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Presidential Documents

Title 3—

The President

Executive Order 13908 of February 28, 2020

Establishment of the Interagency Committee on Trade in Automotive Goods Under Section 202A of the United States Mexico Canada Agreement Implementation Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 202A of the United States-Mexico-Canada Agreement Implementation Act (Act) (Public Law 116–113), it is hereby ordered as follows:

Section 1. *Establishment of Interagency Committee.* The Interagency Committee on Trade in Automotive Goods (Committee) is hereby established to provide advice, as appropriate, on the implementation, enforcement, and modification of provisions of the United States-Mexico-Canada Agreement (Agreement) that relate to automotive goods, including the automotive rules of origin and the alternative staging regime that are part of such rules. The Committee shall also review the operation of the Agreement with respect to trade in automotive goods, including the economic effects of the automotive rules of origin on the United States economy, workers, and consumers, and the impact of new technology on such rules.

Sec. 2. *Membership.* The Committee shall be composed of the Secretary of Commerce, the Secretary of Labor, the United States Trade Representative (USTR), the Chairman of the United States International Trade Commission, and the Commissioner of U.S. Customs and Border Protection in the Department of Homeland Security. Members of the Committee may designate an officer of the United States within their respective executive department, agency, or component to serve as their representative on the Committee. The USTR shall serve as Chair of the Committee. The USTR may invite representatives from other executive departments or agencies, as the USTR determines are necessary, to participate as members or observers, and shall include the Secretary of the Treasury as a member of the Committee. Each executive department, agency, and component represented on the Committee shall ensure that the necessary staff are available to assist in performing the responsibilities of the Committee.

Sec. 3. *Committee Decision-making.* The Committee shall endeavor to make any recommendation on an action or determination under section 202A of the Act by consensus, which shall be deemed to exist where no Committee member objects to the proposed action or determination. If the Committee is unable to reach a consensus on a proposed action or determination, the Committee may decide the matter by majority vote of its members if the Chair determines that allotting further time will unduly delay implementation of provisions of the Agreement that relate to automotive goods. The Chair, in addition to voting, may also break any tie vote.

Sec. 4. *Implementing Measures.* The Secretary of the Treasury, the Secretary of Labor, and the Commissioner of U.S. Customs and Border Protection, are directed to issue, in consultation with the USTR (and with each other, as directed in the Act), such regulations and other measures as are necessary or appropriate to implement section 202A of the Act.

Sec. 5. *General Provisions.* (a) Each executive department and agency shall bear its own expenses incurred in connection with the Committee's functions described in section 202A of the Act.

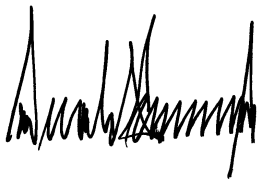
(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 28, 2020.

[FR Doc. 2020–04755
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Billing code 3295–F0–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 944, 980, and 999

[Doc. No. AMS–SC–16–0064; SC16–980–1 FR]

RIN 0581–AD68

Changes to Reporting Requirements—Vegetable and Specialty Crop Import Regulations; and Other Clarifying Changes—Fruit, Vegetable, and Specialty Crop Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the reporting requirements for certain Irish potatoes, tomatoes, and onions regulated under section 608e of the Agricultural Marketing Agreement Act of 1937, as amended (section 8e). With this change, importers of those regulated commodities that have been certified by a designated governmental inspection service other than the Federal or Federal-State Inspection Service as meeting section 8e requirements will be required to provide the inspection certificate number and a copy of the certificate to the Agricultural Marketing Service (AMS) (currently, the Canadian Food Inspection Agency is the only entity so designated). In addition, this rule changes the pistachio import regulations to provide for the electronic filing of aflatoxin test results and to eliminate a requirement to report the disposition of reworked or failed lots of pistachios. This rule also changes several of the section 8e regulations by removing or replacing outdated information.

DATES: Effective September 2, 2020.

FOR FURTHER INFORMATION CONTACT: Vincent Fusaro, Compliance and Enforcement Branch Chief, Specialty Crops Program, AMS, USDA; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *VincentJ.Fusaro@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Final Rule

This final rule streamlines and automates import entry and reporting processes for the import trade as well as USDA and USDA-accredited laboratories. These changes support the International Trade Data System (ITDS) initiative and will reduce the burden on the import industry while also enhancing AMS' ability to ensure compliance with its import regulations. In addition, this rule allows AMS to meet a U.S. Customs and Border Protection (CBP) requirement that all government agencies participating in the ITDS project update their regulations to provide for the electronic entry of import information. This rule also ensures that the import trade has access to accurate and up-to-date information in AMS' import regulations.

Legal Authority for the Final Rule

This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Section 8e provides that whenever certain commodities are regulated under Federal marketing orders, imports of those commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and/or maturity requirements as those in effect for the domestically-produced commodities. The Act also authorizes the U.S. Department of Agriculture (USDA) to perform inspections on those imported commodities and to certify whether those requirements have been met.

Parts 944, 980, and 999 of title 7 of the Code of Federal Regulations (CFR) specify inspection, certification, and reporting requirements for imported commodities regulated under section 8e, including the governmental inspection services that are authorized to perform certification.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Summary of the Provisions of the Final Rule

This final rule:

1. Requires importers of certain Irish potatoes, tomatoes, and onions regulated under section 8e that have been certified by the Canadian Food Inspection Agency to electronically provide the inspection certificate number and a copy of the certificate to AMS. If unable to submit electronically, importers must submit the certificate via email, mail, or facsimile.

2. Changes the method of reporting aflatoxin test results from USDA and USDA-accredited laboratories to AMS by converting a paper form to an electronic format and expanding the reporting requirements for the laboratories to reflect the laboratories' current practice of reporting all test results instead of only failed test results.

3. Eliminates the requirement that importers of pistachios report the disposition of reworked or failed lots of pistachios to AMS.

4. Makes other miscellaneous changes to AMS' import regulations, including updating the agency and program names and contact information, and removing or updating other information that is out of date.

Costs and Benefits

To the extent that this rule will increase efficiency and cost savings, it would benefit importers. Revising the reporting requirements will streamline the regulations and reduce the burden on the trade. The other changes finalized in this action will provide the import trade with accurate information.

Executive Orders 13563, 13175, 13771, 12866, and 12988

USDA is issuing this final rule in conformance with Executive Orders 13563, 13175, 12866, and 13771. See OMB's Memorandum M–17–21 of April 5, 2017, containing guidance for implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Background

This final rule revises the reporting requirements for certain Irish potatoes, tomatoes, and onions regulated under part 980, the vegetable import regulations. This rule requires importers of those regulated commodities that have been certified by a designated governmental inspection service other than the Federal or Federal-State Inspection Service as meeting section 8e requirements to electronically enter the inspection certificate number and upload an electronic copy of the certificate to AMS. Currently, the Canadian Food Inspection Agency (CFIA) is the only designated non-Federal/Federal-State Inspection Service; therefore, references to the reporting requirement in this rule will hereinafter be described as ''CFIA'' or ''Canadian'' inspection certificates and/or inspection information.

A proposed rule concerning this action was published in the **Federal Register** on December 6, 2016 (81 FR 87849). The proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 5, 2017, was provided to allow interested persons to respond to the proposal. The import industry, USDA laboratories, and USDA-accredited laboratories are aware of ITDS and its goal to streamline processes. Members of the import industry have attended annual ITDS Trade Support Network plenary sessions conducted by the U.S. Government over the past few years. No comments were received on the proposed rule.

While no comments were received on the proposed rule, USDA believes that industry and laboratories would benefit from additional time to adjust to the new electronic filing and reporting requirements; accordingly, USDA is setting six months from the publication of this final rule as the effective date for these changes.

In the event an importer is unable to enter the CFIA inspection information electronically, he or she will be required to provide a copy of the certificate to AMS via email, mail, or facsimile.

In addition, this rule changes two pistachio import reporting requirements in § 999.600 of the specialty crop import regulations: The *Imported Pistachios—Lot Notification* report (form FV–249) and the *Imported Pistachios—Rework and Failed Lot Disposition* report (form FV–251). Both forms have been previously approved for use by OMB under OMB No. 0581–0215, Pistachios Grown in California, Arizona, and New Mexico (although these two forms are included in the OMB information collection for the domestic pistachio marketing order, they are used strictly for reporting related to imported pistachios). The pistachio import regulations currently require that USDA or USDA-accredited laboratories complete a form FV–249 for all lots of imported pistachios that fail to meet aflatoxin requirements and submit the form to USDA, the CBP, and the importer who requested the aflatoxin test. The regulations also require that importers of pistachios complete and submit form FV–251 to USDA and CBP for lots that fail to meet aflatoxin requirements when the lots are reworked for further testing or, when not reworked, are exported, sold for non-human consumption, or destroyed.

With the implementation of this rule, USDA or USDA-accredited labs will submit the form FV–249 electronically, reporting all aflatoxin test results (both ''meets'' and ''fails'') to USDA. In March 2017, the Office of Management and Budget (OMB) approved AMS' request to change the FV–249 form number to SC–249 to reflect the current program name (Specialty Crops), and references to the electronic form in this rule will be to SC–249. AMS has confirmed with CBP that it does not need to receive form SC–249, and importers already receive ''meets'' and ''fails'' test results from the laboratories in the form of aflatoxin test certificates; therefore, the laboratories will electronically submit this form only to USDA. Importers will no longer be required to submit the form FV–251 because AMS has determined that information provided on this form is available from other sources. At the same time, AMS obtained OMB's approval for changes to the information collection currently approved under OMB No. 0581–0215, including removal of form FV–251 from the information collection. Providing for electronic submission of the form SC–249 and removing the requirement that importers submit the form FV–251 supports the ITDS initiative by streamlining processes and reducing the burden on America's import trade without compromising AMS' ability to ensure compliance with its import regulations.

This rule makes other changes to the fruit, vegetable, and specialty crop import regulations in §§ 944.400, 944.401, 980.1, 980.117, 980.212, 999.1, 999.100, 999.300, and 999.400. These changes, which include updating agency and program names and contact information and removing or updating other information that is out of date, will help ensure the import regulations contain accurate information and align with the ITDS objective of streamlining import processes for the trade.

This final rule does not remove any specific requirements related to the physical inspection of potatoes, onions, or tomatoes, only the manner in which inspection results are reported. All domestic and imported potatoes, onions, and tomatoes must still be inspected to ensure grade, quality and wholesomeness during the regulated period. All domestic growers of these commodities are also still required to register with the applicable marketing order committee or board. The marketing order committees/boards will still verify that inspections occur for domestically produced commodities. Importers are still required to register each entry by filing with CBP's Automated Commercial Environment (ACE). The AMS Marketing Order and Agreement Division (MOAD) will then verify whether imported products have met inspection requirements.

Certification by Canadian Food Inspection Agency (CFIA)

In part 980, the following sections prescribe the grade, size, quality, and maturity requirements for imported vegetable commodities that are regulated under section 8e: § 980.1(b) for potatoes, § 980.117(b) for onions, and § 980.212(b) for tomatoes. Further, the following sections in part 980 specify the governmental inspection services that are designated to certify that grade, size, quality, and maturity requirements of the commodities have been met: § 980.1(f) for potatoes, § 980.117(e) for onions, and § 980.212(e) for tomatoes. Part 980 also specifies that an inspection certificate issued by a designated government inspection service certifying that the potatoes, onions, and tomatoes meet the import requirements is required for all imports (§§ 980.1(g), 980.117(f), and 980.212(f) for potatoes, onions, and tomatoes, respectively.

As noted above, the vegetable import regulations specify those domestic and foreign government inspection services that are designated to certify that imported potatoes, onions, and tomatoes meet grade, size, quality, and maturity requirements. Currently, the only foreign designated governmental inspection service is CFIA.

When importers have potatoes, onions, or tomatoes inspected in Canada prior to import into the United States, an inspection certificate is provided to the importer that certifies that the

commodity meets section 8e import requirements. These certificates are comprised of various formats, including a *Certificate of Inspection for Fresh Fruits and Vegetables—Shipping Point* (also known as Form CFIA/ACIA 5314 or E2 and E3 Certificates) and an *Export Document for C–PIQ Establishments—Fresh Fruits and Vegetables* (also known as a C–PIQ form). CFIA issues C–PIQ forms to C–PIQ establishments that meet the requirements defined within the CFIA quality assurance program, known as ''Canadian Partners in Quality'' (C–PIQ). Currently, the C–PIQ program is only active for potatoes. All of these Canadian certificates contain similar information as required by the AMS vegetable import regulations, including the date of inspection, the name of the shipper, the commodity inspected, the quantity of the commodity covered by the certificate, and a statement indicating that the commodity meets the import requirements of section 8e.

Currently, Canadian certificates that state that potatoes meet section 8e requirements are presented to CBP at the United States/Canada border, prior to entry into the United States. AMS conducts periodic reviews at CFIA offices and potato handling facilities in various Canadian provinces during which inspectors from AMS' Specialty Crops Inspection (SCI) Division, as well as Compliance and Enforcement Specialists from AMS' MOAD, observe inspection processes and review records at traditional shipping points and maintained under the C–PIQ program for potatoes exported from Canada to the United States. However, importers have not been required to submit copies of the Canadian E2, E3, or C–PIQ certificates or otherwise provide proof of Canadian inspection to AMS.

Electronic Entry of Canadian Certificate Information in ACE

CBP's ACE is the primary system through which the global trade community electronically files information about imports and exports so that admissibility into the United States may be determined and government agencies may monitor compliance. ACE is the platform that provides a ''single window'' through which the global trade community electronically files shipment data, instead of completing or submitting paper-based forms to report the same information to different government agencies. This ''single window'' concept is a key component of ITDS, a system that is designed to reduce the burden on America's import and export trade while still providing information to government agencies that is necessary for the United States to ensure compliance with its laws.

In conjunction with the full implementation of the ITDS ''single window,'' CBP required that government agencies participating in the ITDS project, including AMS, ensure that regulations provide for the electronic entry of import and/or export information. This mandate was instituted through the Border Interagency Executive Council's (BIEC) effort to implement Executive Order 13659 and its governance structure to ensure coordination. CBP shares ACE data with Partnering Government Agencies (PGA) that have entered into a Memorandum of Understanding (MOU) with CBP. ACE data sharing MOUs with PGAs define and limit the scope and use of information shared pursuant to the PGA's respective authorities.

AMS developed and in 2017 began deploying a new automated system called the Compliance and Enforcement Management System (CEMS) that interfaces with CBP's ACE system in support of ITDS. CEMS electronically links with the ACE system to create a ''pipeline'' through which data are transmitted between MOAD and CBP. CEMS validates information electronically entered by importers in ACE and transmits messages to CBP about whether a shipment may be released for importation into the United States.

AMS has determined that: (1) Requiring importers of potatoes, tomatoes and onions to provide the inspection certificate number and a copy of the certificate issued by the non-USDA inspection agency; and (2) requiring the electronic filing of aflatoxin test results related to imported pistachios and eliminating the requirement to report disposition of reworked or failed lots of pistachios, as initially proposed, meet CBP's requirements for ITDS by: (1) Providing for the electronic entry in ACE of certification information for potatoes, onions, and tomatoes inspected by CFIA prior to import into the United States, and (2) providing for the electronic entry of aflatoxin test results related to imported pistachios into ACE. Data will be transmitted from CBP's ACE to AMS' CEMS, where it will be electronically validated. Upon validation, CEMS will transmit an electronic message back to ACE indicating the shipment is cleared for import into the United States. The changes to the vegetable import regulations will automate and streamline the entry and reporting process for importers while enhancing AMS' ability to ensure compliance with its import regulations.

These changes will also provide an option for importers to provide AMS with a paper copy of a CFIA certificate, via email, mail, or facsimile, in the event an importer is unable to electronically provide the required certificate number and image in ACE.

Imported Pistachio Regulation Reporting Changes

The pistachio import regulations provide that each pistachio sample drawn and prepared for aflatoxin testing by a USDA-authorized inspector be submitted to a USDA or USDA-accredited laboratory for analysis (§ 999.600(e)). Aflatoxins are a family of toxins producers by certain fungi that are found on agricultural products, including tree nuts. Aflatoxins are poisonous carcinogens. Lots that fail to meet the aflatoxin requirements currently must be reported by the laboratories to USDA, CBP, and the importer using an *Imported Pistachios—Failed Lot Notification* report (form FV–249), pursuant to §§ 999.600(e), (g), and (h). Importers are also currently required to report the disposition of reworked and failed lots to USDA and CBP using an *Imported Pistachios—Rework and Failed Lot Disposition* report (form FV–251), pursuant to §§ 999.600(g) and (h). Both the form FV–249 and form FV–251 were previously approved as paper forms.

Section 999.600(f) requires that the laboratories provide an aflatoxin inspection certificate to importers that contains, among other things, a statement as to whether the lot meets or fails the import requirements under section 8e. Thus, all aflatoxin test results are provided to importers by the testing laboratories.

Section 999.600 will be revised by changing the reporting requirements for laboratories (form SC–249) and importers (form FV–251). USDA and USDA-accredited laboratories currently submit a paper form FV–249 to USDA, CBP, and the importer when a lot fails to meet the aflatoxin requirements of the pistachio import regulations. The testing laboratories are now meeting this requirement and are also voluntarily providing information to USDA about lots that meet aflatoxin requirements; in other words, the laboratories are providing all aflatoxin test results to USDA, not just failed lot notifications. Importers currently complete and submit a paper form FV–251 to report the disposition of reworked or failed lots to USDA and CBP.

To streamline the regulations and eliminate the paper-based reporting process, AMS has converted the existing paper form to an electronic format, form

SC–249. The electronic format provides for the laboratories to report all aflatoxin test results to AMS, in line with the current practice. USDA's Science and Technology Program approves and accredits laboratories to perform chemical analysis of pistachios for aflatoxin content. The regulations will require accredited laboratories to submit aflatoxin test results to AMS using the electronic form SC–249, and USDA laboratories will also use the electronic form SC–249 to submit test results to AMS. AMS has determined that CBP does not require this test result information, and the laboratories already provide importers with certificates for all aflatoxin tests; therefore, the laboratories will be required to electronically submit form SC–249 to only USDA and not to CBP or importers.

In addition to the changes to laboratory-reporting requirements, § 999.600 will be revised to remove the requirement that importers report the disposition of reworked or failed lots to USDA and CBP using the *Imported Pistachios—Rework and Failed Lot Disposition* report (form FV–251). When this form was included in a proposed rule published in the **Federal Register** on October 11, 2011, (76 FR 65411) and implemented in a final rule published in the **Federal Register** on August 27, 2012, (77 FR 51686), AMS believed that the most effective way to ensure compliance with the rework and failed lot disposition requirements of the pistachio import regulations was to require importers to submit the form FV–251 with details about reworked, exported, sold for non-human consumption, or destroyed lots. Since that time, however, AMS has determined that the information provided on this form is available from other sources (for example, destruction information is available from AMS' SCI Division) or requires additional follow up with an importer. The requirements for rework and final disposition of failed lots is not changing; only the reporting associated with these requirements is changing. Importers will no longer be required to submit the form FV–251 because AMS has determined that information provided on this form is available from other sources. In March 2017, AMS received approval from OMB to remove form FV–251 from the information collection package OMB No. 0581–0215.

Accordingly, §§ 999.600(e), (g), and (h) will be revised to reflect the changes to reporting noted above.

Other Changes

To further ensure that the fruit, vegetable, and specialty crop import regulations provide accurate information to the import trade and in furtherance of streamlining processes in support of ITDS, the following changes will be made:

Contact information for inspection offices and ports of entry, and references to importers making various advance arrangements for inspection services will be revised or removed from the fruit import regulations at §§ 944.400(a) (designated inspection services and procedures), 944.401(c) (olives); the vegetable import regulations at §§ 980.1(g)(1)(ii) (potatoes), 980.117(f)(3) (onions); 980.212(f)(3) (tomatoes); and in the specialty crop regulations at §§ 999.1(c)(1) (dates), 999.100(c)(4) (walnuts), 999.300(c)(3) (raisins), and 999.400(c)(2) (filberts). The contact information for individual inspection offices and ports of entry is currently out of date in many of these sections. Under ITDS, importers will electronically file initial requests for inspection (SC–357, *Initial Inspection Request for Regulated Import Commodities*), which will alert the appropriate inspection office and CBP that a regulated commodity will be arriving that will require inspection at the port of entry or at another location. This electronic process will provide the needed advance notice to the inspection service. AMS' SCI Division has amended its inspection application regulations (7 CFR parts 51 and 52) to provide for the electronic filing of the initial request for inspection, thereby meeting CBP's requirement that the regulations of agencies participating in ITDS be revised to provide for electronic filing of shipment entry data (81 FR 93571, December 21, 2016). This rule adds contact information (address, telephone number, and facsimile numbers) for the main SCI office in Washington, DC, in the event importers need any information about inspection services. This change also makes the fruit, vegetable, and specialty crop regulations more current and consistent.

Administrative changes include updating the USDA agency and program names in §§ 944.400(a) (designated inspection services and procedures) and 944.401(a)(5) and (c) (olives) in the fruit import regulations; 980.1(f) (potatoes), 980.117(e) (onions), and 980.212(e) (tomatoes) in the vegetable import regulations; and 999.600(h) (pistachios) in the specialty crop import regulations. Additionally, the word ''nectarines'' will be removed from § 944.400(a) (designated inspection services and procedures) of the fruit import regulations. Nectarines were regulated in the past but are not currently regulated under the fruit import regulations and should not, therefore, be listed in this section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS considered the information collection requirements necessary for form SC–357 (Initial Inspection Request for Regulated Imported Commodities) for importers to electronically complete to submit CFIA's inspection certificates and certificate numbers. It was deemed not to place an additional paperwork burden on importers. No changes in the information collection requirements pertaining to OMB No. 0581–0125 (Regulations Governing Inspection Certification of Fresh & Processed Fruits, Vegetables, & Other Products) are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

The information collection requirements for the form SC–249 (for imported pistachios) have been previously approved by OMB and assigned OMB No. 0581–0215 (Pistachios Grown in California, Arizona, and New Mexico). As noted earlier, form SC–249 is contained within the OMB information collection for the domestic pistachio marketing order but is used strictly for imported pistachios.

In March 2017, OMB approved AMS' request for changes to the information collection currently approved under OMB No. 0581–0215, Pistachios Grown in California, Arizona and New Mexico, by renaming the existing form number and name to form SC–249, *Notification of Aflatoxin Levels,* to reflect the USDA program name change to Specialty Crops (SC) and the inclusion of all aflatoxin test results; providing for the electronic submission of form SC–249; and relaxing the submission requirements so that laboratories submit the form to only USDA, eliminating the need to also submit the form to CBP and importers. There are currently nine USDA-accredited laboratories that could potentially submit all aflatoxin test results to USDA instead of only failed test results using form SC–249. The number of respondents changed from 7 to 9 to cover all 9 laboratories completing the form, the estimated number of responses per respondent increased from 4 to 7 to more accurately capture the number of times per year each laboratory typically submits the form to USDA, and the annual burden

hours increased as a result of the increased number of respondents and annual responses from 5.6 hours to 11.55 hours (this is a slight reduction from the 12.60 annual burden hours that were previously calculated and included in the proposed rule concerning this action that was published in the **Federal Register** on December 6, 2016, 81 FR 87849). These changes necessitated by the rulemaking action were included in AMS' request to OMB to revise this information collection and were approved by OMB in March 2017. The revised form SC–249 was then included in the June 2017 three-year renewal of this information collection.

Executive Order 12866 and the Regulatory Flexibility Act

A Regulatory Impact Analysis is required for significant rules by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives. If regulation is necessary, then agencies must select the action that maximizes net benefits, including potential economic, environmental, public health and safety effects, and equity. This analysis examines the costs and benefits of this rule on importers, Customs brokers, and USDA. This document also addresses the requirement of Executive Order 13771 that agencies provide the best approximation of total costs and savings associated with a new or repealed regulation.

Need for Regulatory Action

This final rule streamlines and automates import entry and reporting processes for the import trade as well as USDA and USDA-accredited laboratories. These changes support the International Trade Data System (ITDS) initiative and will reduce the burden on the import industry while also enhancing AMS' ability to ensure compliance with its import regulations. In addition, this rule allows AMS to meet a U.S. Customs and Border Protection (CBP) requirement that all government agencies participating in the ITDS project update their regulations to provide for the electronic entry of import information. This rule also ensures that the import trade has access to accurate and up-to-date information in AMS' import regulations.

Importers of Canadian potatoes, onions, and tomatoes that are certified by CFIA as meeting section 8e requirements are not currently required to provide AMS with proof of this certification prior to import. This rule mandates that AMS receive proof of CFIA certification through electronic entry of CFIA certificate numbers and electronic copies of certificates. Other agencies, such as CBP, already require importers to electronically enter information about shipments. The implementation of electronic filing capability via ACE and CEMS, will allow entries and associated paperwork to be transmitted to and verified electronically by AMS. Under this system, the importer would electronically file entries via ACE, which would then electronically transmit data to CEMS. Once the data is received, CEMS automatically records information regarding the entry and transmits an electronic notification to the inspection office identified by the filer via email. The ACE Secure Data Portal is covered by OMB Control number 1651–0105 and is the primary means of importers and other trade filers to submit information to ACE and establish their user accounts. CBP published its Privacy Impact Analysis concurrent with a System of Records Notice on July 31, 2015. It is numbered DHS/CBP/PIA–003(b) and available at *https://www.dhs.gov/sites/default/files/publications/privacy-piaupdate-cbp-ace-july2015.pdf*) CBP and AMS established a Memorandum of Understanding, dated May 29, 2019, formalizing their respective roles in sharing information that supports ACE's ability to service the trade community.

After the import undergoes a mandatory grading inspection, the inspection service electronically transmits pertinent inspection information to CEMS. If the inspection information identifies the entry as having met import requirements, CEMS automatically reconciles the inspection information against the entry information it previously stored. If the entry does not meet import requirements, a case is created in CEMS, which is electronically assigned to MOAD for investigation.

This process reduces or eliminates the handling and processing of paper forms and adheres to the Paperwork Reduction Act of 1995. The previous paper-based filing method remains available for instances when the system may be temporarily off-line, or for filers with an inability to file electronically.

This electronic filing option should streamline business operations, both for importers of these commodities, and for USDA, which will use the electronically submitted data to monitor compliance with section 8e regulations. Electronic submission of this certificate information would meet CBP's requirement to ensure that the regulations of those government agencies participating in the ITDS project, such as AMS, provide for the electronic submission of required data. This change should create little to no burden on importers while providing AMS with the ability to properly monitor imported vegetable shipments for compliance with the import regulations.

This rule also changes the reporting requirements of aflatoxin test results of imported pistachios. Currently, USDA and USDA-accredited laboratories are required to submit documentation for all lots of imported pistachios that fail the test for aflatoxin to USDA, CBP, and the importer. The importer is also required to submit documentation to USDA and CBP for lots that fail the test for aflatoxin when lots are reworked for further testing, or are exported, sold for non-human consumption, or destroyed. This rule changes these requirements in that laboratories will electronically report all aflatoxin test results (both ''meets'' and ''fails'') to USDA. Importers already receive these results from laboratories through aflatoxin test certificates. CBP has reported that it does not need to receive documentation of aflatoxin test results. As all USDA and USDA-accredited laboratories already electronically supply USDA with all aflatoxin test results of imported pistachios, this rule should have little to no impact on these entities.

This rule is expected to generate time and cost-savings for importers, Customs brokers, MOAD specialists, and USDA and USDA-accredited laboratories. The benefits, assessed both qualitatively and quantitatively, are expected to outweigh any costs of this rule. The burden on the impacted entities is anticipated to be minimal.

Affected Entities

The entities that are most likely to be affected by this rule primarily include importers of potatoes, tomatoes, and onions from Canada, and importers of pistachios. Also likely to be impacted are Customs brokers hired by importers to file the CFIA certification with CBP, MOAD specialists who are responsible to ensure that imports meet section 8e standards, and USDA and USDA-accredited laboratories that perform chemical analysis of aflatoxin levels in imported pistachios. All entities are expected to gain time and cost-savings as a result of this rule.

Based on 2015 information from CBP, the most recent data available to AMS, USDA estimates that there are 25 importers of potatoes from Canada, 13 importers of onions from Canada, and 12 importers of tomatoes from Canada.

The Harmonized Tariff Schedule (HTS) codes of imports of potatoes, tomatoes, and onions that are subject to quality inspection are listed in Table 1. Using these codes, USDA retrieved data from the Global Agricultural Trade System (GATS), which is administered by the USDA's Foreign Agricultural Service (FAS).

TABLE 1—HTS CODES FOR IMPORTED POTATOES, TOMATOES, AND ONIONS SUBJECT TO QUALITY INSPECTION IN ACCORDANCE WITH FEDERAL MARKETING ORDERS AND AGREEMENTS

HTS codes	Descriptions
0701.90.5015	Potatoes, fresh, other: In immediate containers not over 1,200 kg net weight, russet or netted gem.
0701.90.5025	Potatoes, fresh, other: In immediate containers not over 1,200 kg net weight, red skin.
0701.90.5035	Potatoes, fresh other: In immediate containers not over 1,200 kg net weight, other.
0701.90.5045	Potatoes, fresh other, other, russet or netted gem.
0701.90.5055	Potatoes, fresh, other, other, red skin.
0701.90.5065	Potatoes, fresh, other, other.
0702.00.2099	Tomatoes, fresh, entered from 3/1–7/14 or 9/1–11/14, other, other.
0702.00.4098	Tomatoes, fresh, entered 7/15–8/31, other, other.
0702.00.6099	Tomatoes, fresh, entered 11/15–last day of February, other, other.
0703.10.20	Onions, onion sets.
0703.10.30	Onions, pearl onions not over 16 mm in diameter.
0703.10.40	Onions, other.

Source: CBP and Trade Automated Interface Requirements, September 2016.

Table 2 shows three-year average import volumes for potatoes, tomatoes, and onions from Canada and from all U.S. trading partners for the years 2015 through 2017. As shown in the fourth column, almost all potatoes imported into the United States come from Canada. About 13 percent of imported onions originate in Canada, as do 4 percent of tomatoes.

TABLE 2—AVERAGE IMPORT VOLUME OF POTATOES, TOMATOES, AND ONIONS FOR 2015–2017

Commodity	Imports from Canada (lbs.)	Total imports (lbs.)	Imports from Canada as share of total (percent)
Potatoes	777,061,999	777,115,645	99.99
Tomatoes	13,208,999	307,818,502	4.29
Onions	152,630,386	1,144,195,001	13.34

Source: FAS–GATS.

According to GATS data, potatoes account for approximately 28 percent of U.S. fresh vegetable import volume from Canada. Canada is the second-largest trading partner of the United States in terms of fresh vegetable import volume, accounting for 18 percent of fresh vegetable imports.

In-shell and shelled pistachio imports are also subject to quality inspection under section 8e requirements. Table 3 lists the HTS codes of imported pistachios subject to aflatoxin testing and the three-year average volume of imports from 2015 to 2017. Turkey is the largest supplier of both in-shell and shelled imported pistachios into the United States, supplying 74 percent and 66 percent of their totals, respectively. Altogether, Turkey accounts for 70 percent, on average, of total U.S. pistachio import volume. Greece supplies 14 percent of in-shell imports, and Italy supplies 14 percent of shelled imports.

TABLE 3—HTS CODES FOR IMPORTED PISTACHIOS SUBJECT TO AFLATOXIN TESTING AND AVERAGE IMPORT VOLUMES FOR 2015–2017

HTS codes	Description	Imports (lbs.)
0802.51	Pistachios: In shell	525,803
0802.52	Pistachios: Shelled	377,946

Sources: CBP and Trade Automated Interface Requirements, September 2016; FAS–GATS.

In addition to importers, Customs brokers are expected to be impacted by the change in reporting requirements as a result of this rule. Customs brokers are hired by importers to coordinate and file the paperwork that allows an import to enter the country. Customs brokers, who may be private individuals or corporations, are authorized by CBP to assist importers and exporters in meeting Federal requirements governing trade. According to CBP, there are approximately 14,454 active licenses for Customs brokers in the United States.

MOAD, along with USDA and USDA-accredited laboratories, are the final groups expected to be impacted by this rule. MOAD ensures that imports subject to section 8e regulations meet the same quality standards as the commodity produced domestically. MOAD oversees the compliance of 14 such commodities that are subject to section 8e regulations. As of January

2019, there were nine USDA and USDA-accredited laboratories that perform chemical analysis on aflatoxin levels of pistachios. One of these laboratories is the USDA facility in Blakely, Georgia. The other eight are privately-owned USDA-accredited laboratories all in California.

Baseline Definition

In fiscal year 2018, CEMS received and processed 34,686 electronic filings of CFIA certification from CBP's ACE system. Importers and Customs brokers have commented that the multi-step paper-based filing process, which relied on the coordination of multiple parties, could take up to half a day to complete, compared to less than five minutes for filing electronically. Assuming an eight-hour workday, AMS concludes that CEMS may generate a time savings of four hours per filing for importers and Customs brokers. Applying this time savings to the number of electronic filings in CEMS in 2018 results in a total of 138,744 hours saved by importers and Customs brokers for the year. The Bureau of Labor Statistics reports a mean hourly wage for Office and Administrative Support Occupations of $19.58 as of May 2018. Multiplying the total hours of time saved by importers and Customs brokers who used CEMS to file electronically in 2018 by the hourly wage of an Office and Administrative Support worker in 2018 leads to an estimated baseline cost savings of $2,716,608.

In 2018 and prior to CEMS, MOAD required at least one full-time employee to manage the manual data-entry that accompanied the paper-based filing system. The time of this full-time employee represents a cost to the USDA of $83,462, which is the 2018 total compensation (wages and benefits) for a full-time employee at the GS–8, Step 1 pay-grade, adjusted for locality pay in the Washington, DC, region, and with benefits assumed to account for 39 percent of total compensation.

Cost-Savings of the Action

Based on industry feedback, AMS estimates that approximately 25 to 30 percent of Customs brokers and importers already used ACE to electronically file CFIA certification in fiscal year 2018, even though it was not yet mandatory. This speaks to importers' and Customs brokers' approval of CEMS and a willingness to file electronically. While businesses are generally drawn to practices that maximize efficiency and profits, the voluntary adoption of the electronic filing system by Customs brokers and importers has not been immediate. AMS attributes this to resistance to change. Since 2018, the portion of Customs brokers and importers to voluntarily utilize the system has increased to more than half. It may be true that over time, the incentives to maximize efficiency and profits would overcome resistance to change, and all Customs brokers and importers would voluntarily adopt the electronic filing system. AMS recognizes, therefore, that the estimated cost-savings attributed to this rule may be overstated in the analysis that follows.

Customs brokers and importers have responded positively to the change in reporting requirements, particularly in regard to the integration of CEMS in creating and filing an Importer Exempt Commodity Certificate (SC–6 form). Customs brokers and importers report to have had little or no difficulty in creating an electronic copy of the form in CEMS and report that using CEMS is an improvement compared to the former paper-based system. Based on feedback from the industry, the cost for Customs brokers and importers to use CEMS to electronically file CFIA certification will be minimal.

Assuming that the number of electronic filings is evenly distributed among importers and Customs brokers, and that the figure of 34,686 electronic filings represents 25 to 30 percent of the greater population of filings, AMS estimates that the total number of filings in 2018, both electronic and paper-based, to be between 115,620 and 138,744. Multiplying this range by the four hours required to complete the paper-based filing process results in 462,480 to 554,976 total hours required to complete the filing process prior to CEMS. The product of the total hours and the mean hourly wage of an Office and Administrative Support worker in 2018 is $9,055,358 to $10,866,430 in total costs to importers and Customs brokers to administer the paper-based filing process prior to CEMS. This range represents the potential cost-savings for all importers and Customs brokers to use CEMS, including those that had already adopted its use in 2018. Subtracting the baseline hours and cost-savings of 138,744 hours and $2,716,608 from the potential time and cost-savings for all importers and Customs brokers to use CEMS results in a range of additional time-savings of 323,736 to 416,232 hours and cost-savings of $6,338,751 to $8,149,823. Additionally, the streamlining of the process of gathering information and harmonizing data through CEMS results in a cost-savings to USDA of $83,462.

The requirement in this rule for USDA and USDA-accredited laboratories to report to USDA all test results of chemical analysis of aflatoxin levels in pistachios is expected to generate little to no change in costs or benefits for involved parties. This is because all nine laboratories currently provide USDA with both ''meets'' and ''fails'' aflatoxin test results voluntarily. Converting the process from reporting results of failed lots only on paper to instead reporting all results electronically does not result in substantial change in burden.

Executive Order 13771

In accordance with Executive Order 13771, this action has been designated as neither regulatory nor deregulatory as its resultant costs and savings are de minimis.

Alternatives to the Rule

Regarding alternatives to this action, AMS determined that these changes to the regulations are needed to comply with the ITDS mandate and to provide AMS with information it requires to ensure compliance with its regulations. CBP is requiring that all government agencies partnering on the ITDS initiative (including AMS) update their regulations to provide for the electronic entry of import and export shipment data. Providing for the entry of certificate information in ACE for potatoes, tomatoes, and onions imported from Canada that have been certified by CFIA as meeting section 8e requirements enhances AMS' ability to monitor compliance while also meeting the objectives of ITDS to streamline processes for the import trade. In addition, changing the pistachio regulations by revising the reporting requirements will streamline the regulations and reduce the burden on the trade. The other changes finalized in this action will provide the import trade with accurate information.

As this rule aims to streamline processes and improve efficiency, the only alternative considered was the status quo of a paper-based filing system and the reporting of only failed lots from aflatoxin tests to AMS. AMS believes that the changes in reporting requirements in this rule represent the best alternative to maximize benefits to importers, Customs brokers, MOAD specialists, and USDA and USDA-accredited laboratories.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. AMS has prepared this final Regulatory Flexibility Analysis, the

purpose of which is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Need for Regulation

Importers of Canadian potatoes, onions, and tomatoes that are certified by CFIA as meeting section 8e standards are not currently required to submit this certification to AMS prior to import. By mandating that AMS receive proof of CFIA certification through electronic entry of CFIA certificate numbers and electronic copies of certificates, AMS can better ensure compliance of imports with section 8e standards.

Similarly, the requirement in this rule for USDA and USDA-accredited laboratories to electronically submit all aflatoxin test results to USDA will replace outdated reporting practices and promote greater efficiency. Currently, these laboratories are required to submit documentation for all lots of imported pistachios that fail the test for aflatoxin to USDA, CBP, and the importer. The importer is also required to submit documentation to USDA and CBP for lots that fail the test for aflatoxin when lots are reworked for further testing, or are exported, sold for non-human consumption, or destroyed. This rule eliminates the need for these documents, replacing them with the requirement that laboratories electronically report all aflatoxin test results (both ''meets'' and ''fails'') to USDA. Importers already receive these results from laboratories and CBP has reported that it does not need to receive documentation of aflatoxin test results.

Objectives of the Action

This final rule changes the import regulations for potatoes, onions, and tomatoes by requiring proof of CFIA certification through electronic entry of CFIA certificate numbers and electronic copies of certificates. Prior to import into the United States, importers must enter into CBP's ACE system the certificate number and upload an electronic image of the certificate for those shipments certified by CFIA as meeting section 8e requirements. This information is then transmitted through CEMS to AMS. If an importer is unable to provide this information electronically in ACE, a copy of the certificate must accompany the shipment at entry into the country, and the importer must also submit a copy of the certificate to AMS via email, mail, or facsimile.

This final rule also changes the pistachio import regulations by modifying the reporting requirements for USDA and USDA-accredited laboratories that perform chemical analysis of aflatoxin levels in imported pistachios. The regulations will require these laboratories to submit all aflatoxin test results to USDA instead of only the results of failed lots.

Legal Basis for the Action

This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Section 8e provides that whenever certain commodities are regulated under Federal marketing orders, imports of those commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and/or maturity requirements as those in effect for the domestically-produced commodities. The Act also authorizes the U.S. Department of Agriculture (USDA) to perform inspections on those imported commodities and to certify whether those requirements have been met.

Parts 944, 980, and 999 of title 7 of the Code of Federal Regulations (CFR) specify inspection, certification, and reporting requirements for imported commodities regulated under section 8e, including the governmental inspection services that are authorized to perform certification.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

A 30-day comment period ending January 5, 2017, was provided to allow interested persons to respond to the proposal. The import industry, USDA laboratories, and USDA-accredited laboratories are aware of ITDS and its goal to streamline processes. Members of the import industry have attended annual ITDS Trade Support Network plenary sessions conducted by the U.S. Government over the past few years. No comments were received on the proposed rule; accordingly, no changes will be made to the rule as proposed.

Potentially Affected Small Entities

Importers of potatoes, tomatoes, onions, and pistachios may be engaged in a variety of different industries and in varying segments of the supply chain. The North American Industry Classification System (NAICS) categorizes industries based on their activities. Table 5 lists potential industries with which importers may be involved that may be impacted by this rule, along with information about their sizes.

TABLE 5—PROFILES OF POTENTIALLY IMPACTED IMPORTERS

NAICS codes	NAICS industry description	Total number of firms	Firms with less than 100 employees	Firms with 100–499 employees	Firms with 500 employees and more
Subsector 311—Food Manufacturing					
311411	Frozen Fruit, Juice and Vegetable Manufacturing.	153	102	24	27
311423	Dried and Dehydrated Food Manufacturing	181	142	20	19
311911	Roasted Nuts and Peanut Butter Manufacturing.	233	184	29	20
Subsector 424—Merchant Wholesalers, Nondurable Goods					
424410	General Line Grocery Merchant Wholesalers	2,443	2,300	80	63
424420	Packaged Frozen Food Merchant Wholesalers.	2,570	2,377	113	80
424480	Fresh Fruit and Vegetable Merchant Wholesalers.	4,415	4,157	208	50

TABLE 5—PROFILES OF POTENTIALLY IMPACTED IMPORTERS—Continued

NAICS codes	NAICS industry description	Total number of firms	Firms with less than 100 employees	Firms with 100–499 employees	Firms with 500 employees and more
Subsector 445—Food and Beverage Stores					
445110	Supermarkets and Other Grocery (except Convenience) Stores.	41,264	39,827	1,118	319
445292	Confectionery and Nut Stores	2,132	2,084	35	13

Source: U.S. Census Bureau—2016 County Business Patterns.

Potatoes, tomatoes, onions, and pistachios may be imported for further processing or be re-entered into the stream of commerce as a fresh market product. For example, an importer of potatoes in the food manufacturing industry (Subsector 311) may utilize imports for frozen French fries or dehydrated potatoes. An importer may also purchase fresh potatoes to sell to restaurants as a wholesaler (Subsector 424), or to sell in a supermarket or grocery store (Subsector 445). According to 2016 data from the U.S. Census Bureau, most firms in the industries listed in Table 5 employ fewer than 100 people. Time-savings from the automation that CEMS provides is expected to particularly benefit importers with a smaller workforce.

The Small Business Administration (SBA) determines standards by which entities are considered to be ''small''. These standards may be determined by the average annual receipts or the average employment of a firm. Table 6 shows the small business standards for the industries in which importers of potatoes, tomatoes, onions, and pistachios may be employed. Table 6 also shows the portion of businesses in these industries likely to be considered ''small'', using the information in Table 5.

TABLE 6—INDUSTRY COMPARISON WITH SBA STANDARDS OF SMALL BUSINESSES

NAICS codes	NAICS industry description	SBA size standards in dollars	SBA size standards in number of employees	Portion of industry estimated to meet standard
Subsector 311—Food Manufacturing				
311411	Frozen Fruit, Juice and Vegetable Manufacturing		1,000	82% (at least).
311423	Dried and Dehydrated Food Manufacturing		750	90% (at least).
311911	Roasted Nuts and Peanut Butter Manufacturing		750	91% (at least).
Subsector 424—Merchant Wholesalers, Nondurable Goods				
424410	General Line Grocery Merchant Wholesalers		250	94% (at least).
424420	Packaged Frozen Food Merchant Wholesalers		200	92% (at least).
424480	Fresh Fruit and Vegetable Merchant Wholesalers		100	94% (at least).
Subsector 445—Food and Beverage Stores				
445110	Supermarkets and Other Grocery (except Convenience) Stores.	$32,500,000		Likely the majority.
445292	Confectionery and Nut Stores	7,500,000		Likely the majority.

Sources: U.S. Small Business Administration Size Standards Table (Oct. 2017); U.S. Census Bureau—2016 County Business Patterns; U.S. Census Bureau—2016 Monthly Retail Trade Survey.

The industries listed in Table 6 under NAICS Code Subsectors 311 and 424 have small business standards based on number of employees. Using the information in Table 5 on business firm size, AMS concludes that most importers of potatoes, tomatoes, onions, and pistachios in these industries are likely considered ''small''. The industries listed in Table 6 under NAICS Code Subsector 445 have small business standards based on average annual receipts. The U.S. Census Bureau, unfortunately, does not publish retail sales data specific to six-digit NAICS Code. AMS, therefore, used the business firm size data in Table 5 to estimate sales by businesses with NAICS Codes 445110 and 445292 based on the retail sales data of all businesses under NAICS Code Subsector 445. In this estimate, AMS assumes retail sales to be evenly spread among all industries falling within NAICS Code Subsector 445. The results are average annual sales receipts of $1.15 million for Confectionary and Nut Stores, and $14.5 million in average annual sales receipts for Supermarkets and Other Grocery Stores. The majority of businesses in these industries are, therefore, likely ''small''.

As of January 2019, there were a total of nine USDA and USDA-accredited laboratories that perform chemical analysis on aflatoxin levels of pistachios. One of these laboratories is the USDA facility in Blakely, Georgia. As a government entity, it is not subject to RFA analysis. The other eight are privately-owned USDA-accredited laboratories in California. The SBA classifies testing laboratories (NAICS code 541380) as small businesses if they receive no more than an average of $15 million annually. AMS could find no data on the average annual receipts of testing laboratories and is, therefore,

unable to determine whether these eight USDA-accredited laboratories would be considered small businesses under the SBA standards.

Alternatives To Minimize Impacts of Rule

Regarding alternatives to this action, AMS determined that these changes to the regulations are needed to comply with the ITDS mandate and to provide AMS with information it requires to ensure compliance with its regulations. CBP is requiring that all government agencies partnering on the ITDS initiative (including AMS) update their regulations to provide for the electronic entry of import and export shipment data. Providing for the entry of certificate information in ACE for potatoes, tomatoes, and onions imported from Canada that have been certified by CFIA as meeting section 8e requirements enhances AMS' ability to monitor compliance while also meeting the objectives of ITDS to streamline processes for the import trade. In addition, changing the pistachio regulations by revising the reporting requirements will streamline the regulations and reduce the burden on the trade. The other changes finalized in this action will provide the import trade with accurate information.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS conducted extensive stakeholder outreach as part of this rulemaking. During the summer of 2015, AMS staff members participated in 13 outreach sessions to the U.S. import industry. The sessions took place both in person as well as via webcast. The goal of these sessions was to introduce the new ACE system and the government agencies that are participating in the program. USDA presented extensive overviews of the proposed regulations and encouraged the trade to participate by creating their own companion software. Additionally, through 2017 and 2018, AMS staff coordinated extensively with CBP to prepare for the changes detailed in this Rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Civil Rights Impact Analysis

AMS has reviewed this final rule in accordance with Departmental Regulation 4300–4, Civil Rights Impact Analysis (CRIA), to identify and address any major civil rights impacts the rule might have on any protected groups of people. After a careful review of the rule's intent and provisions, AMS has determined that this rule would not disproportionately or adversely impact any importers of commodities regulated under section 8e who are members of any protected group or employees of any USDA or USDA-accredited laboratories who are members of any protected group.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Olives, Oranges.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Pistachios, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 944, 980, and 999 are amended as follows:

■ 1. The authority citation for 7 CFR parts 944, 980, and 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 944—FRUITS; IMPORT REGULATIONS

■ 2. Revise § 944.400(a) to read as follows:

§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, kiwifruit, oranges, prune variety plums (fresh prunes), and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, oranges, prune variety plums (fresh prunes), and table grapes that are imported into the United States. Agriculture and Agri-Food Canada is also designated as a governmental inspection service for the purpose of certifying grade, size, quality and maturity of prune variety plums (fresh prunes) only. Inspection by the Federal or Federal-State Inspection Service or the Agriculture and Agri-Food Canada, with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective services, applicable to the particular shipment of the specified fruit, is required on all imports. Inspection and certification by the Federal or Federal-State Inspection Service will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR part 51). For further information about Federal or Federal-State inspection services, contact Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0240, Washington, DC 20250–0237; telephone (202) 720–5870; fax (202) 720–0393.

* * * * *

■ 3. In § 944.401, revise paragraphs (a)(5) and (c) to read as follows:

§ 944.401 Olive Regulation 1.

(a) * * *

(5) *USDA Inspector* means an inspector of the Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, or any other duly authorized employee of the Department.

* * * * *

(c) The Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade and size of processed olives from imported bulk lots for use in canned ripe olives and the grade and size of imported canned ripe olives. Inspection by said inspection service with appropriate evidence thereof in the form of an official inspection certificate, issued by the service and applicable to the particular lot of olives, is required. With respect to imported bulk olives, inspection and certification shall be completed prior to use as packaged ripe olives. With respect to canned ripe olives, inspection and certification shall be completed prior to importation, unless imports arrive by vessel in which case the date of inspection and

certification may be after the date of importation. Any lot of olives which fails to meet the import requirements and is not being imported for purposes of contribution to a charitable organization or processing into oil may be exported or disposed of under the supervision of the Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, with the cost of certifying the disposal borne by the importer. Such inspection and certification services will be available, upon application, in accordance with the applicable regulations governing the inspection and certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR part 52). For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1536–S, STOP 0240, Washington, DC 20250–0237; telephone (202) 720–5870; fax (202) 720–0393.

* * * * *

PART 980—VEGETABLES; IMPORT REGULATIONS

■ 4. In § 980.1, revise paragraphs (f) and (g)(1)(i) and (ii) to read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(f) *Designation of governmental inspection services.* The Federal or Federal-State Inspection Service, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of § 608e of the Act.

(g) * * *

(1)(i) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables, and other products (7 CFR part 51), and each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant. For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1536–S, STOP 0240, Washington, DC 20250–0237; telephone (202) 720–5870; fax (202) 720–0393.

(ii) If certification is provided by a designated governmental inspection service other than the Federal or Federal-State Inspection Service, in accordance with 980.1(f), an importer shall electronically transmit to USDA, prior to entry, the certificate number and an electronic image of the certificate using the U.S. Customs and Border Protection's Automated Commercial Environment system. If this information is not provided electronically prior to entry, a paper copy of the certificate must accompany the shipment at the time of entry, and a copy of the certificate must be submitted by email or mail to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone (888) 551–3523; or email *8eImports@ams.usda.gov.*

* * * * *

■ 5. In § 980.117, revise paragraphs (e) and (f)(2) and (3) to read as follows:

§ 980.117 Import regulations; onions.

* * * * *

(e) *Designation of governmental inspection service.* The Federal or Federal-State Inspection Service, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of onions that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

(f) * * *

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant. For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1536–S, STOP 0240, Washington, DC 20250–0237; telephone (202) 720–5870; fax (202) 720–0393.

(3) If certification is provided by a designated governmental inspection service other than the Federal or Federal-State Inspection Service, in accordance with 980.117(e), an importer shall electronically transmit to USDA, prior to entry, the certificate number and an electronic image of the certificate using the U.S. Customs and Border Protection's Automated Commercial Environment system. If this information is not provided electronically prior to entry, a paper copy of the certificate must accompany the shipment at the time of entry, and a copy of the certificate must be submitted by email or mail to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone (888) 551–3523; email *8eImports@ams.usda.gov;* or fax (202) 720–5698.

* * * * *

■ 6. In § 980.212, revise paragraphs (e) and (f)(2) and (3) to read as follows:

§ 980.212 Import regulations; tomatoes.

* * * * *

(e) *Designation of governmental inspection service.* The Federal or Federal-State Inspection Service, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of tomatoes that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

(f) * * *

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant. For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1536–S, STOP 0240, Washington, DC 20250–0237; telephone (202) 720–5870; fax (202) 720–0393.

(3) If certification is provided by a designated governmental inspection service other than the Federal or Federal-State Inspection Service, in accordance with 980.212(e), an importer shall electronically transmit to USDA,

prior to entry, the certificate number and an electronic image of the certificate using the U.S. Customs and Border Protection's Automated Commercial Environment system. If this information is not provided electronically prior to entry, a paper copy of the certificate must accompany the shipment at the time of entry, and a copy of the certificate must be submitted by email or mail to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone (888) 551–3523; email *8eImports@usda.gov;* or fax (202) 720–5698.

* * * * *

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

§ 999.100 [Amended]

■ 7. In § 999.100, amend paragraph (c)(4) by removing the last sentence.

■ 8. In § 999.300, revise paragraph (c)(3) to read as follows:

§ 999.300 Regulation governing importation of raisins.

* * * * *

(c) * * *

(3) Whenever raisins are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as the inspector may request.

* * * * *

■ 9. In § 999.400, revise paragraph (c)(2) to read as follows:

§ 999.400 Regulation governing the importation of filberts.

* * * * *

(c) * * *

(2) *Inspection.* Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection and Certification of Fresh Fruits and Vegetables and Related Products (7 CFR part 51). The cost of each such inspection and related certification shall be borne by the applicant. Whenever filberts are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as the inspector may request. Inspection must be completed prior to the importation, unless imported by vessel, in which case for filberts, the date of release may be used.

* * * * *

■ 10. Amend § 999.600 by revising paragraphs (e)(2) and (3), (g), and (h) to read as follows:

§ 999.600 Regulation governing the importation of pistachios.

* * * * *

(e) * * *

(2) Lots that require a single test sample will be certified as ''negative'' on the aflatoxin inspection certificate if the sample has an aflatoxin level at or below 15 ppb. If the aflatoxin level is above 15 ppb, the lot fails. The laboratory shall electronically submit the results to USDA as described in paragraph (h) of this section.

(3) Lots that require two test samples will be certified as ''negative'' on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 10 ppb. If the aflatoxin level of Test Sample #1 is above 20 ppb, the lot fails and the laboratory shall electronically submit the results to USDA as described in paragraph (h) of this section. If the aflatoxin level of Test Sample #1 is above 10 ppb and at or below 20 ppb, the laboratory may, at the importer's discretion, analyze Test Sample #2 and average the test results of Test Samples #1 and #2. Alternately, the importer may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the importer directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged result of Test Samples #1 and #2 is at or below 15 ppb. If the average aflatoxin level of Test Samples #1 and #2 is above 15 ppb, the lot fails. The laboratory shall electronically submit the results to USDA as described in paragraph (h) of this section.

* * * * *

(g) *Failed lots/rework procedure.* Any lot or portion thereof that fails to meet the import requirements prior to or after reconditioning may be exported, sold for non-human consumption, or disposed of under the supervision the Federal or Federal-State Inspection Programs, with the costs of certifying the disposal of such lot paid by the importer.

(1) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for aflatoxin as specified in paragraphs (d) and (e) of this section, except that the lot sample size and the test sample size shall be doubled. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled, and tested in the manner specified for an original lot of kernels, or the failed lot may be exported, used for non-human consumption, or otherwise disposed of.

(2) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for aflatoxin as specified in paragraphs (d) and (e) of this section.

(3) *Failed lot reporting.* If a lot fails to meet the aflatoxin requirements of this part, the testing laboratory shall electronically submit the results to USDA as described in paragraph (h) of this section within 10 working days of the test failure. This information must be submitted each time a lot fails aflatoxin testing.

(h) *Reports and Recordkeeping: Notification of Aflatoxin Levels.* Each USDA or USDA-accredited laboratory shall notify the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA of all aflatoxin test results for all lots by electronically submitting this form within 10 days of testing through a format specified by the Secretary.

* * * * *

Dated: February 21, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–03895 Filed 3–5–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0846; Airspace Docket No. 19–AWP–78]

RIN 2120–AA66

Amendment of Air Traffic Service (ATS) Route V–165; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends one domestic Very High Frequency Omnidirectional Range (VOR) Federal airway V–165 in the western United States. The modifications are necessary due to the planned decommissioning of Clovis, CA, VOR portion of the VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), which provides navigation guidance for portions of the affected ATS route. The Clovis, CA, VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, 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 Rules and Regulations 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: Kenneth Ready, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it supports modifying the air traffic service route structure in the western United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0846 in the **Federal Register** (84 FR 67385; December 10, 2019), amending VOR Federal airway V–165 in the western United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Domestic VOR Federal airways are published in paragraph 6010, 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 VOR Federal airway listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by amending domestic VOR Federal airway V–165. The route change is outlined below.

V–165: V–165 is amended on the segment between Tule, CA, VOR/DME and the Mustang, NV, VORTAC. The ATS route will stop at EXTRA intersection (INT Tule, CA 339° and Avenal, CA, 042° radials) and then resume at MARRI intersection (INT Squaw Valley, CA 133° and Mustang, NV, 183° radials). The unaffected portion of the existing federal airway will remain as charted.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending domestic VOR Federal airway V–165 in the western United States qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6010 Domestic VOR Federal Airways.

V–165 [Amended]

From Mission Bay, CA; INT Mission Bay 270° and Oceanside, CA, 177° radials; Oceanside; 24 miles, 6 miles wide, Seal Beach, CA; six (6) miles wide, INT Seal Beach 287° and Los Angeles, CA, 138° radials; Los Angeles; INT Los Angeles 357° and Lake Hughes, CA, 154° radials; Lake Hughes; INT Lake Hughes 344° and Shafter, CA, 137° radials; Shafter; Tule, CA; INT Tule 339° and Avenal, CA, 042°radials. From INT Squaw Valley, CA 133° and Mustang, NV, 183° radials; 72 miles, 50 miles, 131 MSL, Mustang, NV; 40 miles, 12 AGL, seven (7) miles, 115 MSL, 54 miles, 135 MSL, 81 miles, 12 AGL, Lakeview, OR; 5 miles, 72 miles, 90 MSL, Deschutes, OR; 16 miles, 19 miles, 95 MSL, 24 miles, 75 MSL, 12 miles, 65 MSL, Newberg, OR; 32 miles, 45 MSL, INT Newberg 355° and Olympia, WA, 195° radials; Olympia; Penn Cove, WA; to Whatcom, WA.

Issued in Washington, DC, on February 25, 2020.

Scott Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–04419 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0665; Airspace Docket No. 17–ASO–7]

RIN 2120–AA66

Amendment of VOR Federal Airways V–56, and V–209 in the Vicinity of Kewanee, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VHF Omnidirectional Range (VOR) Federal airways V–56 and V–209, in the vicinity of Kewanee, MS. This action is necessary due to the planned decommissioning of the Kewanee, MS, VORTAC navigation aid, which provides navigation guidance for segments of the routes.

DATES: Effective date 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, 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 Rules and Regulations 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: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure in the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2017–0665 in the **Federal Register** (82 FR 40737; August 28, 2017) amending VOR Federal airways V–56, and V–209 due to the planned decommissioning of the Kewanee, MS, VORTAC. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received.

Discussion of Comment

The Aircraft Owners and Pilots Association (AOPA) stated that, when VOR NAVAIDs are to be decommissioned and routes correspondingly removed, the FAA should create an Area Navigation (RNAV) waypoint (WP) at the previous NAVAID location, and retain all fixes and intersections along the removed route by converting them to RNAV waypoints.

The FAA established the KWANE, MS, WP located near the current location of the Kewanee VORTAC. In a separate rulemaking action, the FAA established a new RNAV route, designated T–239 that replaces V–56 between Meridian, MS, and Montgomery, AL; and RNAV route T–292 that replaces V–209 between the YARBO, AL, fix, and the EUTAW, AL, fix. Selected fixes along the affected route sections are incorporated in T–239 and T–292.

VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document would be subsequently published in the Order.

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

Differences From the NPRM

The NPRM incorrectly listed the wrong location for the Kewannee

VORTAC; correct location is Kewannee, MS. The NPRM proposed to amend V–56 by removing the airway segments between Meridian, MS, and Tuskegee, AL. The FAA has decided to retain the segment between Montgomery, AL and Tuskegee, AL in order to join T–290 at Montgomery.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–56 and V–209. The planned decommissioning of the Kewanee, MS, VORTAC has made these actions necessary. The VOR Federal airway changes are outlined below.

V–56: V–56 currently extends between the Meridian, MS, VORTAC and the New Bern, NC, VOR/DME. This rule removes the airway segments between the Meridian, MS, VORTAC and the Montgomery, AL, VOR/DME. As amended, V–56 extends between Montgomery, AL, and New Bern, NC as currently charted.

In a separate action, (84 FR 64989; November 26, 2019) the FAA established RNAV route T–290 that extends between the HABJE, MS, fix (west of the Meridian, MS, VORTAC) and the JACET, GA, waypoint. T–290 replaces V–56 between Meridian, MS, and Montgomery, AL.

V–209: V–209 currently extends between the Semmes, AL, VORTAC and the Choo Choo, TN, VORTAC. This action removes the Kewanee, AL, VORTAC from the route, resulting in a gap in the airway between the intersection of the Semmes, AL, 356° and Eaton, MS, 080° radials (*i.e.,* the charted YARBO, AL, fix, located approximately 43 NM north of Semmes, AL), and the intersection of the Bigbee, MS 139°(T)/135°(M) and Brookwood, AL 230°(T)/230°(M) radials (*i.e.,* the charted EUTAW, AL, fix, located approximately 41 NM northeast of Kewanee). Therefore, the amended V–209 route consists of two sections: first, between Semmes, AL, and the YARBO fix; and, after the gap, V–209 resumes between the EUTAW fix to Choo Choo, TN as currently charted.

In the above separate action, the FAA established RNAV route T–292 that extends between Semmes, AL, and the JACET, GA, WP. T–292 replaces V–209 between the YARBO, AL, fix and the EUTAW, AL, fix.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying VOR Federal airways V–56 and V–209 near Kewanee, MS, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–56 [Amended]

From Montgomery, AL; Tuskegee, AL; Columbus, GA; INT Columbus 087° and Macon, GA, 266° radials; Macon; Colliers, SC; Columbia, SC; Florence, SC; Fayetteville, NC, 41 miles 15 MSL, INT Fayetteville 098° and New Bern, NC 256° radials; to New Bern.

V–209 [Amended]

From Semmes, AL, to INT Semmes 356° and Eaton, MS, 080° radials. From INT Bigbee, MS 139° and Brookwood, AL 230° radials; Brookwood; Vulcan, AL; INT Vulcan 097° and Gadsden, AL, 233° radials; Gadsden; INT Gadsden 042° and Choo Choo, TN, 214° radials; Choo Choo.

Issued in Washington, DC, on February 25, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–04422 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0431; Airspace Docket No. 19–ASO–9]

RIN 2120–AA66

Amendment of VOR Federal Airway V–159 in the Vicinity of Hamilton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VHF Omnidirectional Range (VOR) Federal airway V–159 due to the planned decommissioning of the Hamilton, AL, VORTAC navigation aid which provides navigation guidance segments of the route. The Hamilton VORTAC is being

decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, 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 Rules and Regulations 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: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0431 in the **Federal Register** (84 FR 28434; June 19, 2019), amending VOR Federal airway V–159 due to the planned decommissioning of the Hamilton, AL, VORTAC. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airway listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 Rule

V–159 currently extends between the Virginia Key, FL, VOR/DME and the Huron, SD, VORTAC. This rule removes the segments of V–159 between the Vulcan, AL, VORTAC, and the Holly Springs, MS, VORTAC. This is due to the planned decommissioning of the Hamilton, AL, VORTAC which provides navigation guidance for the route between Vulcan and Holly Springs. As amended, V–159 consists of two sections. The first section extends between Virginia Key, FL, and Vulcan, AL, as currently charted. This is followed by a gap in the route between Vulcan, AL, and Holly Springs, MS. The second section extends between Holly Springs, MS, and Huron, SD, as currently charted.

To mitigate the removal of V–159 between Vulcan, AL, and Holly Springs, MS, a low altitude area navigation (RNAV) route, designated T–239, was established effective January 30, 2020 (84 FR 28434; June 19, 2019). T–239 extends between the Pecan, GA, VOR/DME, and the GOINS, MS, waypoint (near the Holly Springs, MS, VORTAC). T–239 replaces V–159 between Vulcan, AL and Holly Springs, MS, and also overlies those parts of V–159 between Pecan, GA, and Vulcan, AL. Alternative routing for VOR navigation between Vulcan, AL, and Holly Springs, MS, is available via existing airway V–7 between Vulcan, AL, and the Muscle Shoals, AL, VORTAC; then airway V–54 between Muscle Shoals and Holly Springs.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying VOR Federal airway V–159 near Hamilton, AL, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–159 [Amended]

From Virginia Key, FL: INT Virginia Key 344° and Treasure, FL, 178° radials; Treasure; INT Treasure 318° and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; Tuskegee, AL; to Vulcan, AL. From Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 005° and St. Joseph, MO, 122° radials; St. Joseph; Omaha, IA; Sioux City, IA; Yankton, SD; Mitchell, SD; to Huron, SD.

* * * * *

Issued in Washington, DC, on February 25, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–04418 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0661; Airspace Docket No. 19–AEA–9]

RIN 2120–AA66

Amendment of Area Navigation Routes Q–75 and Q–475, Northeast Corridor Atlantic Coast Routes; Northeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies high altitude area navigation (RNAV) routes Q–75, and Q–475 in the northeastern United States. This action supports the Northeast Corridor Atlantic Coast Route (NEC ACR) Project. The modified routes were developed to improve the efficiency of the National Airspace System (NAS), expand the availability of area navigation (RNAV) routing, and reduce dependency of the NAS on ground-based navigational systems.

DATES: Effective date 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, 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 Rules and Regulations 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: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it supports the air traffic service route structure in the southeastern United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0661 in the **Federal Register** (84 FR 50341; September 25, 2019) modifying RNAV routes Q–75, and Q–475 in the northeastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Area navigation routes are published in paragraph 2006, 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 area navigation routes listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying RNAV routes Q–75 and Q–475, in the northeastern United States in support of the Northeast Corridor Atlantic Coast Route project.

The Q-route amendments are as follows:

Q–75: Q–75 currently extends between the ENEME, GA, WP, and the Greensboro, NC, (GSO) VORTAC. The amended route is extended from the Greensboro, NC, VORTAC northeast to the COPLY, MA, WP (approximately 20 NM east of the Boston, MA, (BOS) VOR/DME). Between the Greensboro, NC, VORTAC and the COPLY, MA, WP, the following points are added to the route: BROSK, NC, WP; DRAIK, VA, Fix; Gordonsville, VA, (GVE) VORTAC; HAMMZ, VA, WP; TOOBN, MD, WP; MURPH, MD, Fix; SACRI, MD, Fix ; STOEN, PA, Fix; Modena, PA, (MXE) VORTAC; COPES, PA, Fix; BIGGY, NJ, Fix; Solberg, NJ, (SBJ) VOR/DME; JERSY, NJ, Fix; DUEYS, NY, Fix; BIZEX, NY, WP; GREKI, CT, Fix; NELIE, CT, Fix; SWALO, MA, Fix; and the Boston, MA, (BOS) VOR/DME. This change

provides RNAV routing between Greensboro, NC and the Boston, MA, area.

Q–475: Q–475 currently extends between the TUSKY, OA, Fix and the PERLU, Canada, WP. This action extends Q–475 from the TUSKY, OA, Fix westward to the COPLY, MA, WP (located approximately 20 NM northeast of the Boston, MA, VOR/DME). The CANAL, MA, WP, and the SCUPP, OA, Fix are added between the TUSKY Fix and the COPLY WP.

Note: The Q–475 route description includes the SCUPP and TUSKY Fixes located over international waters. In the route description, in place of a two-letter state abbreviation for the SCUPP and TUSKY Fixes, ''OA,'' meaning ''Offshore Atlantic,'' is used.

Full route descriptions of the proposed amended routes are listed in ''The Amendment'' section of this notice.

The amended routes in this notice will significantly expand the availability of high altitude RNAV routing along the eastern seaboard of the U.S. The project is designed to increase airspace capacity and reduce complexity in high volume areas through the use of optimized routes through congested airspace.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying high altitude RNAV Q–75 and Q–475 qualifies for a categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F—Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q75 ENEME, GA TO COPLY, MA [AMENDED]

ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
TEUFL, GA	WP	(Lat. 31°52′00.46″ N, long. 082°01′04.56″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
SHRIL, GA	WP	(Lat. 32°54′42.21″ N, long. 081°34′09.78″ W)
FISHO, SC	WP	(Lat. 33°16′46.25″ N, long. 081°24′43.52″ W)
ILBEE, SC	WP	(Lat. 34°18′41.66″ N, long. 081°01′07.88″ W)
SLOJO, SC	WP	(Lat. 34°38′46.31″ N, long. 080°39′25.63″ W)
GREENSBORO, NC (GSO)	VORTAC	(Lat. 36°02′44.49″ N, long. 079°58′34.95″ W)
BROSK, NC	WP	(Lat. 36°14′52.55″ N, long. 079°47′39.93″ W)
DRAIK, VA	FIX	(Lat. 37°08′02.15″ N, long. 078°58′58.56″ W)
Gordonsville, VA (GVE)	VORTAC	(Lat. 38°00′48.96″ N, long. 078°09′10.90″ W)
HAMMZ, VA	WP	(Lat. 38°43′51.56″ N, long. 077°19′59.85″ W)
TOOBN, MD	WP	(Lat. 38°59′54.31″ N, long. 076°59′25.83″ W)
MURPH, MD	FIX	(Lat. 39°27′51.22″ N, long. 076°23′07.24″ W)
SACRI, MD	FIX	(Lat. 39°36′07.34″ N, long. 076°10′24.70″ W)
STOEN, PA	FIX	(Lat. 39°50′17.54″ N, long. 075°47′54.92″ W)
Modena, PA (MXE)	VORTAC	(Lat. 39°55′05.00″ N, long. 075°40′14.96″ W)
COPES, PA	FIX	(Lat. 40°07′50.57″ N, long. 075°22′36.37″ W)
BIGGY, NJ	FIX	(Lat. 40°25′10.62″ N, long. 074°58′21.73″ W)
Solberg, NJ (SBJ)	VOR/DME	(Lat. 40°34′58.95″ N, long. 074°44′30.45″ W)
JERSY, NJ	FIX	(Lat. 40°47′28.99″ N, long. 074°23′58.00″ W)
DUEYS, NY	FIX	(Lat. 41°09′09.46″ N, long. 073°47′48.52″ W)
BIZEX, NY	WP	(Lat. 41°17′02.86″ N, long. 073°34′50.20″ W)
GREKI, CT	FIX	(Lat. 41°28′48.03″ N, long. 073°18′50.98″ W)
NELIE, CT	FIX	(Lat. 41°56′27.64″ N, long. 072°41′18.88″ W)
SWALO, MA	FIX	(Lat. 42°03′55.75″ N, long. 072°11′37.10″ W)
Boston, MA (BOS)	VOR/DME	(Lat. 42°21′26.82″ N, long. 070°59′22.37″ W)
COPLY, MA	WP	(Lat. 42°29′52.21″ N, long. 070°33′28.57″ W)

Q475 COPLY, MA TO PERLU, CANADA [AMENDED]

COPLY, MA	WP	(Lat. 42°29′52.21″ N, long. 070°33′28.57″ W)
SCUPP, OA	FIX	(Lat. 42°36′11.01″ N, long. 070°13′49.35″ W)

CANAL, MA	FIX	(Lat. 42°40′08.51″ N, long. 070°01′21.76″ W)
TUSKY, OA	FIX	(Lat. 43°33′54.00″ N, long. 067°00′00.00″ W)
SCOTS, Canada	WP	(Lat. 44°30′00.00″ N, long. 064°00′00.00″ W)
BITRA, Canada	WP	(Lat. 45°06′26.00″ N, long. 061°52′44.00″ W)
PERLU, Canada	WP	(Lat. 47°17′25.00″ N, long. 054°02′46.00″ W)
Excluding the portion within Canada.		

* * * * *

Issued in Washington, DC, on February 25, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–04420 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31300; Amdt. No. 551]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum enroute authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, March 26, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on February 21, 2020.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 30, 2020.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 551 effective date March 26, 2020]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3200 RNAV Route T200 is Added to Read			
COLLEGE STATION, TX VORTAC	SEALY, TX FIX	2100	17500
SEALY, TX FIX	MOLLR, TX WP	2000	17500
MOLLR, TX WP	SABINE PASS, TX VOR/DME	3100	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 551 effective date March 26, 2020]

From	To	MEA	MAA
§ 95.3220 RNAV Route T220 is Added to Read			
INDUSTRY, TX VORTAC	2100	17500	
SEALY, TX FIX	MOLLR, TX WP	2000	17500
MOLLR, TX WP	SABINE PASS, TX VOR/DME	3100	17500
§ 95.3224 RNAV Route T224 is Added to Read			
PALACIOS, TX VORTAC	MOLLR, TX WP	2500	17500
MOLLR, TX WP	BEAUMONT, TX VOR/DME	2100	17500
BEAUMONT, TX VOR/DME	LAKE CHARLES, LA VORTAC	1700	17500
§ 95.3256 RNAV Route T256 is Added to Read			
SAN ANTONIO, TX VORTAC	EAGLE LAKE, TX VOR/DME	3000	17500
EAGLE LAKE, TX VOR/DME	MOLLR, TX WP	2400	17500
MOLLR, TX WP	SABINE PASS, TX VOR/DME	3100	17500
§ 95.4000 High Altitude RNAV Routes			
§ 95.4024 RNAV Route Q24 is Amended by Adding			
SAN ANTONIO, TX VORTAC *18000—GNSS MEA. *DME/DME/IRU MEA.	MOLLR, TX WP	*18000	45000
MOLLR, TX WP *18000—GNSS MEA. *DME/DME/IRU MEA.	LAKE CHARLES, LA VORTAC	*18000	45000
§ 95.4056 RNAV Route Q56 is Amended by Adding			
SAN ANTONIO, TX VORTAC *18000—GNSS MEA. *DME/DME/IRU MEA.	MOLLR, TX WP	*18000	45000
MOLLR, TX WP *18000—GNSS MEA. *DME/DME/IRU MEA.	PEKON, LA FIX	*18000	45000
PEKON, LA FIX *18000—GNSS MEA. *DME/DME/IRU MEA.	HARVEY, LA VORTAC	*18000	45000
HARVEY, LA VORTAC *18000—GNSS MEA *DME/DME/IRU MEA.	SEMMES, AL VORTAC	*18000	45000
SEMMES, AL VORTAC *18000—GNSS MEA. *DME/DME/IRU MEA.	CATLN, AL FIX	*18000	45000
Is Amended to Read in Part			
CATLN, AL FIX *18000—GNSS MEA. *DME/DME/IRU MEA.	KELLN, SC WP	*18000	45000
§ 95.4150 RNAV Route Q150 is Amended to Read in Part			
GANNE, WY WP *18000—GNSS MEA. *DME/DME/IRU MEA.	DDRTH, WY WP	*24000	45000
DDRTH, WY WP *18000—GNSS MEA. *DME/DME/IRU MEA.	YAMPA, CO WP	*24000	45000

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6004 VOR Federal Airway V4 is Amended to Read in Part		
PAYET, ID FIX	*EMETT, ID FIX	
	SE BND	5900
	NW BND	9000
*9400—MRA.		

From	To	MEA
EMETT, ID FIX	BOISE, ID VORTAC	5900
BOISE, ID VORTAC	CANEK, ID FIX	
	NW BND	7000
	SE BND	9500
§ 95.6015 VOR Federal Airway V15 is Amended to Delete		
HOBBY, TX VOR/DME	NAVASOTA, TX VOR/DME	2100
§ 95.6020 VOR Federal Airway V20 is Amended to Delete		
PALACIOS, TX VORTAC	*MAGUS, TX FIX	1800
*3000—MRA.		
MAGUS, TX FIX	KEEDS, TX FIX	1700
KEEDS, TX FIX	HOBBY, TX VOR/DME	2500
HOBBY, TX VOR/DME	BEAUMONT, TX VOR/DME	2100
§ 95.6026 VOR Federal Airway V26 is Amended to Read in Part		
GREEN BAY, WI VORTAC	NEROE, WI FIX	#3000
#GREEN BAY R–115 TO YULNU UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
WELKO, MI FIX	WHITE CLOUD, MI VOR/DME	#4000
#WHITE CLOUD R–303 TO YULNU UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
§ 95.6055 VOR Federal Airway V55 is Amended to Read in Part		
WHALL, MI FIX	NEROE, WI FIX	#*5000
*2400—MOCA.		
#MUSKEGON R–328 TO YULNU UNUSABLE EXCEPT AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
NEROE, WI FIX	GREEN BAY, WI VORTAC	#3000
#GREEN BAY R–115 TO YULNU UNUSABLE EXCEPT AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
§ 95.6068 VOR Federal Airway V68 is Amended to Delete		
INDUSTRY, TX VORTAC	SEALY, TX FIX	2100
SEALY, TX FIX	HOBBY, TX VOR/DME	2000
§ 95.6076 VOR Federal Airway V76 is Amended to Delete		
INDUSTRY, TX VORTAC	SEALY, TX FIX	2100
SEALY, TX FIX	HOBBY, TX VOR/DME	2000
§ 95.6148 VOR Federal Airway V148 is Amended to Delete		
GOPHER, MN VORTAC	ALEEN, WI FIX	*5000
*2700—MOCA.		
ALEEN, WI FIX	HAYWARD, WI VOR/DME	000
HAYWARD, WI VOR/DME	*IRONWOOD, MI VOR/DME	10000
*5200—MCA IRONWOOD, MI	VOR/DME, SW BND.	
§ 95.6159 VOR Federal Airway V159 is Amended to Read in Part		
PECAN, GA VOR/DME	*SHANY, GA FIX	2200
*4000—MRA.		
SHANY, GA FIX	EUFAULA, AL VORTAC	2200
§ 95.6170 VOR Federal Airway V170 is Amended to Read in Part		
ODESA, MD FIX	SWANN, MD FIX	#
#UNUSABLE.		
SWANN, MD FIX	PALEO, MD FIX	#
#UNUSABLE.		
§ 95.6177 VOR Federal Airway V177 is Amended to Delete		
JOLIET, IL VOR/DME	NUELG, IL FIX	2700
NUELG, IL FIX	JANESVILLE, WI VOR/DME	*4000
*2300—MOCA.		
JANESVILLE, WI VOR/DME	MADISON, WI VORTAC	3000

From	To	MEA
MADISON, WI VORTAC	WAUSAU, WI VORTAC	
WAUSAU, WI VORTAC	BAITS, WI FIX	
BAITS, WI FIX	HAYWARD, WI VOR/DME	
HAYWARD, WI VOR/DME	DULUTH, MN VORTAC	
DULUTH, MN VORTAC	ELY, MN VOR/DME	3600
§ 95.6187 VOR Federal Airway V187 is Amended to Read in Part		
CURLY, NM FIX	MISSY, NM FIX	11000
MISSY, NM FIX	RATTLESNAKE, NM VORTAC	
	NW BND	9100
	SE BND	11000
BILLINGS, MT VORTAC	TASSE, MT FIX	
	NW BND	8000
	SE BND	6200
TASSE, MT FIX	*JUGAP, MT FIX	8000
*11200—MCA	JUGAP, MT FIX, NW BND.	
JUGAP, MT FIX	GREAT FALLS, MT VORTAC	13000
§ 95.6193 VOR Federal Airway V193 is Amended to Read in Part		
MUSKY, MI FIX	PULLMAN, MI VOR/DME	#*3000
*2000—MOCA.		
#PULLMAN R–243 UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
PULLMAN, MI VOR/DME	CLOCK, MI FIX	#*3000
*2400—MOCA.		
#PULLMAN R–029 UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
CLOCK, MI FIX	WHITE CLOUD, MI VOR/DME	#2800
#WHITE CLOUD R–169 TO CLOCK UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
WHITE CLOUD, MI VOR/DME	TRAVERSE CITY, MI VOR/DME	#4000
#WHITE CLOUD R–007 UNUSABLE TO COP EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
§ 95.6194 VOR Federal Airway V194 is Amended to Delete		
COLLEGE STATION, TX VORTAC	PRARI, TX FIX	*7000
*2000—MOCA.		
*2000—GNSS MEA.		
PRARI, TX FIX	*SEALY, TX FIX	**7000
*7000—MCA SEALY, TX	FIX, NW BND.	
**3500—MOCA.		
**3500—GNSS MEA.		
SEALY, TX FIX	HOBBY, TX VOR/DME	2000
HOBBY, TX VOR/DME	SABINE PASS, TX VOR/DME	3000
§ 95.6198 VOR Federal Airway V198 is Amended to Delete		
EAGLE LAKE, TX VOR/DME	BLUMS, TX FIX	2000
BLUMS, TX FIX	HOBBY, TX VOR/DME	2000
HOBBY, TX VOR/DME	SABINE PASS, TX VOR/DME	3000
§ 95.6214 VOR Federal Airway V214 is Amended to Read in Part		
SWANN, MD FIX	ODESA, MD FIX	#
#UNUSABLE.		
§ 95.6253 VOR Federal Airway V253 is Amended to Read in Part		
CANEK, ID FIX	*BOISE, ID VORTAC	
	NW BND	7000
	SE BND	9500
*7500—MCA BOISE, ID	VORTAC, N BND.	
BOISE, ID VORTAC	BANGS, ID FIX	
	S BND	9100
	N BND	10500
BANGS, ID FIX	DONNELLY, ID VOR/DME	10500

From	To	MEA
§ 95.6285 VOR Federal Airway V285 is Amended to Read in Part		
CLOCK, MI FIX	WHITE CLOUD, MI VOR/DME	#2800
#WHITE CLOUD R–169 TO CLOCK UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
WHITE CLOUD, MI VOR/DME	MANISTEE, MI VOR/DME	#4000
#WHITE CLOUD R–332 TO MANISTEE UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
#MANISTEE R–156 TO WHITE CLOUD UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
MANISTEE, MI VOR/DME	TRAVERSE CITY, MI VOR/DME	#2800
#MANISTEE R–057 TO COP UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS.		
§ 95.6330 VOR Federal Airway V330 is Amended to Read in Part		
BOISE, ID VORTAC	CANEK, ID FIX NW BND SE BND	 7000 9500
§ 95.6345 VOR Federal Airway V345 is Amended to Delete		
EAU CLAIRE, WI VORTAC *3100—MOCA. *4000—GNSS MEA.	HAYWARD, WI VOR/DME	*5200
§ 95.6369 VOR Federal Airway V369 is Amended to Delete		
NAVASOTA, TX VOR/DME GROESBECK, TX VOR/DME	GROESBECK, TX VOR/DME MAVERICK, TX VOR/DME	2300 3600
§ 95.6375 VOR Federal Airway V375 is Amended to Read in Part		
ROANOKE, VA VOR/DME	PROSE, VA FIX E BND W BND	 6500 5400
§ 95.6433 VOR Federal Airway V433 is Amended to Read in Part		
NOTTINGHAM, MD VORTAC #UNUSABLE. SWANN, MD FIX #UNUSABLE.	SWANN, MD FIX ODESA, MD FIX	# #
§ 95.6444 VOR Federal Airway V444 is Amended to Read in Part		
PAYET, ID FIX *9400—MRA. EMETT, ID FIX *7400—MCA BOISE, ID	*EMETT, ID FIX SE BND NW BND *BOISE, ID VORTAC VORTAC, E BND.	 5900 9000 5900
§ 95.6445 VOR Federal Airway V445 is Amended to Read in Part		
SWANN, MD FIX #UNUSABLE.	ODESA, MD FIX	#
§ 95.6548 VOR Federal Airway V548 is Amended to Delete		
HOBBY, TX VOR/DME *7000—MCA SEALY, TX FIX, NW BND. SEALY, TX FIX *3500—MOCA. *3500—GNSS MEA. PRARI, TX WP *2000—MOCA. *2000—GNSS MEA.	*SEALY, TX FIX PRARI, TX WP COLLEGE STATION, TX VORTAC	2000 *7000 *7000
§ 95.6558 VOR Federal Airway V558 is Amended to Delete		
EAGLE LAKE, TX VOR/DME	BLUMS, TX WP	2000

From	To	MEA
BLUMS, TX WP	HOBBY, TX VOR/DME	2400

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7037 Jet Route J37 is Amended to Delete			
HOBBY, TX VOR/DME	HARVEY, LA VORTAC	18000	45000
§ 95.7051 Jet Route J51 is Amended to Read in Part			
NOTTINGHAM, MD VORTAC #UNUSABLE.	PALEO, MD FIX	#	
PALEO, MD FIX #UNUSABLE.	DUPONT, DE VORTAC	#	
§ 95.7138 Jet Route J138 is Amended to Delete			
SAN ANTONIO, TX VORTAC	HOBBY, TX VOR/DME	18000	45000
HOBBY, TX VOR/DME	LAKE CHARLES, LA VORTAC	18000	45000
§ 95.7177 Jet Route J177 is Amended to Delete			
HUMBLE, TX VORTAC	HOBBY, TX VOR/DME	18000	45000
HOBBY, TX VOR/DME	PALACIOS, TX VORTAC	18000	45000
§ 95.7502 Jet Route J502 is Amended to Delete			
BURWASH, CA NDB	NORTHWAY, AK VORTAC #	*18000	45000

#FOR THAT AIRSPACE OVER U.S. TERRITORY.

Airway segment		Changeover points	Distance
From	To		
§ 95.8005 Jet Routes Changeover Points			
SISTERS ISLAND, AK VORTAC	BURWASH, CA NDB	80	SISTERS ISLAND
J511 is Amended to Delete Changeover Point			
GULKANA, AK VOR/DME	BURWASH, CA NDB	55	GULKANA
Is Amended to Modify Changeover Point			
TOVAD, FIX	GULKANA, AK VOR/DME	76	TOVAD
V15 is Amended to Delete Changeover Point			
HOBBY, TX VOR/DME	NAVASOTA, TX VOR/DME	38	HOBBY
V20 is Amended to Delete Changeover Point			
PALACIOS, TX VORTAC	HOBBY, TX VOR/DME	41	PALACIOS
V148 is Amended to Delete Changeover Point			
GOPHER, MN VORTAC	HAYWARD, WI VOR/DME	65	GOPHER
Is Amended to Delete Changeover Point			
HAYWARD, WI VOR/DME	IRONWOOD, MI VOR/DME	20	HAYWARD
V177 is Amended to Delete Changeover Point			
JOLIET, IL VOR/DME	JANESVILLE, WI VOR/DME	40	JOLIET

Airway segment		Changeover points	Distance
From	To		
V285 is Amended to Delete Changeover Point			
WHITE CLOUD, MI VOR/DME	MANISTEE, MI VOR/DME	28	WHITE CLOUD

[FR Doc. 2020–04416 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry of Security

15 CFR Part 740

[Docket No. 200204–0044]

RIN 0694–AH93

Amendments to Country Groups for Russia and Yemen Under the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this document to correct a final rule published in the **Federal Register** on February 24, 2020 (February 24th rule), in which BIS amended the Export Administration Regulations (EAR) to revise the Country Group designations for the Russian Federation (Russia) and Yemen based on national security and foreign policy concerns, including proliferation-related concerns. This document corrects the final rule to provide an instruction to remove Yemen from Country Group B, as was described in the preamble of the February 24th rule.

DATES: This correction is effective March 6, 2020 and is applicable on February 24, 2020.

FOR FURTHER INFORMATION CONTACT: Jodi Kouts, Director, Chemical and Biological controls Division, at email *Jodi Kouts@bis.doc.gov* or by phone at (202) 482–6109.

SUPPLEMENTARY INFORMATION: For the reasons described in the preamble and the authority as set out in the February 24, 2020 final rule (85 FR 10274), this document provides the correcting amendment to remove ''Yemen'' from the list of ''Country Group B—Countries'' in Supplement No. 1 to part 740 of the EAR.

List of Subjects in 15 CFR Part 740

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

Accordingly, part 740 of the Export Administration Regulations (15 CFR parts 730–774) is corrected by making the following correcting amendment:

PART 740—LICENSE EXCEPTIONS

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 1 to Part 740 [Amended]

■ 2. Supplement No. 1 part 740 is amended by removing ''Yemen'' from ''Country Group B—Countries''.

Dated: February 25, 2020.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–04178 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM19–2–001; Order No. 861–A]

Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order on rehearing and clarification.

SUMMARY: In this order on rehearing, the Federal Energy Regulatory Commission grants clarification in part and denies rehearing of certain revisions to its regulations regarding the horizontal market power analysis required for market-based rate sellers that study certain Regional Transmission Organization or Independent System Operator markets and submarkets therein.

DATES: This order on rehearing and clarification is effective May 5, 2020.

FOR FURTHER INFORMATION CONTACT:
Ashley Dougherty (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8851, *ashley.dougherty@ferc.gov*
Mary Ellen Stefanou (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC, (202) 502–8989, *mary.stefanou@ferc.gov*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. On July 18, 2019, the Commission issued Order No. 861,[1] which modified its regulations regarding the horizontal market power analysis required for market-based rate Sellers [2] that study certain Regional Transmission Organization (RTO) or Independent System Operator (ISO) markets and submarkets therein. Specifically, in Order No. 861, the Commission relieved Sellers located in certain RTO or ISO markets and submarkets therein of the obligation to submit indicative screens to the Commission in order to obtain or retain authority to sell energy, ancillary services, and capacity at market-based rates. The Commission's regulations continue to require Sellers that study an RTO, ISO, or submarket therein, to submit indicative screens for authorization to make capacity sales at market-based rates in any RTO/ISO market that lacks an RTO/ISO administered capacity market subject to Commission-approved RTO/ISO monitoring and mitigation.[3] For those RTOs and ISOs that do not have an RTO/ISO-administered capacity market, the Commission found that Commission-approved RTO/ISO monitoring and mitigation is no longer

[1] *Refinements to Horizontal Market Power Analysis for Sellers in Certain Reg'l Transmission Org. & Indep. Sys. Operator Mkts.,* Order No. 861, 84 FR 36374 (July 26, 2019), 168 FERC ¶ 61,040 (2019).

[2] The term ''Seller'' is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates. 18 CFR 35.36(a)(1).

[3] Order No. 861, 168 FERC ¶ 61,040 at P 38.

presumed sufficient to address any horizontal market power concerns for capacity sales where there are indicative screen failures. However, Sellers studying such markets would be relieved of the requirement to submit indicative screens if they sought market-based rate authority limited to sales of energy and/or ancillary services in those markets.[4]

2. On August 15, 2019, California Independent System Operator Corporation (CAISO) filed a motion for clarification of Order No. 861. On August 19, 2019, Pacific Gas and Electric Company (PG&E) filed a request for rehearing, or in the alternative clarification, of Order No. 861. As discussed further below, we grant CAISO's requested clarification and deny PG&E's request for rehearing and alternative request for clarification.

II. Discussion

A. Capacity Procurement Mechanism Soft Offer Cap

1. Final Rule

3. In describing CAISO's Capacity Procurement Mechanism, the Commission stated that the soft offer cap for the Capacity Procurement Mechanism is an estimate of the cost of new entry. In response to the Commission's notice of proposed rulemaking (NOPR),[5] some commenters argued that California's Resource Adequacy program coupled with CAISO's backstop procurement process, including the Capacity Procurement Mechanism, offer adequate safeguards against the exercise of horizontal market power in the sale of capacity.[6] In response, the Commission noted that ''the soft offer cap is an estimate of the cost of new entry and does not necessarily reflect a mitigated, 'going forward' cost of any existing generator and does not address concerns regarding local market power.'' [7]

2. Requests for Clarification and Rehearing

4. CAISO seeks clarification and PG&E requests rehearing regarding the Commission's description of CAISO's Capacity Procurement Mechanism soft offer cap. CAISO and PG&E state that the Commission's characterization of the soft offer cap as the cost of new entry for resources is not technically correct. CAISO states that the ''soft offer cap is based on the levelized going-forward fixed costs of a reference resource, plus a 20 percent adder.'' [8] Thus, CAISO recommends ''that the Commission clarify Order No. 861 to state that the [Capacity Procurement Mechanism] soft offer cap represents an estimate of going-forward costs plus a 20 percent adder, as opposed to an estimate of the cost of entry.'' [9] PG&E states that the Commission should grant rehearing and remove the requirement for capacity sellers in CAISO to submit indicative screens because the Commission based its conclusion that the Capacity Procurement Mechanism is inadequate to mitigate local capacity market power in CAISO on the incorrect finding that the soft offer cap is based on the cost of new entry.[10]

5. PG&E notes that the Commission erred in Order No. 861 when it stated that the soft offer cap is an estimate of the cost of new entry, and PG&E contends that the soft offer cap mitigates local capacity market power by limiting Capacity Procurement Mechanism compensation to the marginal unit's going-forward fixed costs, plus a 20 percent adder.[11]

3. Commission Determination

6. We grant CAISO's request and clarify that the CAISO Capacity Procurement Mechanism soft offer cap represents an estimate of going-forward costs plus a 20 percent adder, as opposed to an estimate of the cost of entry. We note that the Commission approved this definition of the soft offer cap,[12] which is included in CAISO's tariff.[13] As discussed further below, the change in characterization of the soft offer cap does not affect the determinations made in Order No. 861.

7. We deny PG&E's request for rehearing. While the Commission incorrectly characterized the Capacity Procurement Mechanism soft offer cap in Order No. 861, the Commission also stated that the soft offer cap does not provide mitigation comparable to the mitigation applied to the RTO/ISO administered capacity markets.[14] As discussed further below, the Commission declined to extend Order No. 861's relief to capacity Sellers located in CAISO for several reasons, including the lack of a transparent market price for capacity in CAISO and the fact that capacity sales are not reviewed, approved, or monitored by CAISO.[15] We find that these reasons continue to apply and, therefore, deny PG&E's request for rehearing and continue to require that capacity Sellers in CAISO submit indicative screens for capacity sales. For the same reasons, we also will not permit capacity Sellers in CAISO to rely on a rebuttable presumption that the Capacity Procurement Mechanism adequately mitigates Sellers' horizontal market power.

B. Retention of Screens for Capacity Sellers in CAISO

1. Final Rule

8. In Order No. 861, the Commission required capacity Sellers in CAISO to continue to submit indicative screens and eliminated the rebuttable presumption that Commission-approved RTO/ISO market monitoring and mitigation is sufficient to address any horizontal market power concerns regarding sales of capacity in CAISO.[16] The Commission stated that, although the majority of capacity sales within CAISO are made through the Resource Adequacy program, these sales are not reviewed, approved, or monitored by CAISO. The Commission explained that the California Public Utilities Commission (CPUC) reviews and approves capacity purchases by load serving entities through the Resource Adequacy program pursuant to resource requirements established by the CPUC, but that these purchases are not necessarily the result of competitive solicitations. The Commission also explained that there is no transparent market price determined under Commission-approved rules for capacity in CAISO comparable to the market price for capacity established by RTOs/ISOs with centralized capacity markets.[17]

2. Request for Rehearing

9. PG&E requests rehearing of the Commission's decision to retain indicative screens for capacity Sellers in CAISO and asks that the Commission conclude that existing Commission-approved capacity backstop mechanisms in CAISO adequately mitigate the potential for capacity market power and, therefore, that capacity Sellers in CAISO do not need to submit indicative screens.[18] PG&E explains that CAISO and the CPUC have created a two-step process to ensure that adequate supply resources are available

[4] *Id.* P 51.

[5] *Refinements to Horizontal Market Power Analysis for Sellers in Certain Reg'l Transmission Org. & Indep. Sys. Operator Mkts.,* 84 FR 993 (Feb. 1, 2019), 165 FERC ¶ 61,268 (2018) (NOPR).

[6] *See* Order No. 861, 168 FERC ¶ 61,040 at P 33.

[7] *Id.* P 40.

[8] CAISO Motion for Clarification at 2.

[9] *Id.* at 2, 3.

[10] PG&E Request for Rehearing at 6–7.

[11] *Id.* at 11–12.

[12] *Cal. Indep. Sys. Operator Corp.,* 153 FERC ¶ 61,001, at PP 13, 29 (2015).

[13] CAISO Tariff section 43A.4.1.1.2.

[14] *See* Order No. 861, 168 FERC ¶ 61,040 at P 40.

[15] *Id.* P 39.

[16] *Id.* P 38.

[17] *Id.* P 39.

[18] PG&E Request for Rehearing at 4.

to meet the demand for electricity in California. PG&E states that first, load serving entities are required to demonstrate to both the CPUC and CAISO that they have procured an adequate amount of Resource Adequacy capacity to meet their forecasted peak demand as well as a planning reserve margin. PG&E states that load serving entities rely primarily on the bilateral market to procure these resources, and this bilateral market, the procurement requirements, and associated rules are generally called the Resource Adequacy program.

10. Second, PG&E states that if load serving entities fail to meet their Resource Adequacy requirements, CAISO may procure additional capacity through the Capacity Procurement Mechanism, and that ''[t]he [Capacity Procurement Mechanism] is thus a backstop procurement that fills any remaining need for supply-side resources.'' [19] PG&E states that when CAISO procures backstop capacity through the Capacity Procurement Mechanism, CAISO runs a competitive solicitation process, a pay-as-bid auction with a soft offer cap, which serves to mitigate market power in these competitive solicitation processes and, if designed properly, can also mitigate prices in the bilateral Resource Adequacy market in a manner similar to other RTO/ISO capacity markets.

11. PG&E argues that, given the current role that the Capacity Procurement Mechanism plays in mitigating market power in CAISO, and in light of the ongoing CAISO stakeholder process to improve the Capacity Procurement Mechanism so that it more effectively limits the abuse of market power through market power tests and enhanced mitigation, the Commission erred in Order No. 861 in concluding that CAISO should be treated differently than other RTOs/ISOs. PG&E asserts that the Commission should therefore grant rehearing and determine that the Capacity Procurement Mechanism works in tandem with California's Resource Adequacy program to mitigate capacity market power, and that this creates a rebuttable presumption that Sellers of capacity cannot exercise horizontal market power and therefore are not required to submit indicative screens studying the capacity market in CAISO.[20]

12. PG&E next argues that if the Commission nonetheless continues to find CAISO's existing Capacity Procurement Mechanism to be inadequate to mitigate the potential for market power, the Commission should modify Order No. 861 to require improvements to the Capacity Procurement Mechanism so that it provides adequate mitigation of capacity market power comparable to other RTOs/ISOs.[21]

13. PG&E also requests that, in the event that the Commission continues to require Sellers of capacity in CAISO to submit indicative screens, it should host a technical conference or otherwise clarify how the assumptions and modeling process should be adjusted to reflect that the energy market-focused indicative screens are now only being used as an indicator for market power in certain capacity markets.[22]

3. Commission Determination

14. We deny PG&E's request for rehearing and motion for clarification. We disagree with PG&E's assertion that the Capacity Procurement Mechanism adequately mitigates the potential for capacity market power such that the Commission should lift the requirement that Sellers of capacity in CAISO submit indicative screens. In CAISO, capacity is primarily procured in the bilateral market, and the Capacity Procurement Mechanism serves as a backstop procurement mechanism, not a mitigation construct for the bilateral market.

15. CAISO does not have a centralized capacity market, and thus, as explained in Order No. 861, there are no transparent capacity prices determined under Commission-approved rules, similar to the market prices for capacity that are established in RTOs/ISOs with centralized capacity markets.[23] The vast majority of capacity sales within California are bilateral sales, and those sales are not reviewed, monitored, or approved by CAISO. The CPUC regulates capacity purchases by load serving entities to ensure compliance with the CPUC's Resource Adequacy program. However, the bilateral Resource Adequacy procurement processes are not subject to Commission review to ensure competitive process. Load serving entities' Resource Adequacy capacity purchases and their associated prices are only transparent to the relevant regulatory authority, be it the state utility commission, a municipal utility board, a city council, or some other authority.

16. We also deny PG&E's request to require that the Capacity Procurement Mechanism be modified so that it provides adequate mitigation of capacity market power comparable to other RTOs/ISOs. Such a requirement would be outside of the scope of this rulemaking. As noted in Order No. 861, relief from the requirement to submit indicative screens may be extended to capacity Sellers in CAISO in the future, if CAISO develops an ISO-administered capacity market that is subject to Commission-approved market monitoring and mitigation.[24]

17. Finally, we deny PG&E's request to hold a technical conference or otherwise clarify how to adapt the market power screens for different capacity products. In Order No. 861, the Commission did not require adjustments to the current market power screens, and we thus find this request to be outside the scope of this rulemaking. The market power screens were designed to show the lack of presumption of market power for energy, capacity, and ancillary services and will continue to serve this purpose in markets that lack an RTO/ISO administered capacity market subject to Commission-approved RTO/ISO monitoring and mitigation.

III. Document Availability

18. 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 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

19. 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.

20. 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.*

[19] *Id.* at 7.

[20] *Id.* at 13.

[21] *Id.* at 14.

[22] *Id.* at 16–21.

[23] Order No. 861, 168 FERC ¶ 61,040 at P 39.

[24] *Id.* P 42.

IV. Effective Date

21. This order on rehearing and clarification is effective May 5, 2020.

By the Commission.

Issued: February 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03929 Filed 3–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM16–17–001; Order No. 860–A]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission addresses requests for rehearing and clarification and affirms its determinations in Order No. 860, which amends its regulations governing market-based rates for public utilities.

DATES: The order on rehearing and clarification is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Regine Baus (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8757, *Regine.Baus@ferc.gov.*

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SUPPLEMENTARY INFORMATION:

I. Introduction

1. On July 18, 2019, the Commission issued Order No. 860,[1] which revised certain aspects of the substance and format of information submitted for market-based rate purposes by Sellers.[2] Specifically, the Commission adopted the approach to data collection proposed in the notice of proposed rulemaking issued in July 2016, *i.e.,* to collect market-based rate information in a relational database.[3] However, the Commission declined to adopt the proposal to require Sellers and entities, other than those described in FPA section 201(f),[4] that trade virtual products [5] or that hold financial transmission rights (FTR) [6] (Virtual/FTR Participants) to report certain information about their legal and financial connections to other entities (Connected Entity Information). In this order, we address requests for rehearing and clarification of Order No. 860.[7]

2. Six requests for rehearing and/or clarification were filed.[8] The requests for rehearing and clarification concern the following subjects: (1) Ownership information, including ultimate upstream affiliates; [9] (2) passive owners; (3) Connected Entity proposal; (4) implementation and components of the Data Dictionary; (5) public access; and (6) due diligence requirements.

3. We deny the requests for rehearing, and grant in part and deny in part the requests for clarification, as discussed below.

II. Discussion

A. Substantive Changes to Market-Based Rate Requirements

1. Ownership Information

a. Final Rule

4. In Order No. 860, the Commission adopted the proposal to require that, as part of their market-based rate applications or baselines submissions, Sellers must identify through the relational database their ultimate upstream affiliate(s). The Commission explained that, because this is a characteristic the Commission will rely upon in granting market-based rate authority, Sellers must also inform the Commission when they have a new ultimate upstream affiliate as part of their change in status reporting obligations. In addition, the Commission required that any new ultimate upstream affiliate information must also be submitted into the relational database on a monthly basis.[10]

b. Request for Clarification

5. NRG/Vistra seeks clarification solely with respect to implementation issues relating to identifying and reporting a Seller's ultimate upstream affiliate(s) where holdings of publicly traded voting securities are involved.[11] NRG/Vistra first argues that an investor should not be considered a Seller's ultimate upstream affiliate based solely on holdings of publicly traded securities. According to NRG/Vistra, where publicly traded securities are involved, applying the ultimate upstream affiliate definition will yield false positives and fail to recognize the control exercised by the publicly traded entity. In this regard, NRG/Vistra asserts that the Commission has granted financial institutions blanket

[1] *Data Collection for Analytics & Surveillance and Market-Based Rate Purposes,* Order No. 860, 84 FR 36390 (July 26, 2019), 168 FERC ¶ 61,039 (2019).

[2] A Seller is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act (FPA). 18 CFR 35.36(a)(1); 16 U.S.C. 824d.

[3] *Data Collection for Analytics & Surveillance and Market-Based Rate Purposes,* Notice of Proposed Rulemaking, 81 FR 51726 (Aug. 4, 2106), 156 FERC ¶ 61,045 (2016) (NOPR).

[4] 16 U.S.C. 824(f).

[5] Virtual trading involves sales or purchases in the day-ahead market of a Regional Transmission Organization (RTO) or Independent System Operator (ISO) that do not go to physical delivery. By making virtual energy sales or purchases in the day-ahead market and settling these positions in the real-time market, any market participant can arbitrage price differences between the two markets. *See Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.,* Order No. 697, 119 FERC ¶ 61,295, at P 921 n.1047, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 123 FERC ¶ 61,055, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, 125 FERC ¶ 61,326 (2008), *order on reh'g,* Order No. 697–C, 127 FERC ¶ 61,284 (2009), *order on reh'g,* Order No. 697–D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011).

[6] The term ''FTR,'' as used in the NOPR and Order No. 860, was intended to cover not only Financial Transmission Rights, a term used by PJM Interconnection, L.L.C. (PJM), ISO New England Inc., and Midcontinent Independent System Operator, Inc., but also Transmission Congestion Contracts in New York Independent System Operator, Inc., Transmission Congestion Rights in Southwest Power Pool, Inc., and Congestion Revenue Rights in California Independent System Operator Corp. Order No. 860, 168 FERC ¶ 61,039 at P 2 n.6.

[7] Order No. 860 will become effective October 1, 2020.

[8] The requests for rehearing and/or clarification were filed by the following entities: (1) Edison Electric Institute (EEI); (2) Fund Management Parties (FMP), which includes Ares EIF Management, LLC, for itself and its public utility affiliates, Monolith Energy Trading LLC, as the sole owner of Solios Power LLC, for itself and its public utility affiliates and affiliates the engage in trading of virtual and/or financial transmission products, Southwest Generation Operating Company, for itself and its public utility affiliates, and Star West Generation LLF, for itself and its public utility affiliates; (3) Office of the People's Counsel for the District of Columbia, Delaware Division of the Public Advocate, Citizens Utility Board of Illinois, and West Virginia Consumer Advocate Division (collectively, Joint Advocates); (4) NRG Energy, Inc. and Vistra Energy Corp. (together, NRG/Vistra); (5) Starwood Energy Group Global, L.L.C. (Starwood); and (6) Transmission Access Policy Study Group (TAPS).

[9] ''Ultimate upstream affiliate'' is defined in the final rule as ''the furthest upstream affiliate(s) in the ownership chain—*i.e.,* each of the upstream affiliate(s) of a Seller, who itself does not have 10 percent or more of its outstanding voting securities owned, held or controlled, with power to vote, by any person (including an individual or company).'' Order No. 860, 168 FERC ¶ 61,039 at P 5 n.10.

[10] Order No. 860, 168 FERC ¶ 61,039 at P 121.

[11] NRG/Vistra Request at 4.

authorizations under FPA section 203(a)(2) to acquire 10 percent or more of the voting securities of public utilities based on its understanding that these institutions are acquiring such interests ''in the ordinary course of business and as a passive investor (*i.e.,* not to gain control of the [public u]tilities),'' and that their holdings of such securities will ''not convey control of day-to-day operations of jurisdictional facilities.'' [12]

6. As an example, NRG/Vistra states that the Vanguard Group, Inc. (Vanguard) has reported that it, together with certain related entities, owns more than 10 percent of the shares of NRG's common stock. NRG/Vistra maintains that, although these shares are voting securities, there is no reason to regard Vanguard as ''controlling'' NRG or its Seller subsidiaries in any respect relevant to the Commission's analysis and monitoring of Sellers as Vanguard has reported its holdings of NRG's common stock to the Securities and Exchange Commission (SEC) through Schedule 13G filings. NRG/Vistra explains that the Commission has recognized that, in order to file a Schedule 13G, an investor must certify that the securities were not acquired for the purpose, or with the effect, of changing or influencing control over the issuer. NRG/Vistra also states that Vanguard has obtained a blanket section 203(a)(2) authorization similar to the other section 203(a)(2) blanket authorizations in recognition that it is acquiring the shares of entities like NRG on behalf of investors in its managed funds exclusively for investment purposes, not for the purpose of managing, controlling, or entering into business transactions with portfolio companies. NRG/Vistra argues that, if NRG's Seller subsidiaries were to identify Vanguard as their ultimate upstream affiliate, it would inaccurately suggest that they are under common control with other Sellers in which Vanguard and its affiliates might also own 10 percent voting interests. NRG/Vistra adds that NRG itself would not appear in the relational database in this case.[13]

7. Accordingly, NRG/Vistra requests that the Commission clarify that an investor (or investor group) will not be considered a Seller's ultimate upstream affiliate based solely on holdings of publicly traded securities. NRG/Vistra explains, in other words, where the voting securities of a Seller's upstream owner are publicly traded, the exercise of tracing upstream ownership will stop at the publicly traded entity unless the facts and circumstances suggest that a holder of 10 percent or more of the publicly traded voting securities has an intent and ability to exercise control over the publicly traded entity and its subsidiaries. NRG/Vistra posits that the Commission could find that, unless the publicly traded entity states otherwise, the Commission will presume that any holder of 10 percent or more of the entity's securities does not have an intent and ability to exercise control over the publicly traded entity and its subsidiaries. NRG/Vistra adds that, if such facts and circumstances change, the publicly traded company could commit to notify the Commission within 30 days upon notice of that change. NRG/Vistra contends that, at minimum, investors that have made Schedule 13G filings with the SEC or that have obtained blanket FPA section 203 authorizations should not be considered ultimate upstream affiliates because such investors have affirmatively represented that they do not hold the securities for control purposes.[14]

8. However, if the Commission does not grant this clarification, NRG/Vistra requests that, where there is a change resulting from trading publicly traded securities, the change be deemed to occur when the Seller had actual or constructive notice of the change. NRG/Vistra argues that the Commission has acknowledged the difficulty of tracking secondary market transactions and that, as a general matter, publicly traded companies rely on after-the-fact investor filings with the SEC, including (but not limited to) Schedule 13D and 13G filings, for information about when a given investor or investor group has acquired significant holdings of their shares.[15] NRG/Vistra maintains that, where Schedule 13D and 13G filings are made, the Seller will receive actual or constructive notice that an investor has acquired 10 percent or more of its publicly traded parent company's shares within 10 days after the end of the month of the underlying trades. NRG/Vistra posits that, by granting its request, Sellers will have a more reasonable amount of time to make its submission to update the database, which would lessen the burden on Sellers and reduce the chance of inaccurate submissions that would later have to be corrected.[16]

c. Commission Determination

9. We deny NRG/Vistra's request that the Commission clarify that an investor will not be considered a Seller's ultimate upstream affiliate based solely on holdings of publicly traded securities. This determination is consistent with current Commission requirements, *i.e.,* that Sellers must identify all upstream owners.[17] When the final rule takes effect, this determination will also be consistent with the requirement to report all ultimate upstream affiliates.[18]

10. More importantly, however, this determination is consistent with the affiliate definition in § 35.36(a)(9).[19] Among other things, the affiliate definition provides that an affiliate of a specified company means ''any person that directly or indirectly owns, controls, or holds with power to vote, ten percent or more of the outstanding voting securities of the specified company.'' [20] The Commission established in the final rule that the definition of ultimate upstream affiliate ''means the furthest upstream affiliate(s) in the ownership chain'' including ''any entity described in § 35.36(a)(9)(i).'' [21] There is no exemption under either of these definitions for entities that hold publicly traded securities. Rather, to exempt these entities from this definition would require a change to the affiliate definition in § 35.36(a)(9)(i) because the determining criterion is voting securities. Neither the NOPR nor the final rule proposed or considered any change to the substance of the affiliate definition. For this reason, we also find NRG/Vistra's request to be outside of the scope of this rulemaking as it is not a logical outgrowth of the NOPR or final rule.[22]

11. In addition, once the relational database is implemented, consistent and complete information on ultimate upstream affiliates will be crucial for database integrity and accuracy, given

[12] *Id.* at 4–5 (quoting *Morgan Stanley,* 121 FERC ¶ 61,060, at P 9 (2007), *order on clarification,* 122 FERC ¶ 61,094 (2008)).

[13] *Id.* at 5–6.

[14] *Id.* at 6–7.

[15] *Id.* at 7–8 (quoting *FPA Section 203 Supplemental Policy Statement,* 120 FERC ¶ 61,060, at P 36 (2007), *on clarification and reconsideration,* 122 FERC ¶ 61,157 (2008)).

[16] *Id.* at 8–9.

[17] Order No. 697–A, 123 FERC ¶ 61,055 at P 181 n.258.

[18] When Order No. 860 becomes effective, Sellers generally will only need to identify a subset of their upstream affiliates, the ultimate upstream affiliate(s). Order No. 860, 168 FERC ¶ 61,039 at P 5 n.10.

[19] 18 CFR 35.36(a)(9).

[20] 18 CFR 35.36(a)(9)(i).

[21] 18 CFR 35.36(a)(10).

[22] In determining whether a proposal is a logical outgrowth of a NOPR, the issue is whether interested parties ''ex ante, should have anticipated that such a requirement might be imposed.'' *Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 549 (D.C. Cir. 1983).

that the information in the database may affect a multitude of filers. Therefore, to ensure the relational database functions as intended, it would not be appropriate for the Commission to sever the chain of affiliation with respect to holders of publicly traded securities and preemptively find that they are not ultimate upstream affiliates. NRG/Vistra alternatively requests that the Commission stop tracing upstream ownership at publicly traded entities unless the facts and circumstances indicate that a holder of 10 percent or more of the securities has an intent and ability to exercise control over the publicly traded entity. We decline to adopt this subjective approach, given that it is critical that ultimate upstream affiliates be consistently reported to the database.

12. We also deny NRG/Vistra's alternative request to allow publicly traded Sellers or the Seller subsidiaries of publicly traded companies extra time to file updates to the relational database. Although we appreciate that tracking trading in a publicly traded ultimate upstream affiliate may be difficult, the requirement to identify upstream affiliates is not a new requirement. Currently, a Seller owned by a publicly traded company, like a Seller with any other type of owner, must timely report to the Commission any changes in the conditions the Commission relied upon when granting it market-based rate authority, which typically include any changes in ownership such as new affiliations. These reports must be made within 30 days of the date of that change.[23] When Order No. 860 takes effect, Sellers will continue to have at least 15 days to incorporate, in their monthly database submissions, any relevant changes to their ultimate upstream affiliate(s).[24] Given that Sellers will still have at least 30 days to submit their notice of change in status filings, we do not believe that Sellers potentially having as few as 15 days to make their database submissions is a significant change from current practice such that Sellers with publicly traded ultimate upstream affiliates will necessarily require additional time to report changes regarding their ultimate upstream affiliates.

13. In addition, granting this alternative request would affect the timing of quarterly notice of change in status filings, as certain ownership changes could be reported approximately 75 days after the relevant transaction occurs.[25] This could result in Sellers not having the most up-to-date information in their notice of change in status filings and triennial filings. Consequently, we deny NRG/Vistra's alternative request.

2. Passive Owners

a. Final Rule

14. In Order No. 860, the Commission adopted the proposal to require Sellers to make an affirmation, in lieu of a demonstration, in their market-based rate narratives concerning their passive owners. The Commission explained that such a demonstration is unnecessary, given that the Commission does not make a finding of passivity in its orders granting market-based rate authority and that removing this demonstration will ease the burden on filers.[26]

15. The Commission also clarified the nature of the proposed affirmation regarding passive owners. Specifically, ''[w]ith respect to any owners that a Seller represents to be passive, the Seller must identify such owner(s), and affirm in its narrative that the ownership interests consist solely of passive rights that are necessary to protect the passive investors' or owners' investments and do not confer control.'' [27] The Commission also clarified that it will continue to require change in status filings when passive interests arise in a Seller that has received market-based rate authority, so that the Seller can make the necessary affirmations. However, the Commission provided that, in this context, a Seller only needs to make a change in status filing to report and affirm the status of new passive owners as passive and need not submit any additional information into the relational database.[28]

16. In addition, the Commission clarified that it is not changing existing policy regarding the definition of a passive investor and that specific clarifications on that policy are beyond the scope of this proceeding. The Commission explained that, in most circumstances, a determination as to passivity is fact-specific and that, if a Seller is uncertain whether an investment is passive, it may file a petition for declaratory order.[29] Indeed, the Commission emphasized that nothing in Order No. 860 is intended to overturn the Commission's case-specific determinations as to passivity and an entity's reporting obligations under previously issued declaratory orders.[30]

17. As to obligations regarding the relational database, the Commission concluded that passive owners need not be reported in the database as ultimate upstream affiliates. The Commission also did not require that a Seller report the identity of its passive owners in the database. Further, the Commission clarified that, if a Seller can make the requisite affirmation regarding passive ownership, it would not need to list the assets associated with any such passive owner in its asset appendix.[31] The Commission stated, however, in footnote 209 of the final rule that ''Sellers should provide the identity of *new* passive owner(s) in their narratives when making their passive affirmation.'' [32]

b. Requests for Clarification and/or Rehearing

18. FMP requests clarification or, in the alternative, rehearing with respect to footnote 209 of the final rule. As background, FMP explains that many entities subject to the final rule are owned by or associated with one or more passive, non-managing owners. FMP states that the Commission has recognized the widespread nature of the passive ownership of public utilities and notes that the final rule referred to several instances where the Commission treatment of non-voting ownership interests indicated that they are outside the scope of the jurisdiction of the FPA.[33]

19. FMP asserts that footnote 209 is inconsistent with paragraphs 140 and 141 of the final rule, which state that Commission treatment of passive ownership is not being changed and that a passive owner need not be identified in the filing materials that are established and described in the final rule. FMP contends, however, that

[23] 18 CFR 35.42.

[24] Because monthly database updates will be due on the 15th of the month following the change, updates will be due between 15 and 45 days after the relevant change occurs (*e.g.,* in April, Sellers have 15 days to make the monthly database update if the change occurred on March 31, but 45 days if it occurred on March 1).

[25] That is, if the reportable transaction occurs on March 1, the relevant SEC filings that serve as notice to a Seller are made by April 10, according to NRG/Vistra, and the monthly database updates would be due on May 15.

[26] Order No. 860, 168 FERC ¶ 61,039 at P 137.

[27] *Id.* P 138 (citing *AES Creative Res., L.P.,* 129 FERC ¶ 61,239 (2009) (*AES Creative*)). The Commission added that it expects that this affirmation will be included in the narrative of initial market-based rate applications and in any other market-based rate filing (*e.g.,* triennial update or change in status notification) in which the Seller is making a passive ownership representation. *Id.* n.206.

[28] *Id.* P 139.

[29] *Id.* P 140. The Commission also declined to extend any safe harbor to affirmations made in good faith. *Id.* n.207.

[30] *Id.* P 140.

[31] *Id.* P 141.

[32] *Id.* n.209 (emphasis added).

[33] FMP Request at 1–2 (citing *Starwood Energy Grp. Global, L.L.C.,* 153 FERC ¶ 61,332, at P 21 (2015) (*Starwood*); *AES Creative,* 129 FERC ¶ 61,239).

footnote 209 substantially changes the Commission's existing policy.[34]

20. FMP argues next that footnote 209 is inconsistent with Commission precedent. FMP contends that nowhere in *Starwood,* for example, does the Commission require the submission of the identities of passive owners; FMP asserts that *Starwood* instead states that public utilities submitting market-based rate materials to the Commission ''do not need to identify the [passive investors] in any future section 205 market-based rate application, updated market power analysis, or notice of change in status.'' [35]

21. FMP contends that footnote 209 also substantively contradicts other recent, controlling precedent on this issue. FMP asserts that, ''in *Ad Hoc Renewable Energy Financing Group,*[36] the Commission referenced and confirmed without deviation exactly the conclusions stated in *AES Creative* and *Starwood* with respect to passive ownership . . . .'' [37] However, FMP argues that the final rule does not explain footnote 209's departure from this precedent.[38]

22. In addition, FMP argues that footnote 209's use of the word ''new'' in the context of ''new passive owners'' is unclear. FMP contends that *Starwood* expressly addresses the concept of new passive investors and applies to future passive investors, as long as the investment is actually passive.[39] Lastly, FMP asserts that the NOPR did not give notice that the Commission was considering a substantial change to *Starwood, AES Creative,* and *Ad Hoc* along the lines of footnote 209.[40]

23. If the Commission does not clarify that footnote 209 does not apply to a passive investment that is consistent with *Starwood, AES Creative,* or *Ad Hoc,* FMP requests that the Commission grant rehearing of footnote 209 on the grounds that: (1)The legal standard applied in footnote 209 is contrary to the facts present in the other provisions of the final rule and Commission precedent relied on in the final rule; (2) footnote 209 lacks adequate support and does not represent reasoned decision-making because it misrepresents the Commission's holdings in paragraphs 140 and 141 of the final rule; (3) footnote 209 lacks adequate support and does not represent reasoned decision-making because the Commission failed to examine the specific Commission orders on which the Commission relied on in the final rule and to apply its own precedent in a consistent fashion; and (4) footnote 209 departed from the Commission's precedent without notice in the NOPR such that the departure was arbitrary, capricious, or otherwise unlawful and in violation of FMP's rights.[41]

24. Starwood also requests clarification with respect to footnote 209 of the final rule and incorporates the entirety of FMP's pleading as part of its own request. Starwood argues that footnote 209 is inconsistent with prior Commission precedent, including Starwood's own 2015 declaratory order.[42] Starwood contends that one of the primary reasons it sought a declaratory order was to obtain a definitive ruling from the Commission that it did not need to disclose the identity of its passive owners. Starwood argues that other similarly situated private equity funds and fund managers have relied on *Starwood* since that time. Starwood requests that the Commission clarify that nothing in the final rule, specifically footnote 209, will change existing Commission precedent, which Starwood argues clearly provides that parties do not need to disclose the identity of their passive owners.[43]

25. TAPS requests clarification regarding the affirmation a Seller must make if it has passive owners. According to TAPS, the classification of owners as active or passive is critical to the Commission's analysis of whether to grant market-based rate authority to a Seller. TAPS explains that the classification determines affiliation, which triggers several market-based rate reporting requirements, and that the Commission required in Order No. 816 that Sellers need not include in their asset appendices entities or facilities if they have claimed and demonstrated that the relationship with those entities or facilities is passive.[44]

26. TAPS explains that, with respect to the relational database, distinguishing between passive owners and affiliates takes on greater importance. TAPS contends that failing to do so will substantially frustrate the Commission's ability to regulate the exercise of market power and ensure just and reasonable rates.[45]

27. TAPS contends that the generalized affirmation requirement described in Order No. 860 is much less specific than what was proposed in the NOPR.[46] TAPS thus requests that the Commission clarify that, for each owner that a Seller identifies as passive, the Seller must specifically (1) affirm whether each passive owner owns a separate class of non-voting securities, has limited consent rights, does not exercise day-to-day control over the company, and cannot remove the manager without cause; and (2) provide information sufficient to show that the Seller performed the requisite investigation for these affirmations.[47] According to TAPS, this clarification will allow the Commission to ensure that Sellers are complying with the Commission's existing policy regarding the definition of a passive investor and impose little, if any, additional burden on Sellers as they must already identify and investigate each of these four attributes of the ownership interests to make the affirmation.[48]

28. TAPS adds that requiring Sellers to include this basic information in their market-based rate filings is consistent with existing Commission practice and does not require a determination as to passivity. TAPS references the *EquiPower Resources Management, LLC* proceeding, in which Commission staff issued a letter with several questions regarding the passive nature of the ownership interests involved in the application for market-based rate authorization.[49] TAPS states that the Commission then granted the application by letter order without making any determination as to the passive ownership interests. TAPS points out that these questions concern the same matters as the NOPR's proposed affirmation requirement. TAPS asks that the Commission make clear that a ''narrative that the ownership interests consist solely of passive rights that are necessary to protect the passive investors' or owners'

[34] *Id.* at 2–3.

[35] *Id.* at 3 (quoting *Starwood,* 153 FERC ¶ 61,332 at P 21).

[36] 161 FERC ¶ 61,010 (2017) (*Ad Hoc*).

[37] FMP Request at 3.

[38] *Id.*

[39] *Id.* (citing *Starwood,* 153 FERC ¶ 61,332 at PP 14, 16–19).

[40] *Id.* at 4.

[41] *Id.* at 4–5.

[42] Starwood Request at 1–2 (citing *Starwood,* 153 FERC ¶ 61,332).

[43] *Id.* at 2.

[44] TAPS Request at 6–7 (citing *Refinements to Policies & Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.,* Order No. 816, 153 FERC ¶ 61,065, at P 284 (2015), *order on reh'g and clarification* Order No. 816–A, 155 FERC ¶ 61,188 (2016)).

[45] *Id.* at 7–8.

[46] *Id.* at 8 (quoting NOPR, 156 FERC ¶ 61,045 at P 26 (''[W]e also propose . . . that with respect to any owners than [a Seller] represents to be passive, the [Seller] affirm in its ownership narrative that its passive owner(s) own a separate class of securities, have limited consent rights, do not exercise day-to-day control over the company, and cannot remove the manager without cause.'')).

[47] *Id.* at 8–9.

[48] *Id.* at 10.

[49] *EquiPower Res. Mgmt., LLC,* Docket No. ER10–1089–000 (June 16, 2010) (deficiency letter).

investments and do not confer control'' include responses to these questions.[50]

29. If the Commission does not grant this clarification, TAPS requests rehearing of the Commission's decision to allow Sellers to make an affirmation instead of a demonstration regarding passive ownership interests.[51] TAPS asserts that this vague affirmation requirement is contrary to the Commission's obligations under the FPA and represents an unexplained departure from the Commission's prior requirement in Order No. 816 [52] that Sellers demonstrate passivity. According to TAPS, although the Commission stated that a demonstration is unnecessary given that the Commission makes no findings as to passivity in its orders granting market-based rate authority, the Commission did not explain the departure from the requirement in Order No. 816 that Sellers demonstrate passivity before excluding certain information from asset appendix entries.[53] TAPS contends that the Commission's statement that it is not changing the substantive standards governing a determination of passivity, or the timing of such a determination, does not justify a change in Sellers' reporting obligations.[54]

c. Commission Determination

30. We deny clarification and rehearing with respect to the Commission's directive in footnote 209 of the final rule that ''Sellers should provide the identity of new passive owner(s) in their narratives when making their passive affirmation.'' [55] FMP and Starwood argue that this directive is inconsistent with provisions in the final rule as well as Commission precedent. FMP and Starwood also contend that footnote 209 represents a departure from Commission precedent and the NOPR did not provide notice of this change. We disagree for the reasons discussed below.

31. FMP and Starwood misread the Commission's discussion of passive ownership in the final rule, including the clarification regarding new passive owners in footnote 209. The only substantive change the Commission made regarding passive interests in the final rule was to require Sellers to make an affirmation, in lieu of a demonstration, in their market-based rate narratives concerning their passive ownership interests.[56] The Commission concluded that such a demonstration was unnecessary because it makes no findings regarding passivity in its orders granting market-based rate authority and thus an affirmation would reduce the burden on filers.[57] In addressing a comment in the final rule, the Commission noted that ''passive owners need not be reported in the database'' [58] and, in footnote 209, it only clarified that Sellers should provide the identities of the owners they are claiming to be passive in their transmittal letters. It is not inconsistent to say that passive owners need to be identified in the narrative but do not need to be reported in the database. Moreover, providing the names of such owners is consistent with current practice.[59] The use of ''new'' in footnote 209 means Sellers will only need to make the affirmation for, and provide the identify of, passive owners whom they have not previously identified to the Commission in a market-based rate proceeding.[60]

32. In addition, we disagree with FMP and Starwood that footnote 209 is inconsistent with Commission precedent. In the final rule, the Commission expressly provided that nothing in the final rule would impact, let alone overturn, the Commission's case-specific determinations as to passivity and an entity's reporting obligations under previously issued declaratory orders.[61] Consistent with current Commission policy, Sellers must continue to disclose new passive owners should the Seller acquire them unless those Sellers received case-specific determinations as to passivity and reporting obligations under a declaratory order. Thus, the entities that are the subject of the *AES Creative, Starwood,* and *Ad Hoc* declaratory orders may continue to rely on the determinations as to passivity in those orders as well as the associated reporting obligations. However, to the extent that entities *not* subject to those orders have relied on those orders for reporting obligations, we clarify that those entities must comply with the Commission's current policy described above and, when the final rule takes effect, as articulated in the final rule.

33. For these reasons, we also disagree with FMP and Starwood that the NOPR provided insufficient notice of a change in filing requirements regarding passive ownership. The Commission changed no aspect of its policy on passive owners except for reducing a Seller's burden from a demonstration to simple affirmation. What FMP and Starwood characterize as a change to Commission policy in footnote 209 is only an explanation regarding existing policy, which will remain unchanged when the final rule takes effect.

34. We also deny clarification with respect to TAPS's request that the affirmation: (1) Affirm whether each passive owner owns a separate class of non-voting securities, has limited consent rights, does not exercise day-to-day control over the company, and cannot remove the manager without cause; and (2) provide sufficient information to show that a Seller performed an investigation for the affirmation. Likewise, we deny TAPS's alternative request for rehearing on the Commission's decision to allow Sellers to make an affirmation instead of a demonstration regarding passive ownership interests.

35. Although we agree with TAPS that, for the relational database to function correctly and as intended, owners must be properly classified as passive, we decline to grant rehearing to require, as TAPS requests, that the affirmation specifically affirm each of the four attributes of passivity identified in the NOPR and for each Seller to provide sufficient information to show that the Seller performed the requisite investigation for the affirmation. First, Order No. 860's requirement that a Seller identify passive owners and affirm in its narrative that the ownership interests consist solely of passive rights that are necessary to protect the passive investors' or owners' investments and do not confer control is taken from *AES Creative's* requirements for passive ownership interests.[62] As contemplated in *AES Creative,* passive owners cannot hold voting securities, have more than limited consent/veto rights, or allow day-to-day control over a company.[63] In addition, the Commission clarified in Order No. 860 that ''absent a Commission order to the

[50] TAPS Request at 10–12.

[51] *Id.* at 13 (quoting Order No. 860,168 FERC ¶ 61,039 at P 137).

[52] *See* Order No. 816, 153 FERC ¶ 61,065 at P 284.

[53] TAPS Request at 13–14 (citing Order No. 860, 168 FERC ¶ 61,039 at P 284). TAPS also points out that the final rule did not cite to Order No. 816 at all in its discussion of passive ownership. *Id.* n.9.

[54] *Id.* at 13–14.

[55] Order No. 860, 168 FERC ¶ 61,039 at P 141 n.209.

[56] *Id.* P 137.

[57] *Id.*

[58] *Id.* P 141.

[59] Order No. 697–A, 123 FERC ¶ 61,055 at n.258.

[60] In other words, this requirement will not apply to those Sellers who have made a passive demonstration prior to the effective date of the final rule.

[61] Order No. 860, 168 FERC ¶ 61,039 at P 140 (''Nothing in this [F]inal [R]ule is intended to overturn the Commission's case-specific determinations as to passivity and an entity's reporting obligations under previously issued declaratory orders.'').

[62] Order No. 860, 168 FERC ¶ 61,039 at P 138 & n.206.

[63] *See AES Creative,* 129 FERC ¶ 61,239 at PP 25–26.

contrary, an owner who can remove the manager without cause is not considered passive.'' [64] Thus, we reiterate here that unless the Commission specifically finds otherwise in a particular case, a Seller will not be able to make the passive affirmation where the owner can remove the manager without cause. Given that Sellers cannot make the requisite affirmation unless they can affirm that the ownership interests meet the *AES Creative* requirements and do not allow an owner to remove the manager without cause, we decline to require the specificity that TAPS requests.

36. Similarly, we deny clarification with respect to the information to be provided in the affirmation. Prior to the final rule, Sellers were required to make a demonstration regarding passive ownership, even though the Commission made no findings with respect to whether these ownership interests were truly passive. Accordingly, in the final rule, the Commission chose to reduce the filing requirements associated with making passive ownership representations. To require Sellers to show that they have sufficient information to make the affirmation would be to effectively continue the demonstration requirement. As explained, Sellers cannot affirm that their ownership interests consist solely of passive rights that are necessary to protect the passive investors' or owners' investments and do not confer control unless they have verified that those ownership interests meet the requirements of *AES Creative.* These Sellers must also abide by a duty of candor when making any filings with the Commission.[65] For these reasons, we also deny TAPS's alternative request for rehearing.

B. Connected Entity Information

1. Final Rule

37. In Order No. 860, the Commission declined to adopt the proposal to require Sellers and Virtual/FTR Participants to submit Connected Entity Information. The Commission acknowledged commenters' concerns about the difficulties and burdens associated with this aspect of the NOPR and, accordingly, transferred the record to Docket No. AD19–17–000 for possible consideration in the future as the Commission may deem appropriate. However, the Commission noted that the determination in the final rule to collect market-based rate information in a relational database will provide value to both the Commission's market-based rate and analytics and surveillance programs.[66]

2. Request for Clarification and/or Rehearing

38. Joint Advocates request limited rehearing of the final rule and argue that the Commission erred: (1) By not applying the requirement to collect Connected Entity Information from Sellers and Virtual/FTR Participants; and (2) in failing to require Virtual/FTR Participants to abide by a duty of candor.

39. Joint Advocates first contend that the finding in the final rule that the Connected Entity reporting requirements are unduly burdensome is unsupported by the evidence and conclusory in nature. Joint Advocates argue that, although the final rule acknowledges that the Connected Entity Information proposal was among the most commented on, it says nothing more than there were many concerns raised about the difficulties and burden associated with the proposal. Joint Advocates contend that this statement alone does not support why the Commission failed to act on the proposal or why the proposal's benefits are outweighed by any burden. Joint Advocates assert that the final rule instead ignores the record except for a cursory statement about supporting comments.[67]

40. Joint Advocates argue that the final rule focuses solely on comments regarding the proposal's alleged burdens but takes that evidence out of context. Joint Advocates contend, for example, that AVANGRID, Inc.'s (AVANGRID) and EEI's comments were critical of the burden imposed by the whole NOPR and that it is not reasoned decision-making to refer to these criticisms as if they apply only to the collection of Connected Entity Information.[68] Joint Advocates explain that the final rule references only one other set of comments, *i.e.,* Berkshire Hathaway Energy Company's (Berkshire) comments, and that these comments note concerns with the previous Connected Entity proposal; [69] however, Joint Advocates argue that Berkshire does not ask the Commission to wholly set aside the Connected Entity proposal but rather raises issues specific to its own business model. Joint Advocates argue thus that Berkshire's comments do not support the final rule's decision to set aside the Connected Entity proposal.[70]

41. Joint Advocates next assert that the final rule's preferential treatment for Virtual/FTR Participants is discriminatory in both intent and application. Joint Advocates assert that the Commission has long recognized that virtual products, transactions involving such products and that, accordingly, sellers of such products, *i.e.,* Virtual/FTR Participants, are subject to the Commission's jurisdiction.[71] Joint Advocates also point out that Virtual/FTR Participants are similarly situated with other market Sellers in that they are capable of affecting Commission-jurisdictional market prices. Joint Advocates contend that, even if the Commission adopted the Connected Entity proposal, the overall reporting requirements would still be significantly less than those for Sellers and that, without the Connected Entity requirements, Virtual/FTR Participants, unlike Sellers, have no duty of candor under the Commission's regulations. According to Joint Advocates, the failure to adopt the Connected Entity proposal maintains a two-tiered regulatory scheme that is both unjust and unduly preferential and violates section 206 of the FPA. Joint Advocates argue that the appropriate remedy is to adopt the Connected Entity proposal and subject Virtual/FTR Participants to similar oversight as Sellers.[72]

42. Lastly, Joint Advocates assert that the final rule deprives the Commission of important tools to address and combat market manipulation and fraud. Joint Advocates echo the concerns in the dissent, including with respect to the GreenHat Energy, LLC's default on its FTRs in the PJM market, and note the harm that could result from recidivist persons that commit fraud is real.[73]

43. Joint Advocates request in the alternative that the Commission accept their comments in the record of Docket No. AD19–17–000. Joint Advocates also ask that the Commission expediently implement the Connected Entity proposal and any additional reforms offered in Docket No. AD19–17–000 given the clear potential for future

[64] Order No. 860, 168 FERC ¶ 61,039 at P 140.

[65] 18 CFR 35.41(b).

[66] Order No. 860, 168 FERC ¶ 61,039 at P 184.

[67] Joint Advocates Request at 8–9.

[68] *Id.* at 9–10.

[69] *See Collection of Connected Entity Data from Reg'l Transmission Orgs. and Indep. Sys. Operators,* Notice of Proposed Rulemaking, 80 FR 80302 (Dec. 24, 2015), 152 FERC ¶ 61,219 (2015) (Connected Entity NOPR); *Collection of Connected Entity Data from Reg'l Transmission Orgs. and Indep. Sys. Operators,* Withdrawal of Proposed Rulemaking and Termination of Rulemaking Proceeding, 81 FR 49590 (July 28, 2016), 156 FERC ¶ 61,046 (2016).

[70] Joint Advocates Request at 10–11.

[71] *Id.* at 11.

[72] *Id.* at 12.

[73] *Id.* at 13–14.

market manipulation, fraud, and default.[74]

3. Commission Determination

44. As discussed below, we deny Joint Advocates' request for rehearing. We disagree with Joint Advocates' characterization of the Commission's determination in the final rule. The Commission did not state that the Connected Entity reporting requirements are ''unduly burdensome,'' rather the Commission stated that it ''appreciate[s] the concerns raised about the difficulties of and burdens imposed by'' [75] the Connected Entity proposal. Further, we disagree with Joint Advocates' assertion that the final rule takes evidence regarding the burden of the Connected Entity proposal out of context. We acknowledge that AVANGRID's and EEI's comments expressed concerns about the burdens associated with both the market-based rate and Connected Entity proposals. However, the final rule elsewhere addressed commenters' concerns with the market-based rate proposal and made adjustments, clarifications, and determinations as needed.[76]

45. Regarding the Connected Entity proposal, the final rule did not detail all of the commenters' concerns. For example, commenters expressed concerns with the proposal, specifically with the proposed definition of ''trader,'' [77] the scope of the proposal,[78] and other aspects of the Connected Entity proposal.[79] Ultimately, in the final rule, the Commission noted AVANGRID's, EEI's, and Berkshire's concerns while also noting that some commenters supported the Connected Entity proposal. After consideration of all of the comments, the Commission transferred the record to Docket No. AD19–17–000 ''for possible consideration in the future as the Commission may deem appropriate.'' [80] In doing so, the Commission acknowledged that it could explore the Connected Entity proposal in the future. Accordingly, we accept Joint Advocates' alternative request and place their instant comments in the record of Docket No. AD19–17–000 for consideration in the future as the Commission may deem appropriate.

C. Implementation & Data Dictionary

1. Final Rule

46. In the final rule, the Commission revised the previous implementation schedule in the NOPR based on concerns regarding feasibility. The Commission explained that initially, after the final rule's issuance, documentation for the relational database will be posted to the Commission's website, including the extensible markup language document (XML), XML Schema Definition document (XSD), the Data Dictionary, and a test environment user guide as well as a basic relational database test environment. Additionally, the Commission stated that it intends to add to the new test environment features on a prioritized, scheduled basis until complete. The Commission stated that it would inform the public when releases will be made publicly available.[81]

47. The Commission stated that, during the development and testing phase, it would encourage feedback from outside testers and that, to facilitate this feedback, Commission staff will conduct outreach with submitters and external software developers, making any necessary corrections to available requirements and/or documentation.[82] In addition, the Commission explained that, in spring 2020, a user guide and a list of frequently asked questions regarding the process for preparing and submitting information into the relational database will be available on its website.[83]

48. The Commission also explained that, in fall 2020, submitters will be required to obtain FERC generated IDs (GID) [84] for any reportable entity [85] that does not have a CID or LEI,[86] as well as the Commission-issued ''Asset Identification'' (Asset ID) number [87] for any reportable generation asset without a Plant Code, Generator ID, and Unit Code information from the Energy Information Agency (EIA) Form EIA–860 database (collectively, EIA Code).[88] The Commission stated that more information on discovering or obtaining these IDs will be published on the Commission's website.[89]

49. The Commission explained that, after all necessary IDs are acquired, submitters must then submit their baseline submissions into the relational database by close of business on February 1, 2021.[90]

50. The Commission stated that, to the extent that the Commission finds that technical workshops would be helpful after publication of the final rule, it will provide for those workshops.[91] In addition, the Commission explained that, if necessary, requests for an extension to the initial submission deadlines may be submitted similar to the way in which a current request for extension of time would be submitted to the Commission for consideration.[92]

51. The Commission determined that it would post the Data Dictionary and supporting documentation to the Commission's website.[93] The Commission also concluded that there was no need for additional notice and opportunity for comment on the Data Dictionary, but the Commission noted

[74] *Id.* at 3.

[75] Order No. 860, 168 FERC ¶ 61,039 at P 184.

[76] For example, in response to commenters' concerns, the Commission decided to not adopt the requirement for Sellers to identify their relationships with foreign governments. *Id.* P 146.

[77] Berkshire at 13–17, EEI at 11–15; International Energy Credit Association at 5–12; AVANGRID at 11–12; NextEra Energy, Inc. at 4–6; Manitoba Hydro at 3; Power Trading Institute at 5–6; Financial Institutions Energy Group 10–11.

[78] AVANGRID at 14–17; International Energy Credit Association at 22–23; Financial Institutions Energy Group at 4–13; Commercial Energy Working Group at 20–22.

[79] *See* International Energy Credit Association at 17–19; Power Trading Institute at 5 (opposing the requirement for Sellers to obtain LEIs); Berkshire at 4–8; NextEra Energy, Inc. at 3–4 (opposing the requirements to disclose certain affiliates that would fall within the definition of ''connected entities'').

[80] Order No. 860, 168 FERC ¶ 61,039 at P 184.

[81] *Id.* PP 308–309.

[82] *Id.* P 310.

[83] *Id.* P 311.

[84] The GID is a new form of identification that was created alongside the final rule to serve as an identifier for reportable entities that do not have a Company Identifier (CID) or Legal Entity Identifier (LEI). The Commission explained that the system will allow Sellers to obtain unique GIDs for their affiliates and that additional information on the mechanics of this process will be made available on the Commission's website prior to the final rule's October 1, 2020 effective date. The Commission required affiliates to be identified using their CID if they have one, but if they do not, the Seller must use the LEI for the affiliate if available. If the affiliate has neither, the Commission required that the GID must be provided. *Id.* P 24 n.42.

[85] Reportable entities are any companies or natural persons that a Seller needs to identify in its database submissions.

[86] LEI is a unique 20-digit alpha-numeric code assigned to a single entity. They are issued by the Local Operating Units of the Global LEI System. *Id.* P 18 n.30.

[87] *Id.* P 64. The Commission added that, when creating the Asset ID, Sellers will be required to provide basic information about the generator, such as its plant name, nameplate capacity, and month and year it began commercial operation (if known). *Id.* n.108.

[88] *Id.* PP 64, 313.

[89] *Id.* P 313.

[90] *Id.* P 312.

[91] *Id.* P 317.

[92] *Id.* P 318 & n.398 (citing 18 CFR 385.212).

[93] *Id.* P 209.

that Sellers may reach out to Commission staff for further information.[94]

2. Request for Clarification and/or Rehearing

52. EEI requests clarification regarding several implementation issues.[95] First, EEI argues that the implementation timeline should be extended to reflect the scope of the data required to be submitted and implementation challenges. EEI suggests that the Commission has adopted an unreasonably short timeline for implementing the final rule, considering the numerous questions as to implementation.[96] EEI argues that unexpected delays could impact compliance with the final rule and that, while the Commission has posted information regarding the XML, XSD, and Data Dictionary, it should also provide clarity as to when the other tools mentioned in the final rule will be available to users if such information is known.[97]

53. According to EEI, the scope and breadth of the data gathering effort will be extensive in most cases because the data to be gathered is nuanced and requires judgment to determine whether the data falls within the final rule's scope. EEI notes that the Commission now requests data on: (1) The contents of market-based rate tariffs and certain power purchase agreements (PPAs); (2) IDs associated with counterparties to those PPAs; (3) dates related to the various elements of the market-based rate tariffs and PPAs; (4) certain generation; and (5) certain affiliates. EEI points out that the breadth of this data is greater than what is collected today for asset appendices and that it may be difficult to identify who may hold this information, given that ultimate upstream owners often restrict the flow of data among affiliates.[98]

54. In addition, EEI explains that one of the first tasks of each Seller will be to determine for which generating assets it lacks EIA Codes and for which affiliates and counterparties, if any, it lacks a CID or LEI. EEI points out that in both cases the Commission must first generate data. EEI explains that requests for GIDs and Asset IDs are to be submitted in Fall 2020 and that given the compliance deadline and the fact that the Commission must first compile requests, this date occurs too late in the process to meet the Commission's current implementation date. EEI also submits that the Commission first must post a CID list that is kept up-to-date so Sellers can know whether to request an GID.[99] EEI posits, however, that the Commission must recognize that it will take time for Sellers to determine the set of PPAs that require GIDs because no list of PPAs under which the Seller is a long-term Seller likely exists and, if a Seller's Electric Quarterly Report (EQR) contains such a list, it must be sorted by long-term sales of energy or capacity. EEI provides that only then can the CID list be checked to determine the need for an GID.[100]

55. EEI maintains that another issue that will affect the implementation timeframe is the need for internal compliance personnel and compliance programs to determine ongoing compliance. EEI suggests that such personnel will be spread over many departments and training will be required to establish reporting obligations and on the use of data collection software if data entry is not centralized.[101]

56. EEI contends that the data entry task will be substantial for some reporting entities and should be considered in estimating compliance time.[102] EEI suggests that, because the data entry and data gathering tasks are potential sources of human error, some level of review may be necessary post-data collection to ensure that obvious errors or omissions have not occurred.

57. EEI next contends that technical conferences are needed to refine the Data Dictionary and clarify the data that must be collected. For example, EEI references the Commission's guidance in the final rule regarding reporting the number of megawatts associated with full and partial requirements sales agreements, *i.e.,* ''[f]or a full requirements contract, the amount should equal the buyer's most recent historical annual peak load'' and ''for a partial requirements contract, the amount should equal the portion of the buyer's requirements served by the seller multiplied by the buyer's annual peak load.''[103] EEI argues that this guidance raises several questions, and entities will have difficulty knowing what data to gather and report. Each entity may interpret the data requirements differently without Commission clarification.[104]

58. EEI also questions the need for many of the date fields in the Data Dictionary. For example, EEI argues that the need for a field on ''relationship_start_date'' in the ''entities_to_entities'' table is unclear. EEI contends that, unless the Commission explains the need for retroactive dates in this field, as well as in other fields such as the ''cat_status_effective_date'' field in the category status table, it should allow the Sellers to use the date of the baseline filing and not seek historical dates. EEI asserts that if the Commission does not accept this alternative, it should allow discussion during the technical conference on how this burden can be reduced. In addition, EEI states that both outside vendors and in-house personnel will build data collection software for the final rule. EEI argues however that the Data Dictionary in and of itself does not allow software developers to understand what is needed in the software. EEI references several tables, including ''mbr_authorization,'' ''mbr_category_status,'' and ''entities_to_genassets,'' which could each be populated in different ways. EEI thus maintains that, for the software to have the functionality needed to meet the Commission's needs, Commission staff and Sellers must explain to software developers how each table in the Data Dictionary will work.

59. Similarly, EEI suggests that software developers will need time to understand how each table may be used by a variety of customers before they can begin coding. EEI maintains that, because Sellers will require new data collection software to convert the collected data into an XML format, technical conferences will be useful for providing feedback about how long this process will take. EEI suggests that developing new software can take between six months to more than a year and that the relational database is more complicated than past Commission endeavors because some entities will not have a vendor in place. EEI submits that most Sellers will need time to contract to develop software, the process of which will likely take several months.[105]

60. EEI further provides comments on specific fields, such as the ''PPA Agreement ID'' field in the PPA table. EEI requests that the Commission verify that the identifier for each PPA should be the one used in EQR Field 20 only if the Seller is making a sale and that,

[94] *Id.* P 212.

[95] EEI Request at 4.

[96] *Id.*

[97] *Id.* at 4–5 (quoting Order No. 860, 168 FERC ¶ 61,039 at PP 309–310).

[98] *Id.* at 10–11.

[99] *Id.* at 11.

[100] *Id.* at 11–12.

[101] *Id.* at 12.

[102] *Id.* at 13.

[103] *Id.* (quoting Order No. 860, 168 FERC ¶ 61,039 at P 94).

[104] *Id.* at 6–7.

[105] *Id.* at 12–13.

where the Seller is purchasing long-term, it does not need to check to see: (1) If the Seller files EQRs; and (2) review the EQR of that Seller and find its identifier in its Field 20.[106] In regards to operating reserves, EEI requests that the Commission clarify that it is only seeking information as to Sellers who receive a Seller-specific order as to permit sales of operating reserves in a non-ISO/RTO balancing authority area in which it would otherwise be prohibited from selling under the model tariff wording.[107]

61. Lastly, EEI seeks clarification that Commission staff can make changes to the Data Dictionary fields as appropriate to reflect the outcome of the technical conference.[108]

3. Commission Determination

62. We grant EEI's request for clarification in part and deny it in part. First, we deny EEI's request to extend the implementation timeline and disagree with EEI's assessment that the scope and breadth of the data gathering effort will be extensive. As noted in the final rule, Sellers already collect most of the information required to be submitted under the final rule, either as part of the narratives in their market-based rate filings, asset appendices, EQRs, or as part of their market-based rate tariffs.[109] For example, Sellers should already have available a list of long-term PPAs in which they are the seller because such sales are reported in EQRs. The final rule merely alters the manner in which Sellers will provide this data to the Commission. Additionally, the current implementation timeline provides Sellers with over 18 months to gather any new data that they may be required to submit into the database.[110] We find this to be enough time to gather any necessary information.

63. In response to EEI's concerns that Sellers and vendors will not have enough time to become familiar with the submission process, we note that on January 10, 2020, the Commission provided, on its website,[111] updated versions of the Data Dictionary, XML, XSD, and a frequently asked questions document, as well as provided access to a test environment for the relational database.[112] We expect that these items should provide Sellers, vendors, and other interested parties with a reasonable level of clarity on what Sellers will be required to submit and aid in the creation of tools to make those submissions. In regard to EEI's concerns that Sellers may not have enough time to determine for which affiliates or counterparties it needs to obtain a GID and which generating assets need Asset IDs, we note that the test environment (and the future portal for the relational database) should address these concerns. Sellers will find within the test environment tools to search for existing CIDs, LEIs, and GIDs, as well as the mechanism to create GIDs and Asset IDs.[113] Further, because the EIA Codes will be pulled from EIA, Sellers may also review the most recent EIA–860 table to discover whether they need to create an Asset ID for any generation asset.[114] Sellers will also be able to make test submissions into the relational database, which will help them to become familiar with the submission requirements of the database and how to format the data required.[115]

64. We anticipate that these items, along with the technical workshop, will provide interested parties with sufficient information and tools to be able to make their submissions. While we appreciate EEI's argument that unexpected delays could impact compliance with the final rule, to date, no such delays have occurred. Nevertheless, if unexpected delays do occur, Sellers may seek an extension of time to make their baseline submissions. Further, to the extent that EEI remains concerned about human error, we reiterate that the Commission's usual practice is simply to require a corrected submittal be made without any sanctions.[116]

65. Next, we grant EEI's request that the Commission hold a technical workshop, and we note that Commission staff will be hosting a technical workshop on February 27, 2020.[117] We expect that many of EEI's concerns with the Data Dictionary and the data that must be collected will be addressed at the technical workshop. Nevertheless, we take this opportunity to provide some clarifications.

66. We will allow the use of a January 1, 1960 default date for certain date fields, for dates that occur before the October 1, 2020 effective date of the final rule, when populating the database.[118] For example, Sellers may input January 1, 1960 for date fields such as ''relationship_start_date'' in the ''entities_to_entities'' table if the relationship between the entities began before October 1, 2020 and the seller does not know the actual start date.[119]

67. We also verify that the ''ppa_agreement_id'' field in the ''entities_to_ppas'' table will be nullable and Sellers should only populate this field with the ID number in EQR Field 20 when they are reporting their own long-term sales. Stated another way, we do not expect Sellers to review the EQRs of their counterparties when preparing their submissions into the relational database.

68. Regarding operating reserves, we clarify that we are not seeking information on operating reserve authority provided for in standard market-based rate tariff provisions. The Commission is only seeking information on Sellers who have received a seller-specific authority to make sales of operating reserves at market-based rates.[120] Further, for specific questions about the Data Dictionary or other implementation issues, Sellers and

[106] *Id.* at 15.

[107] *Id.* at 17.

[108] *Id.*

[109] Order No. 860, 168 FERC ¶ 61,039 at PP 88, 90, 97, 105, 122, and 158.

[110] Submitters have until close of business February 1, 2021 to make their initial baseline submissions.

[111] This information can be found at *https://www.ferc.gov/industries/electric/gen-info/mbr/important-orders/OrderNo860.asp.*

[112] This test environment, and eventually the relational database, can be found at *https://mbrweb.ferc.gov/.*

[113] The ability to search for EIA Codes or Asset IDs for generation assets will be introduced into the test environment a future update.

[114] *See https://www.eia.gov/electricity/data/eia860/.*

[115] As noted in the January 10, 2020 notice, this is a test environment and all submissions into the database, specifically, XMLs and all created GIDs and Asset IDs, will not be part of the official record and will be cleared from the database before it officially goes live.

[116] Order No. 860, 168 FERC ¶ 61,039 at P 293.

[117] *See* Notice of Technical Workshop, Docket No. RM16–17–000 (Jan. 22, 2020).

[118] We will continue to require Sellers to populate the ''authorization_effective_date'' field in the ''mbr_authorizations'' table with the actual date that their market-based rate tariffs first became effective. For most Sellers this date is easily discoverable as it is in their market-based rate tariff. Additionally, Commission staff currently maintains, and posts on the Commission's website, a document where Sellers can discover this date. *See https://www.ferc.gov/industries/electric/gen-info/mbr/mbr-contact.xlsx.*

[119] One field that EEI specifically inquired about is the ''cat_status_effective_date'' field in the ''mbr_category_status'' table. We clarify that for category statuses granted prior to October 1, 2020, Sellers may use the default date. For any changes to category statuses that occur after that date, Sellers should populate the effective date of the tariff that first reflects the changed status.

[120] The market-based rate standard tariff includes provisions for sales of ancillary services, including sales of operating reserves, in designated organized markets as well as for third-party sales. The third-party sales of ancillary service tariff provision specifies that authority for sales of ''Operating Reserve-Spinning and Operating Reserve-Supplemental do not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, *except where the Commission has granted authorization.*'' *See http://www.ferc.gov/industries/electric/gen-info/mbr/filings/tariff-changes/provisions.asp* (emphasis added). The Commission will only require operating reserve information where such specific authorization was granted.

other interested parties may contact Commission staff at *MBRdatabase@ferc.gov*.

D. Public Access

1. Final Rule

69. In Order No. 860, the Commission clarified that certain aspects of a Seller's market-based rate filing can appear in eLibrary as either public or non-public. The Commission noted that a Seller, like anyone else submitting information to the Commission, may request privileged treatment of its filing if it contains information that is claimed to be exempt from the Freedom of Information Act's mandatory disclosure requirements.[121] The Commission stated that it did not expect that the information required to be submitted into the relational database will qualify for privileged treatment and consequently declined to incorporate confidentiality safeguards in the relational database.[122]

2. Request for Clarification and/or Rehearing

70. TAPS requests that the Commission clarify that the public has a right to access the relational database.[123] According to TAPS, in the final rule, the Commission repeatedly explains that its expectation is that the public will have access to the relational database.[124] TAPS argues, however, that neither the final rule nor the amended regulatory text directly states that the public will have the right to access, search, and use information contained in the relational database. TAPS requests that the Commission expressly clarify that the public will have the right to do so.[125]

71. TAPS points out that full access to the relational database and its functions is critical because the relational database will be one of the only remaining sources of information about the potential for anticompetitive market power. TAPS explains that this is because the final rule eliminated the requirement to submit organizational charts and for each Seller to report the assets of its affiliates with market-based rate authority. TAPS adds that the Commission also eliminated, in a separate rulemaking, the requirement that Sellers in certain RTO/ISO markets submit indicative screens for assessing horizontal market power.[126]

72. TAPS explains that the final rule also implies that the public will have broad access rights through the relational database's services function. However, TAPS argues that the final rule does not define services function or specify that the public will have access to all of the relational database's functions. TAPS thus requests that the Commission clarify that the public's right to access the relational database includes the ability to use all the functions available to the Commission.[127]

73. In addition, TAPS requests that the Commission clarify that the public will have access to the following: (1) The relational database function that generates organizational charts; (2) the same historical data as filers (*i.e.,* Sellers); and (3) the full set of market-based rate information, either through eLibrary or otherwise, including information Sellers submit into the database. TAPS also asks that the Commission clarify that all of the historical data preserved will be publicly available.[128]

3. Commission Determination

74. As TAPS requests, we clarify that the public will be able to access the relational database. In this regard, we clarify that we will make available services through which the public will be able to access organizational charts, asset appendices, and other reports, as well as have access to the same historical data as Sellers, including all market-based rate information submitted into the database. We also clarify that the database will retain information submitted by Sellers and that historical data can be accessed by the public.

E. Due Diligence

1. Final Rule

75. With respect to the due diligence standard in § 35.41(b), the Commission stated that it generally will not seek to impose sanctions for inadvertent errors, misstatements, or omissions in the data submission process. The Commission stated its expectation that Sellers will apply due diligence to the retrieval and reporting of the required information by establishing reasonable practices and procedures to help ensure the accuracy of their filings and submissions, which should minimize the occurrence of any such inadvertent errors, misstatements, or omissions. However, the Commission explained that the intentional or reckless submittal of incorrect or misleading information could result in the Commission imposing sanctions, including civil penalties. The Commission explained that these circumstances might include, for example, systemic or repeated failures to provide accurate information and a consistent failure to exercise due diligence to ensure the accuracy of the information submitted.[129]

76. The Commission declined to adopt a ''safe harbor'' or a ''presumption of good faith'' or ''good faith reliance on others defense,'' nor did the Commission decide to limit enforcement actions to only where there is evidence demonstrating that an entity intentionally submitted inaccurate or misleading information to the Commission.[130]

77. The Commission reiterated that a due diligence standard provides the Commission with sufficient latitude to consider all facts and circumstances related to the submission of inaccurate or misleading information (or omission of relevant information) in determining whether such submission is excusable and whether any additional remedy beyond correcting the submission is warranted.[131]

78. The Commission explained that establishing adequate due diligence practices and procedures ultimately depends on the totality of facts and circumstances and can vary case to case, depending upon evidence presented and whether, for example, reliance on third parties or affiliates is justified under the specific circumstances. The Commission added that most Sellers have knowledge of their affiliates' generation portfolios because Sellers must include this information in their indicative screens, so to the extent that the auto-generated asset appendix is clearly incongruous with the screens, the Commission expects that the Seller will make note of the perceived error in the transmittal letter.[132]

79. The Commission explained however that, if a Seller does not have accurate or complete knowledge of its affiliates' market-based rate information, in most cases it should be able to rely on the information provided by its affiliates unless there is some indication that the information the affiliate supplies is inaccurate or incomplete.[133] The Commission added that, although Sellers should not ignore obvious inaccuracies or omissions, relying on information from affiliates should be

[121] *See* 5 U.S.C. 552.

[122] Order No. 860, 168 FERC ¶ 61,039 at P 284.

[123] TAPS Request at 4.

[124] *Id.* (citing Order No. 860, 168 FERC ¶ 61,039 at PP 151, 152, 158, 234, 284).

[125] *Id.*

[126] *Id.*

[127] *Id.* at 4–5.

[128] *Id.* at 5–6.

[129] Order No. 860, 168 FERC ¶ 61,039 at PP 291–293.

[130] *Id.* P 294.

[131] *Id.* P 295.

[132] *Id.* PP 295–296.

[133] *Id.* P 297.

sufficient to satisfy the due diligence standard provided there is a reasonable basis to believe that such information obtained from affiliates or third parties is reliable, accurate, and complete.[134]

2. Request for Rehearing

80. TAPS requests rehearing as to whether the Commission erred by (1) failing to include safeguards during the relational database's initial implementation to ensure that the newly adopted relational database functions as intended and at least as well as the pre-Order No. 860 data collection regime, and (2) failing to adequately specify the Commission's expectations for satisfying the Commission's [135] due diligence requirements under the new reporting regime.

81. According to TAPS, Order No. 860 conceded the risk of reporting errors and the Commission erred in declining to continue existing reporting requirements or other safeguards during the initial implementation of the relational database.[136] TAPS contends that the Commission also erred in failing to specify what ongoing practices and procedures the Commission expects Sellers to implement to satisfy their due diligence obligations.[137]

82. TAPS asserts that the essential component of the relational database is identifying common ultimate upstream affiliates among Sellers.[138] TAPS argues that the relational database will not work if Sellers fail to correctly identify their ultimate upstream affiliates and that, because of complex corporate organizational structures, the risk of such failures is significant, as the Commission acknowledged. TAPS maintains that the risk of error will increase over time as changes in ownership result in a new ultimate upstream affiliate. TAPS adds that other problems that could compromise the relational database are likely to emerge after the database is fully developed and implemented.[139]

83. TAPS contends that the final rule's response and solution to the problem of misreporting are inadequate. TAPS states that the final rule claims that the CID, LEI, and/or GID assigned by the relational database to each ultimate upstream affiliate will reduce the likelihood that Sellers attempting to report the same ultimate upstream affiliate inadvertently report different entities.[140] TAPS argues however that the Commission conceded that this only remedies reporting errors where Sellers are attempting to report the same ultimate upstream affiliates, and that it does not address the concern that some Sellers will misidentify their ultimate upstream affiliates at the outset.[141] According to TAPS, the final rule claims that this error can be identified and addressed when a Seller views its auto-generated asset appendix.[142] However, TAPS argues that the auto-generated asset appendix may not help remedy this reporting error where there is no specific directive that Sellers perform an independent review of the asset appendix, retain the audit trail necessary to do so, or report errors for correction and/or correct such errors unless the errors are obvious. TAPS asserts that the final rule both fails to require such an audit trail and even allows Sellers to rely on other Sellers' information for accuracy.[143]

84. TAPS argues that the Commission should implement two safeguards to address these concerns. First, TAPS requests that, for purposes of accuracy, the Commission require that baseline database submissions, if not all submissions during the first three years of the relational database, include the asset appendix generated without using the database. TAPS contends that this will enable the Commission and others to check that the initial implementation of the relational database does not omit relevant information that would have been collected and made available under the previous market-based rate reporting regime.[144]

85. Second, TAPS requests that the Commission articulate its expectation for what practices Sellers should adopt after this initial three-year period to satisfy their due diligence obligations under § 35.41(b). Specifically, TAPS contends that the Commission specify that it expects Sellers' continued due diligence practices to include: (1) Creating appendices of affiliated generation assets developed without reliance on the relational database; (2) comparing the non-relational database asset appendices against the ones generated by the database; and (3) retention of those comparisons for a reasonable time (at least six years, or two triennial market power updates). TAPS maintains that these requirements will ensure Sellers are able to identify reporting errors, the Commission can check the accuracy of the database-generated asset appendixes, and the Commission can fulfill its statutory mandate to ensure just and reasonable rates during this transition.[145]

3. Commission Determination

86. We deny TAPS's request for rehearing requesting safeguards during the initial implementation of the relational database and requesting that there be specific expectations regarding due diligence obligations moving forward. We agree with TAPS that, for the relational database to work as intended, common ultimate upstream affiliates between Sellers must be correctly identified, and we expect Sellers to exercise due diligence as they make their initial submissions in the relational database. As stated in the final rule, the Commission acknowledged that there would be some risk of reporting errors where there are subtle changes in ownership percentages resulting in new ultimate upstream affiliates that may not be universally noticed and reported by all affiliated Sellers.[146] We also acknowledge that there will be reporting errors if, as TAPS suggests, Sellers misidentify their ultimate upstream affiliates at the outset. However, we believe these reporting errors will be minimal as the Commission's definition for ultimate upstream affiliate is clear.[147]

87. As such, we affirm the Commission's due diligence findings in the final rule, and decline to impose the additional requirements that TAPS requests. The Commission explained that a due diligence standard provides the Commission with sufficient latitude to make case-by-case considerations and that due diligence practices and procedures ultimately depend on the totality of the facts and circumstances, including whether reliance on third-parties or affiliates for information is justified.[148] We emphasize that the Commission's regulations impose a duty of candor on all Sellers to provide actual and factual information and to not submit false or misleading information in communications, or omit material information, in any communication with the Commission.[149] To the extent

[134] *Id.* P 298.

[135] 18 CFR 35.41(b).

[136] TAPS Request at 14–15 (citing Order No. 860, 168 FERC ¶ 61,039 at PP 123, 310).

[137] *Id.* at 15 (citing Order No. 860, 168 FERC ¶ 61,039 at P 291).

[138] *Id.* (quoting Order No. 860, 168 FERC ¶ 61,039 at P 5).

[139] *Id.* at 15–16.

[140] *Id.* at 16 (quoting Order No. 860, 168 FERC ¶ 61,039 at P 51).

[141] *Id.*

[142] *Id.* (quoting Order No. 860, 168 FERC ¶ 61,039 at P 123).

[143] *Id.* at 16–17 (quoting *inter alia* Order No. 860, 168 FERC ¶ 61,039 at P 298).

[144] *Id.* at 17–18.

[145] *Id.* at 18–19 (citing Order No. 860, 168 FERC ¶ 61,039 at P 292).

[146] Order No. 860, 168 FERC ¶ 61,039 at P 123.

[147] *See supra* n.9.

[148] *See* Order No. 860, 168 FERC ¶ 61,039 at PP 295–296.

[149] 18 CFR 35.41(b).

that there are inaccuracies in auto-generated asset appendices, we expect that Sellers will note those perceived errors in their transmittal letters. We reiterate that, while we expect that most inadvertently erroneous or incomplete submissions will be promptly corrected by reporting entities without the imposition of any penalty, the Commission will continue to exercise its discretion based on the circumstances to determine whether sanctions are appropriate.[150]

88. In addition, we find that TAPS's request for additional safeguards would both be burdensome and undermine the benefits of establishing the relational database. First, if the Commission required that all baseline database submissions and all submissions during the first three years of the relational database include asset appendices generated without the database, this would, in substance, continue the pre-final rule reporting regime except with additional filings.[151] Given that a purpose of the final rule is to reduce burden, this requirement would run counter to the one of the goals of the final rule and would result in a more burdensome system for Sellers; however, the Commission and the public would receive little, if any, added benefit.

89. Likewise, with respect to ongoing due diligence requirements, we decline to require that Sellers are expected to: (1) Create asset appendices without relying on the relational database; (2) compare those asset appendices to the ones generated by the database; and (3) retain those comparisons for at least six years. Although characterized as expectations, TAPS's request can be read as additional requirements that would be part of Sellers' responsibilities under § 35.41(b). As noted above, such requirements would run counter to the purpose of the final rule, specifically, the goal to reduce burden on Sellers. We reiterate, however, that Sellers have a duty to perform due diligence to ensure that the information that they provide to the Commission is accurate and complete, and we encourage Sellers to adopt due diligence practices, which could include those proposed by TAPS.

III. Document Availability

90. 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 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

91. 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.

92. 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.*

IV. Effective Date

93. The order on rehearing and clarification is effective October 1, 2020.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

Issued: February 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes

Docket No. RM16–17–001

GLICK, Commissioner, *dissenting in part:*

1. I dissent in part from today's order, because I believe that the Commission should have finalized a critical aspect of the notice of proposed rulemaking [1] (NOPR) that would have required Sellers [2] and entities that trade virtual products or that hold financial transmission rights (Virtual/FTR Participants) [3] to report information regarding their legal and financial connections to various other entities (Connected Entity Information). Frankly, many aspects of this Connected Entity Information proposal should have been a no-brainer for this Commission. For example, the NOPR would have required Virtual/FTR Participants to be truthful in all communications with the Commission—not exactly a burdensome obligation. Nevertheless, the Commission has relegated even those common-sense reforms to a hollow administrative docket that has not seen any action and likely never will under the Commission's current construct. As I explained in my earlier dissent, the Commission's retreat from the NOPR proposal is part of a troubling pattern in which the majority seems indifferent to detecting and deterring market manipulation.

* * * * *

2. When it comes to detecting market manipulation, context matters. A transaction that seems benign when viewed in isolation may raise serious concerns when viewed with an understanding of the relationships between the transacting parties and/or other market participants.[4] Unfortunately, information regarding the legal and contractual relationships between market participants is not widely available and may, in some cases, be impossible to ascertain without the cooperation of the participants themselves. That lack of information can leave the Commission in the dark and unable to fully monitor wholesale market trading activity for potentially manipulative acts.

3. That problem is particularly acute when it comes to market participants that transact only in virtual or FTR products. Virtual/FTR Participants are very active in RTO/ISO markets and surveilling their activity for potentially manipulative acts consumes a significant share of the Office of Enforcement's time and resources. It may, therefore, be surprising that the Commission collects only limited information about Virtual/FTR Participants and often cannot paint a complete picture of their relationships with other market participants. Similarly, the Commission has no mechanism for tracking recidivist fraudsters and manipulators who deal in

[150] Order No. 860, 168 FERC ¶ 61,039 at P 294.

[151] Further, we note that Sellers will not need to submit a transmittal letter with their baseline database submissions. Instead, the baseline submissions will consist solely of the submission of information into the database as required by the final rule.

[1] *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes,* 156 FERC ¶ 61,045 (2016) (NOPR).

[2] ''Seller means any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act.'' 18 CFR 35.36(a)(1) (2018).

[3] As explained in the final rule, the Commission proposed to define the term ''Virtual/FTR Participants'' as entities that buy, sell, or bid for virtual instruments or financial transmission or congestion rights or contracts, or hold such rights or contracts in organized wholesale electric markets, not including entities defined in section 201(f) of the FPA. *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes,* 168 FERC ¶ 61,039, at P 182 (2019) (Final Rule).

[4] *See* NOPR, 156 FERC ¶ 61,045 at P 43.

these products and perpetuate their fraud by moving to different companies or participating in more than one RTO or ISO. And, perhaps most egregiously, the Commission's current regulations do not impose a duty of candor on Virtual/FTR Participants, meaning that bad actors can lie with impunity, at least insofar as the Commission is concerned.[5] The abandoned aspects of the NOPR would have addressed all three deficiencies, among others.

4. The Commission ''declines to adopt'' this Connected Entity Information aspect of the NOPR based only on its ''appreciat[ion]'' of the ''difficulties of and burdens imposed by this aspect of the NOPR.'' [6] That is hardly a reasoned explanation for why an unspecified burden outweighs the boon that Connected Entities Information would provide to the Commission's ability to carry out its enforcement responsibilities. The Commission does note that it has transferred the record to a new docket for ''possible consideration in the future as the Commission may deem appropriate.'' [7] Unfortunately, there is every indication that it will languish there for the foreseeable future.

5. That is a shame. Without the Connected Entity Information, we are forcing the Commission's Office of Enforcement to police the markets for manipulation with one arm tied behind its back. And despite the Office's valiant efforts, that means that market participants are more likely to find themselves subject to a manipulative scheme than if we had proceeded to a final rule on these aspects of the NOPR.

For these reasons, I respectfully dissent in part.

Richard Glick,
Commissioner.

[FR Doc. 2020–03927 Filed 3–5–20; 8:45 am]

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[5] In contrast, section 35.41(b) of the Commission's regulations requires a Seller to ''provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission,'' market monitors, RTOs/ISOs, or jurisdictional transmission providers, unless the ''Seller exercises due diligence to prevent such occurrences. Virtual/FTR Participants are not subject to this duty of candor. The Connected Entity portion of the NOPR proposed to add a new section 35.50(d) to the Commission's regulations that would require the same candor from Virtual/FTR Participants in all of their communications with the Commission, Commission-approved market monitors, RTOs, ISOs, and jurisdictional transmission providers. NOPR, 156 FERC ¶ 61,045 at P 20.

[6] *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes,* 170 FERC ¶ 61,129, at P 44 (2020).

[7] *Id. P* 45.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 641, 655, 656, 658, 667, 683, and 702

Office of the Secretary of Labor

29 CFR Parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96

Office of Labor-Management Standards

29 CFR Parts 417 and 471

Wage and Hour Division

29 CFR Parts 501 and 580

Occupational Health and Safety Administration

29 CFR Parts 1978 through 1988

Office of Federal Contract Compliance Programs

41 CFR Parts 50–203 and 60–30

RIN 1290–AA39

Discretionary Review by the Secretary

AGENCY: Office of the Secretary

ACTION: Direct final rule.

SUMMARY: The Department of Labor is issuing this direct final rule (DFR) to establish a system of discretionary secretarial review over cases pending before or decided by the Board of Alien Labor Certification Appeals and to make technical changes to Departmental regulations governing the timing and finality of decisions of the Administrative Review Board and the Board of Alien Labor Certification Appeals to ensure consistency with the new discretionary review processes proposed in this rule and established in Secretary's Order 01–2020.

DATES: This direct final rule is effective April 20, 2020 unless significant adverse comment is submitted (transmitted, postmarked, or delivered) by April 6, 2020. If DOL receives significant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this DFR will not take effect (see Section III, direct final rulemaking, for more details on this process). Comments to this DFR and other information must be submitted (transmitted, postmarked, or delivered) by April 6, 2020. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: You may send comments, identified by Regulatory Identification Number (RIN) 1290–AA39, by either one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments. To facilitate receipt and processing of comments, the Department encourages interested parties to submit their comments electronically.
- *Mail, hand delivery, express mail, courier service, or email. You may submit your comments and attachments* to Mr. Thomas Shepherd, Clerk of the Appellate Boards, Room S–5220, 200 Constitution Avenue NW, Washington, DC 20210, or you may submit them by email to *Shepherd.Thomas@dol.gov.* The Office of the Clerk is open during business hours on all days except Saturdays, Sundays, and federal holidays, from 8:30 a.m. to 5:00 p.m., Eastern Time.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Two of the four review boards within the Department of Labor were created by voluntary delegations of authority by previous Secretaries of Labor. Specifically, the Administrative Review Board (ARB)—which has authority to hear appeals from the decisions of the Department's Office of Administrative Law Judges (OALJ) about certain immigration, child labor, employment discrimination, federal construction/service contracts, and other issues—and the Board of Alien Labor Certification Appeals (BALCA)—which has authority over appeals from the decisions of the Employment and Training Administration's adjudication of foreign labor certification applications—were created, respectively, by a Secretary's Order and by regulation. Their existence is neither compelled nor governed by statute. Notably, before the ARB was created in 1996, many of the types of cases now subject to its jurisdiction were decided directly by the Secretary. Each board was also entrusted with the

power to issue final agency decisions in the name of the Secretary. Currently, the Secretary's Order and regulations establishing the ARB and BALCA provide no mechanism by which the Secretary can review, where necessary, the decisions of the officers who exercise power on his behalf.

To ensure that the Secretary has the ability to properly supervise and direct the actions of the Department, the Department proposes to establish systems of discretionary secretarial review over the decisions of the ARB and decisions of and appeals before BALCA, which will be accomplished through the proposed rule contained herein and the simultaneous issuance of a Secretary's Order governing the ARB. The Department's authority to effect these reforms derives from 5 U.S.C. 301, which authorizes the heads of agencies to regulate the internal operations of their departments, 5 U.S.C. 305, which provides for continuing review of agency operations, and the Secretary's authority to administer the statutes and programs at issue in ARB and BALCA proceedings. In combination, these statutes establish many of the powers of the Department within the Office of the Secretary, and give the Secretary wide latitude to delegate those powers to his subordinates on the terms he deems appropriate. Thus, the Secretary has the power to delegate his authority to appropriately supervise the adjudicatory process within the Department, and is now exercising that same authority to assert his decision-making prerogatives duly assigned to him by Congress by modifying the terms on which the members of the ARB and BALCA exercise his delegated authority.

The reforms to BALCA (and conforming edits to various Departmental regulations governing the ARB, BALCA, and the OALJ) preserve the existing structures by which the Department processes adjudications while giving the Secretary the option, in his sole discretion, to initiate review directly in a case where the Secretary's involvement is necessary and appropriate. Again, Congress has assigned the administration of various statutes to the Secretary of Labor, meaning that the Secretary is obligated to ensure that those laws are administered, executed, interpreted, and enforced according to law and Executive Branch priorities and policies. Under these reforms, the Secretary will rely on the ARB and BALCA to assist in identifying cases where secretarial review may be warranted. Consistent with the practice of other agencies, the Department does not anticipate that the power of secretarial review will be used often. The Department similarly anticipates that secretarial review—while completely within the Secretary's discretion as the officer assigned to administer the laws in the first place—will typically be reserved for matters of significant importance. Finally, the Department will ensure that the secretarial review process will be accomplished in a manner that complies with any applicable legal requirements.

Because of significant differences between how the ARB and BALCA operate, the proposed systems of review for each board are designed somewhat differently. Most importantly, whereas with respect to the ARB the Secretary will not exercise review over cases until after a decision has been rendered, the proposed regulations modifying BALCA's authority would allow the Secretary to assume jurisdiction over most cases even before a decision has been issued. This is because BALCA processes significantly more cases each year than does the ARB, and, due to the nature of the temporary visa programs and DOL's role in administering these programs, does so much more quickly than does the ARB. As a result, under the BALCA regulations, the Secretary will be able to initiate review of a case even before BALCA has issued a decision.

The Department appreciates the expeditious nature of many types of BALCA proceedings, such as those involving temporary labor certification, and does not anticipate that the new system of secretarial review established over such cases will significantly disrupt or otherwise impede the way such cases are currently processed. As noted above, the Department expects that secretarial review over BALCA decisions will, as with agency head review at other departments, likely not be exercised often. Further, the proposed changes to 29 CFR 18.95 provide that a BALCA decision is the Secretary's final administrative decision unless the Secretary assumes jurisdiction over the case. For example, once the BALCA issues a decision that grants a labor certification or remands for further processing, the private party in the case will be able to proceed immediately to the next step of the application process, and will only be delayed in doing so if the Secretary later decides to undertake review. Moreover, the revised 29 CFR 18.95 limits any potential uncertainty that may exist because of the possibility of secretarial review by placing strict time limits on when the Secretary will have the option of assuming jurisdiction over a case.

II. Consideration of Comments

The Department will consider comment on issues related to this action. If the Department receives no significant adverse comment, the Department will publish a **Federal Register** document confirming the effective date of the DFR and withdrawing the companion Notice of Proposed Rulemaking (NPRM). Such confirmation may include minor stylistic or technical changes to the DFR. For the purpose of judicial review, the Department views the date of confirmation of the effective date of the DFR as the date of promulgation.

III. Direct Final Rulemaking

In direct final rulemaking, an agency publishes a DFR in the **Federal Register**, with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency may publish an identical concurrent NPRM. If the agency receives no significant adverse comment in response to the DFR, the rule goes into effect. The Department plans to confirm the effective date of a DFR through a separate **Federal Register** document. If the agency receives a significant adverse comment, the agency will withdraw the DFR and treats such comment as a response to the NPRM. An agency typically uses direct final rulemaking when an agency anticipates that a rule will not be controversial.

For purposes of this rulemaking, a significant adverse comment is one that explains: (1) Why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) Why the direct final rule will be ineffective or unacceptable without a change.

In addition to publishing this DFR, the Department is publishing an NPRM in the **Federal Register**. The comment period for the NPRM runs concurrently with that of the DFR. The Department will treat comments received on the companion NPRM as comments also regarding the DFR. Similarly, the Department will consider comments submitted to the DFR as comment to the companion NPRM. Therefore, if the Department receives a significant adverse comment on either this DFR or the NPRM, it will withdraw this DFR and proceed with the companion NPRM. In the event the Department withdraws the DFR because of significant adverse comment, the Department will consider all timely comments received in response to the DFR when it continues with the NPRM. After carefully considering all

comments to the DFR and the NPRM, the Department will decide whether to publish a new final rule.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed revisions to the Department's internal adjudicatory processes would establish a mechanism by which the Secretary can review cases pending before or decided by BALCA, and make other conforming amendments to Departmental regulations to align with this new system of discretionary review as well as the similar system of discretionary review established in Secretary's Order 01–2020 over decisions of the ARB. These are rules of agency management and personnel and are entirely procedural changes to how officers within the Department of Labor exercise delegated authority on behalf of the Secretary; therefore, the Department is not required to engage in a notice and comment process to issue them. *See* 5 U.S.C. 553(a)(2), (b)(A). Indeed, the vast majority of the proposed changes are merely technical amendments to rules governing the manner in which the ARB issues decisions that are designed to eliminate any potential for confusion or ambiguity in light of the issuance of Secretary's Order 01–2020. Further, discretionary review by an agency head over adjudicatory decisions exists in many other executive branch agencies, including at the Department of Justice, the Department of the Interior, and the Department of Education. The proposed rules are therefore consistent with well-known and well-established models of internal agency review. In consequence, the proposed changes to the Department's internal adjudicatory processes should not be controversial.

IV. Discussion of Changes

The Department proposes to revise several sections of the Code of Federal Regulations including 20 CFR parts 641, 655, 656, 658, 667, 683, and 702; 29 CFR parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96; 29 CFR part 471; 29 CFR parts 501 and 580; 29 CFR parts 1978–1988; and 41 CFR parts 50–203 and 60–30 to harmonize the manner in which the ARB issues decisions on behalf of the Secretary under the Department's regulations with the scope of the final decision-making authority delegated to the ARB by the Secretary in Secretary's Order 01–2020. Specifically, references to final decisions of the ARB have been modified or removed to ensure that no regulation contradicts the terms on which an ARB decision becomes final under the Secretary's Order. Certain provisions governing the timing of petitions for review to the ARB and when the ARB is required to issue decisions have also been amended to eliminate potential ambiguity or confusion over the distinction between when the ARB is required to issue a decision and when such decision becomes the final action of the Department pursuant to the Secretary's Order.

The Department also proposes to revise 29 CFR part 18 by modifying the conditions under which a decision of BALCA becomes the final decision of the Department and by creating a process by which the Secretary of Labor can exercise discretionary review over cases pending before or decided by the BALCA. Technical amendments are also proposed to 20 CFR parts 655 and 656 to harmonize the manner in which BALCA issues decisions on behalf of the Secretary with the new system of discretionary review established in 29 CFR part 18.

The Department of Labor and the Department of Homeland Security (DHS) have determined that it is appropriate to issue a separate rule regarding the Secretary of Labor's review authority over H–2B cases under 29 CFR 18.95 to address the same issues addressed by this rule in the H–2B context. It is the Departments' intent to promulgate this separate rule after the publication of this rule. This determination follows conflicting court decisions concerning DOL's authority to issue legislative rules on its own to carry out its duties in the H–2B program. Although DOL and DHS each have authority to issue rules implementing their respective duties in the H–2B program, the Departments plan to make the amendments to the applicable regulations jointly to ensure that there can be no question about the authority underlying such technical amendments. This approach is consistent with the joint rulemaking governing the Temporary Non-Agricultural Employment of H–2B Aliens in the United States, 80 FR 24042 (Apr. 29, 2015) (codified at 8 CFR part 214, 20 CFR part 655, and 29 CFR part 503).

In order to ensure that all parties appearing before the ARB and BALCA have fair notice of the new systems of discretionary review established in this rulemaking and in Secretary's Order 01–2020, the Secretary will not exercise his review authority over any decision of either Board issued before the passage of 30 calendar days from the date on which the rule becomes effective.

V. Rulemaking Analyses and Notices

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866. The Department of Labor, in coordination with the Office of Management and Budget (OMB), determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Accordingly, OMB has waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553 of the Administrative Procedure Act, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 603, 604, do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

The Department has determined that this proposed rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* as this rulemaking does not involve any collections of information. *See* 5 CFR 1320.3(c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act

of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The proposed rule does not ''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.''

Dated: February 21, 2020.

Eugene Scalia,

Secretary of Labor.

List of Subjects

20 CFR Part 641

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

20 CFR Part 655

Administrative practice and procedure, Labor certification processes for temporary employment.

20 CFR Part 656

Administrative practice and procedure, Fraud, Reporting and recordkeeping requirements, Wages.

20 CFR Part 658

Administrative practice and procedure, Complaint system; Discontinuation of services, State workforce agency compliance, Federal application of remedial action to state workforce agencies, Wagner-Peyser Act Employment Service.

20 CFR Part 667

Adjudication and Judicial Review, Administrative practice and procedure; Oversight and monitoring, Grievance procedures, complaints, and state appeal processes, Sanctions, corrective actions, and waiver of liability, Reporting and recordkeeping requirements, Resolution of findings, Workforce Investment Act.

20 CFR Part 683

Adjudication and judicial review, Administrative practice and procedure, Funding and closeout, Grievance procedures, complaints, and State appeal processes; Oversight and resolution of findings, Pay-for-performance contract strategies, Reporting and recordkeeping requirements, Rules, costs, and limitations, Sanctions, corrective actions, and waiver of liability, Workforce Innovation And Opportunity Act.

20 CFR Part 702

Administrative practice and procedure, Claims, Penalties, Reporting and recordkeeping requirements, Whistleblowing, Workers' compensation.

29 CFR Part 2

Administrative practice and procedure, Claims, Courts, Government employees.

29 CFR Part 7

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 8

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 10

Administrative practice and procedure, Construction industry, Government procurement, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 13

Administrative practice and procedure, Government contracts, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 18

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

29 CFR Part 24

Administrative practice and procedure, Review of other proceedings and related matters, Review of wage determinations.

29 CFR Part 29

Administrative practice and procedure, Apprenticeship programs, Labor standards, State apprenticeship agencies.

29 CFR Part 38

Administrative practice and procedure, Compliance procedures, Obligations of recipients and governors, Workforce Innovation and Opportunity Act.

29 CFR Part 96

Administrative practice and procedure, Audit requirements, Grants, contracts, and other agreements.

29 CFR Part 417

Labor management standards, Procedures for removal of local labor organization officers.

29 CFR Part 471

Administrative practice and procedure, Complaint procedures, Compliance review, Contractor obligations, Federal labor law.

29 CFR Part 501

Administrative practice and procedure, Contract obligations; Enforcement, Immigration and Nationality Act, Temporary alien agricultural workers.

29 CFR Part 580

Administrative practice and procedure, Assessing and contesting, Civil money penalties.

29 CFR Part 1978

Administrative practice and procedure; Employee protection; Findings, Investigations, Litigation, Retaliation complaints, Surface Transportation Assistance Act of 1982.

29 CFR Part 1979

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

29 CFR Part 1980

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Sarbanes-Oxley Act of 2002.

29 CFR Part 1981

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Pipeline Safety Improvement Act of 2002, Retaliation complaints.

29 CFR Part 1982

Administrative practice and procedure, Employee protection,

Federal Railroad Safety Act, Findings, Investigations, Litigation, National Transit Systems Security Act, Retaliation complaints.

29 CFR Part 1983

Administrative practice and procedure, Consumer Product Safety Improvement Act of 2008, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1984

Administrative practice and procedure, Affordable Care Act, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1985

Administrative practice and procedure, Consumer Financial Protection Act of 2010, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1986

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Seaman's Protection Act.

29 CFR Part 1987

Administrative practice and procedure, Employee protection, FDA Food Safety Modernization Act, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1988

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Moving Ahead for Progress in the 21st Century Act, Retaliation complaints.

41 CFR Part 50–203

Administrative practice and procedure, Government procurement, Minimum wages, Occupational safety and health.

41 CFR Part 60–30

Administrative practice and procedure, Equal opportunity, Executive Order 11246, Property management, Public contracts.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR chapters V and VI, 29 CFR subtitle A and chapters IV, V, and XVII, and 41 CFR parts 50–203 and 60–30 as follows:

Title 20: Employees' Benefits

Employment and Training Administration

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

■ 1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 et seq.; Pub. L. 114–144, 130 Stat. 334 (Apr. 19, 2016).

■ 2. In § 641.900, revise paragraph (e) to read as follows:

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

* * * * *

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

* * * * *

■ 3. In § 641.920, revise paragraph (d)(5) to read as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(d) * * *

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 4. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 5. In § 655.171, revise paragraphs (a) and (b)(2) to read as follows:

§ 655.171 Appeals.

* * * * *

(a) *Administrative review.* Where the employer has requested administrative review, within 5 business days after receipt of the ETA administrative file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO's

decision, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, the CO, the OFLC Administrator and DHS by means normally assuring next-day delivery.

(b) * * *

(2) *Decision.* After a de novo hearing, the ALJ must affirm, reverse, or modify the CO's determination, or remand to the CO for further action, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, CO, OFLC Administrator, and DHS by means normally assuring next-day delivery.

■ 6. In § 655.181, revise paragraph (b)(3) to read as follows:

§ 655.181 Revocation.

* * * * *

(b) * * *

(3) *Appeal.* An employer may appeal a Notice of Revocation, or a final determination of the OFLC Administrator after the review of rebuttal evidence, according to the appeal procedures of § 655.171.

* * * * *

■ 7. In § 655.182, revise paragraph (f)(6) to read as follows:

§ 655.182 Debarment.

* * * * *

(f) * * *

(6) *ARB decision.* The ARB's decision must be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ. If the ARB fails to issue a decision within 90 days from the notice granting the petition, the ALJ's decision will be the final agency decision.

* * * * *

■ 8. In § 655.183, revise paragraph (c) to read as follows:

§ 655.183 Less than substantial violations.

* * * * *

(c) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (a) of this section, the OFLC Administrator will send a written notice to the employer, stating that the employer's otherwise affirmative H–2A certification determination will be reduced by 25 percent of the total number of H–2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year. Notice of such a reduction in the number of workers requested will be conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written certification determination. The notice will offer the employer an opportunity to request administrative review or a de novo hearing before an ALJ. If administrative review or a de novo hearing is requested, the procedures prescribed in § 655.171 will apply, provided that if the ALJ or the Secretary affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (a) of this section, the reduction in the number of workers requested will be 25 percent of the total number of H–2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year.

■ 9. In § 655.461, revise paragraph (e) to read as follows:

§ 655.461 Administrative review.

* * * * *

(e) *Scope of review.* BALCA will, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, affirm, reverse, or modify the CO's determination, or remand to the CO for further action. BALCA will reach this decision after due consideration of the documents in the Appeal File that were before the CO at the time of the CO's determination, the request for review, and any legal briefs submitted. BALCA may not consider evidence not before the CO at the time of the CO's determination, even if such evidence is in the Appeal File, request for review, or legal briefs.

* * * * *

■ 10. In § 655.472, revise paragraph (b)(3) to read as follows:

§ 655.472 Revocation.

* * * * *

(b) * * *

(3) *Request for review.* An employer may appeal a Notice of Revocation or a final determination of the OFLC Administrator after the review of rebuttal evidence to BALCA, according to the appeal procedures of § 655.461.

* * * * *

■ 11. In § 655.473, revise paragraph (f)(6) to read as follows:

§ 655.473 Debarment.

* * * * *

(f) * * *

(6) *ARB Decision.* The ARB's decision must be issued within 90 calendar days from the notice granting the petition and served upon all parties and the ALJ.

■ 12. In § 655.845, revise paragraphs (h) and (i) to read as follows:

§ 655.845 What rules apply to appeal of the decision of the administrative law judge?

* * * * *

(h) The Board's decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Board's decision shall be served upon all parties and the administrative law judge.

(i) After the Board's decision becomes final, the Board shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § 655.850.

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 13. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101–649, 109 Stat. 4978; and Title IV, Public Law 105–277, 112 Stat. 2681.

■ 14. In § 656.27, revise paragraph (c) to read as follows:

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

* * * * *

(c) *Review on the record.* The Board of Alien Labor Certification Appeals must review a denial of labor certification under § 656.24, a revocation of a certification under § 656.32, or an affirmation of a prevailing wage determination under § 656.41 on the basis of the record upon which the decision was made, the request for review, and any Statements of Position or legal briefs submitted and, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, must:

(1) Affirm the denial of the labor certification, the revocation of certification, or the affirmation of the PWD; or

(2) Direct the Certifying Officer to grant the certification, overrule the revocation of certification, or overrule the affirmation of the PWD; or

(3) Direct that a hearing on the case be held under paragraph (e) of this section.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 15. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

■ 16. In § 658.711, revise paragraph (b) to read as follows:

§ 658.711 Decision of the Administrative Review Board.

* * * * *

(b) The decision of the Administrative Review Board must be in writing, and must set forth the factual and legal basis for the decision. After the Board's decision becomes final, notice of the decision must be published in the **Federal Register**, and copies must be made available for public inspection and copying.

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

■ 17. The authority citation for part 667 continues to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 18. In § 667.830, revise paragraph (b) to read as follows:

§ 667.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 19. The authority citation for part 683 continues to read as follows:

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 20. In § 683.830, revise paragraph (b) to read as follows:

§ 683.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

Office of Workers' Compensation Programs Longshoremen's and Harbor Workers' Compensation Act and Related Statutes

PART 702—ADMINISTRATION AND PROCEDURE

■ 21. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 22. In § 702.433, revise paragraphs (e) and (f) to read as follows:

§ 702.433 Requests for hearing.

* * * * *

(e) The administrative law judge will issue a recommended decision after the termination of the hearing. The recommended decision must contain appropriate findings, conclusions, and a recommended order and be forwarded, together with the record of the hearing, to the Administrative Review Board for a decision. The recommended decision must be served upon all parties to the proceeding.

(f) Based upon a review of the record and the recommended decision of the administrative law judge, the Administrative Review Board will issue a decision.

■ 23. Revise § 702.434 to read as follows:

§ 702.434 Judicial review.

(a) Any physician, health care provider, or claims representative who participated as a party in the hearing may obtain review of the Department's final decision made by the Administrative Review Board or the Secretary, as appropriate, regardless of the amount of controversy, by commencing a civil action within sixty (60) days after the decision is transmitted to him or her. The pendency of such review will not stay the effect of the decision. Such action must be brought in the Court of Appeals of the United States for the judicial circuit in which the plaintiff resides or has his or her principal place of business, or the Court of Appeals for the District of Columbia pursuant to section 7(j)(4) of the Act, 33 U.S.C. 907(j)(4).

(b) As part of the Department's answer, the Administrative Review Board must file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith.

(c) The findings of fact contained in the Department's final decision, if based on substantial evidence in the record as a whole, shall be conclusive.

Title 29: Labor

Office of the Secretary of Labor

PART 2—GENERAL REGULATIONS

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

Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258; Executive Order 13559, 75 FR 71319, 3 CFR 2011 Comp., p. 273.

■ 25. Revise § 2.8 to read as follows:

§ 2.8 Final agency decisions.

Final agency decisions issued under the statutory authority of the U.S. Department of Labor may be issued by the Secretary of Labor, or by his or her designee under a written delegation of authority. The Administrative Review Board, an organizational entity within the Office of the Secretary, has been delegated authority to issue final agency decisions under the statutes, executive orders, and regulations according to,

and except as provided in Secretary's Order 01–2020.

PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

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

Authority: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 3 CFR, 1949–1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755.

■ 27. In § 7.1, revise paragraph (d) to read as follows:

§ 7.1 Purpose and scope.

* * * * *

(d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020.

* * * * *

PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS

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

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357–359, 40 U.S.C. 327–332.

■ 29. In § 8.1, revise paragraph (c) to read as follows:

§ 8.1 Purpose and scope.

* * * * *

(c) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020.

* * * * *

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

■ 30. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 301; section 2, E.O. 13838, 83 FR 25341; section 4, E.O. 13658, 79 FR 9851; Secretary's Order 01–2014, 79 FR 77527.

■ 31. Revise § 10.57 to read as follows:

§ 10.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 10.51(c)(1) or (2), Administrator's rulings issued under § 10.58, and decisions of Administrative Law Judges issued under § 10.55.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

PART 13—ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

■ 32. The authority citation for part 13 continues to read as follow:

Authority: 5 U.S.C. 301; E.O. 13706, 80 FR 54697, 3 CFR, 2016 Comp., p. 367; Secretary's Order 01–2014, 79 FR 77527.

■ 33. Revise § 13.57 to read as follows:

§ 13.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 13.51(c)(1) or the final sentence of § 13.51(c)(2)(ii), Administrator's rulings issued under § 13.58, and decisions of Administrative Law Judges issued under § 13.55.

(2) *Limit on scope of review.* (i) The Administrative Review Board shall not have jurisdiction to pass on the validity of any provision of this part. The Administrative Review Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Administrative Review Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Administrative Review Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, any monetary or equitable relief described in § 13.44. Where the Administrator has sought imposition of debarment, the Administrative Review Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

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

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

■ 35. Revise § 18.95 to read as follows:

§ 18.95 Review of decision and review by the Secretary.

(a) *Review.* The statute or regulation that conferred hearing jurisdiction provides the procedure for review of a judge's decision. If the statute or regulation does not provide a procedure,

the judge's decision becomes the Secretary's final administrative decision, except as provided in paragraph (b) of this section.

(b) *Finality.* A decision of the Board of Alien Labor Certification Appeals (BALCA) shall constitute the Secretary's final administrative decision except in those cases over which the Secretary has, in accordance with this paragraph (b) and paragraph (c) of this section, assumed jurisdiction:

(1) In any case for which administrative review is sought or handled in accordance with 20 CFR 655.171(a) or 20 CFR 655.461, at any point from when the BALCA receives a request for review until the passage of 10 business days after the date on which BALCA has issued its decision.

(2) In any case for which a de novo hearing is sought or handled under 20 CFR 655.171(b), at any point within 15 business days after the date on which the BALCA has issued its decision.

(3) In any case for which review is sought or handled in accordance with 20 CFR 656.26 and 20 CFR 656.27, at any point from when the BALCA receives a request for review until the passage of 30 business days after the BALCA has issued its decision.

(c) *Review by the Secretary*—(1) *Transmission of information.* (i) Whenever the BALCA receives a request for review, it shall immediately transmit a copy of such request to the Deputy Secretary.

(ii) Within 3 business days of when the BALCA issues a decision, the Chair of the BALCA, or his or her designee, shall transmit to the Deputy Secretary a copy of the decision and a concise recommendation as to whether the decision involves an issue or issues of such exceptional importance that review by the Secretary is warranted.

(2) *Review.* (i) The Secretary may, at any point within the time periods provided for in paragraph (b) of this section, and in his or her sole discretion, assume jurisdiction to review the decision or determination of the Certifying Officer, the Office of Foreign Labor Certification Administrator, the National Prevailing Wage Center Director, or the BALCA, as the case may be.

(ii) When the Secretary assumes jurisdiction over a case, the Secretary shall promptly notify the BALCA. The BALCA shall promptly notify the parties to the case of such action and shall submit the Appeal File and any briefs filed to the Secretary.

(iii) In any case the Secretary decides, the Secretary's decision shall be stated in writing and transmitted to the BALCA, which shall promptly transmit it to the parties to the case. Such decision shall constitute final action by the Department and shall serve as binding precedent on all Department employees and in all Department proceedings involving the same issue or issues.

(iv) The Solicitor of Labor, or his or her designee, shall have the responsibility for providing legal advice to the Secretary with respect to the Secretary's exercise of review under this section, except that no individual involved in the investigation or prosecution of a case shall advise the Secretary on the exercise of review with respect to such case or a case involving a common nucleus of operative fact.

PART 24—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISIONS OF SIX ENVIRONMENTAL STATUTES AND SECTION 211 OF THE ENERGY REORGANIZATION ACT OF 1974, AS AMENDED

■ 36. The authority citation for part 24 is revised to read as follows:

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j–9(i)BVG, 5851, 6971, 7622, 9610; Secretary's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary's Order No. 01–2020.

■ 37. In § 24.110, revise paragraphs (a), (c), and (d) to read as follows:

§ 24.110 Decisions and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the ARB and the ARB accepts the case for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the order will order the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of employment, and compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate. At the request of the complainant, the ARB will assess against the respondent all costs and expenses (including attorney's fees) reasonably incurred.

* * * * *

■ 38. Revise § 24.112 to read as follows:

§ 24.112 Judicial Review.

(a) Except as provided under paragraphs (b) through (d) of this section, within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the ARB (or a decision issued by the Secretary upon his or her discretionary review) is not subject to judicial review in any criminal or other civil proceeding.

(b) Under the Federal Water Pollution Control Act, within 120 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for

review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(c) Under the Solid Waste Disposal Act, within 90 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(d) Under the Comprehensive Environmental Response, Compensation and Liability Act, after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States district court in which the violation allegedly occurred. For purposes of judicial economy and consistency, when a final order under the Comprehensive Environmental Response, Compensation and Liability Act also is issued under any other statute listed in § 24.100(a), the adversely affected or aggrieved person may file a petition for review of the entire order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. The time for filing a petition for review of an order issued under the Comprehensive Environmental Response, Compensation and Liability Act and any other statute listed in § 24.100(a) is determined by the time period applicable under the other statute(s).

(e) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the ARB or the ALJ, as appropriate, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of the court.

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

■ 39. The authority citation for part 29 continues to read as follows:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

■ 40. In § 29.10, revise paragraph (c) to read as follows:

§ 29.10 Hearings for deregistration.

* * * * *

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board, specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at the same time. Thereafter, the decision of the Administrative Law Judge remains final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

■ 41. In § 29.13, revise paragraph (g)(4) to read as follows:

§ 29.13 Recognition of State Apprenticeship Agencies.

* * * * *

(g) * * *

(4) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

* * * * *

■ 42. In § 29.14, revise paragraph (c)(3) to read as follows:

§ 29.14 Derecognition of State Apprenticeship Agencies.

* * * * *

(c) * * *

(3) *Requests a hearing.* The Administrator shall refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with § 29.13(g) and submit proposed findings and a recommended decision to the Administrative Review Board. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

* * * * *

PART 38—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

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

Authority: 29 U.S.C. 3101 *et seq.;* 42 U.S.C. 2000d *et seq.;* 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.;* and 20 U.S.C. 1681 *et seq.*

■ 44. In § 38.112, revise paragraph (b)(1)(viii) and remove paragraph (b)(3).

The revision reads as follows:

§ 38.112 Initial and final decision procedures.

* * * * *

(b) * * *

(1) * * *

(viii) *Decision and Order after review by Administrative Review Board.* In any case reviewed by the Administrative Review Board under this paragraph, a decision must be issued within 180 days of the notification of such review. If the Administrative Review Board fails to issue a decision and order within the 180–day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order.

* * * * *

■ 45. In § 38.113, revise paragraph (c) to read as follows:

§ 38.113 Post-termination proceedings.

* * * * *

(c) A decision issued by the Administrative Review Board has become final, the Administrative Law Judge's decision and order has become the Final Agency Decision, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Agency Decision, under § 38.112(b); and

* * * * *

■ 46. In § 38.115, revise paragraph (c)(5) to read as follows:

§ 38.115 Post-termination proceedings.

* * * * *

(c) * * *

(5) The Administrative Review Board must issue a decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

■ 47. The authority citation for part 96 continues to read as follows:

Authority: 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, as amended.

■ 48. In § 96.63, revise paragraph (b)(5) to read as follows:

§ 96.63 Federal financial assistance.

* * * * *

(b) * * *

(5) *Review by the Administrative Review Board.* In any case accepted for review by the Administrative Review Board, a decision shall be issued within 180 days of such acceptance. If a decision is not so issued, the decision of the Administrative Law Judge shall become the final decision of the Secretary.

Office of Labor-Management Standards

PART 417—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

■ 49. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01–2020.

PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

■ 50. The authority citation for part 471 is revised to read as follows:

Authority: 40 U.S.C. 101 *et seq.;* Executive Order 13496, 74 FR 6107, February 4, 2009; Secretary's Order No. 7–2009, 74 FR 58834, November 13, 2009; Secretary's Order No. 01–2020.

■ 51. In § 471.13, revise paragraph (b)(4) to read as follows:

§ 471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?

* * * * *

(b) * * *

(4) After the expiration of time for filing exceptions, the Administrative Review Board may issue an administrative order, or may otherwise appropriately dispose of the matter. In an expedited proceeding, unless the Administrative Review Board issues an administrative order within 30 days after the expiration of time for filing exceptions, the Administrative Law Judge's recommended decision will become the final administrative order. If the Administrative Review Board determines that the contractor has violated the Executive Order or the regulations in this part, the administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in § 471.14, impose appropriate sanctions and penalties, or any combination thereof.

Wage and Hour Division

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 52. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 53. Revise § 501.45 to read as follows:

§ 501.45 Decision of the Administrative Review Board.

The ARB's decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ.

PART 580 CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 54. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 55. Revise § 580.16 to read as follows:

§ 580.16 Decision of the Administrative Review Board.

The Board's decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

Occupational Safety and Health Administration

PART 1978—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA), AS AMENDED

■ 56. The authority citation for part 1978 is revised to read as follows:

Authority: 49 U.S.C. 31101 and 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020.

■ 57. In § 1978.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1978.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Occupational Safety and Health, U.S, Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order, which will be subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020, will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position with the same compensation, terms, conditions, and privileges of the

complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to $250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order will be subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

* * * * *

■ 58. In § 1978.112, revise paragraph (a) to read as follows:

§ 1978.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation.

* * * * *

PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

■ 59. The authority citation for part 1979 continues to read as follows:

Authority: 49 U.S.C. 42121; Secretary's Order No. 01–2020.

■ 60. In § 1979.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''). The decision of the Administrative Law Judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(c) The decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the party charged has violated the law, the ARB shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the party charged has not violated the law, the ARB shall issue an order denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 61. In § 1979.112, revise paragraph (a) to read as follows:

§ 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

* * * * *

PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 806 OF THE SARBANES-OXLEY ACT OF 2002, AS AMENDED

■ 62. The authority citation for part 1980 is revised to read as follows:

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203 (July 21, 2010); Secretary's Order No. 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 63. In § 1980.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the

petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing all relief necessary to make the complainant whole, including reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 64. In § 1980.112, revise paragraph (a) to read as follows:

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1981—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

■ 65. The authority citation for part 1981 continues to read as follows:

Authority: 49 U.S.C. 60129; Secretary's Order No. 01–2020.

■ 66. In § 1981.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1981.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the Administrative Law Judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''). The decision of the Administrative Law Judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(c) The decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the party charged has violated the law, the ARB shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the party charged has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 67. In § 1981.112, revise paragraph (a) to read as follows:

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of

the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

* * * * *

PART 1982—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE NATIONAL TRANSIT SYSTEMS SECURITY ACT AND THE FEDERAL RAILROAD SAFETY ACT

■ 68. The authority citation for part 1982 is revised to read as follows:

Authority: 6 U.S.C. 1142 and 49 U.S.C. 20109; Secretary's Order 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 69. In § 1982.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1982.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint under NTSSA was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will include, where appropriate, affirmative action to abate the violation; reinstatement with the same seniority status that the employee would have had but for the retaliation; any back pay with interest; and payment of compensatory damages, including compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit documentation to the Social Security Administration or the Railroad Retirement Board, as appropriate, allocating any back pay award to the appropriate months or calendar quarters. The order may also require the respondent to pay punitive damages up to $250,000. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint under NTSSA was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 70. In § 1982.112, revise paragraph (a) to read as follows:

§ 1982.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

■ 71. The authority citation for part 1983 is revised to read as follows:

Authority: 15 U.S.C. 2087; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020.

■ 72. In § 1983.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1983.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will

require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 73. In § 1983.112, revise paragraph (a) to read as follows:

§ 1983.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT

■ 74. The authority citation for part 1984 is revised to read as follows:

Authority: 29 U.S.C. 218C; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 75. In § 1984.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1984.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the Administrative Review Board (ARB). The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to the complainant's former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 76. In § 1984.112, revise paragraph (a) to read as follows:

§ 1984.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1985—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE CONSUMER FINANCIAL PROTECTION ACT OF 2010

■ 77. The authority citation for part 1985 is revised to read as follows:

Authority: 12 U.S.C. 5567; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 78. In § 1985.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1985.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic

communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 79. In § 1985.112, revise paragraph (a) to read as follows:

§ 1985.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SEAMAN'S PROTECTION ACT (SPA), AS AMENDED

■ 80. The authority citation for part 1986 is revised to read as follows:

Authority: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 81. In § 1986.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1986.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to $250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 82. In § 1986.112, revise paragraph (a) to read as follows:

§ 1986.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the court of appeals of the United States for the circuit in which the violation allegedly occurred or the

circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1987—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 402 OF THE FDA FOOD SAFETY MODERNIZATION ACT

■ 83. The authority citation for part 1987 is revised to read as follows:

Authority: 21 U.S.C. 399d; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 84. In § 1987.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1987.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 85. In § 1987.112, revise paragraph (a) to read as follows:

§ 1987.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1988—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 31307 OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP–21)

■ 86. The authority citation for part 1988 is revised to read as follows:

Authority: 49 U.S.C. 30171; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 87. In § 1988.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1988.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of

compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 88. In § 1988.112, revise paragraph (a) to read as follows:

§ 1988.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

Title 41: Public Contracts and Property Management

Office of Federal Contract Compliance Programs

PART 50–203—RULES OF PRACTICE

■ 89. The authority citation for part 50–203 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38, unless otherwise noted.

■ 90. In § 50–203.21, revise paragraph (d) to read as follows:

§ 50–203.21 Decisions.

* * * * *

(d) Thereafter, the Administrative Review Board may issue a decision ruling upon each exception filed and including any appropriate wage determination. Any such decision shall be published in the **Federal Register** after it becomes the final action of the Department.

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

■ 91. The authority citation for part 60–30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

■ 92. Revise § 60–30.29 to read as follows:

§ 60–30.29 Record.

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a decision, which shall be the Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

■ 93. Revise § 60–30.30 to read as follows:

§ 60–30.30 Administrative Order.

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a decision which shall be served on all parties. If the Administrative Review Board, United States Department of Labor, concludes that the defendant has violated the Executive Order, the equal opportunity clause, or the regulations, an Administrative Order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate cancellation, termination, and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

■ 94. Revise § 60–30.37 to read as follows:

§ 60–30.37 Final Administrative Order.

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue an Administrative Order which shall be served on all parties. Unless the Administrative Review Board, United States Department of Labor, issues an Administrative Order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60–30.30 shall be applicable to this section.

[FR Doc. 2020–04017 Filed 3–5–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 28, 30, 87, 180, and 3282

[FR–6196–F–01]

Adjustment of Civil Monetary Penalty Amounts for 2020

AGENCY: Office of the General Counsel, HUD.

ACTION: Final rule.

SUMMARY: This rule provides for 2020 inflation adjustments of civil monetary penalty amounts required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective date for 2020 inflation adjustment:* April 6, 2020.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Acting Associate General Counsel, Office of Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20024; telephone number 202–402–5300 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Pub. L. 114–74, Sec. 701), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), requires agencies to make annual adjustments to civil monetary penalty (CMP) amounts for inflation ''notwithstanding section 553 of title 5, United States Code.'' Section 553 refers to the Administrative Procedure Act, which provides for advance notice and public comment on rules. However, as explained in Section III below, HUD has

determined that advance notice and public comment on this final rule is unnecessary. This annual adjustment is for 2020.

The annual adjustment is based on the percent change between the U.S. Department of Labor's Consumer Price Index for All Urban Consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2019 is 1.01764.[1] Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.[2]

II. This Final Rule

This rule makes the required 2020 inflation adjustment of civil penalty amounts. Since HUD is not applying these adjustments retroactively, the 2020 increases apply to violations occurring on or after this rule's effective date. HUD provides a table showing how, for each component, the penalties are being adjusted for 2020 pursuant to the 2015 Act. In the first column (''Description''), HUD provides a description of the penalty. In the second column (''Statutory Citation''), HUD provides the United States Code statutory citation providing for the penalty. In the third column (''Regulatory Citation''), HUD provides the Code of Federal Regulations citation under title 24 for the penalty. In the fourth column (''Previous Amount''), HUD provides the amount of the penalty pursuant to the rule implementing the 2019 adjustment (84 FR 9451, March 15, 2019). In the fifth column (''2020 Adjusted Amount''), HUD lists the penalty after applying the 2020 inflation adjustment.

Description	Statutory citation	Regulatory citation (24 CFR)	Previous amount	2020 Adjusted amount
False Claims	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1)).	§ 28.10(a)	$11,463	$11,665.
False Statements	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(b)(1)).	§ 28.10(b)	$11,463	$11,665.
Advance Disclosure of Funding.	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c)).	§ 30.20	$20,134	$20,489.
Disclosure of Subsidy Layering.	Department of Housing and Urban Development Act (42 U.S.C. 3545(f)).	§ 30.25	$20,134	$20,489.
FHA Mortgagees and Lenders Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	§ 30.35	*Per Violation:* $10,067. *Per Year:* $2,013,399.	*Per Violation:* $10,245. *Per Year:* $2,048,915.
Other FHA Participants Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	§ 30.36	*Per Violation:* $10,067. *Per Year:* $2,013,399.	*Per Violation:* $10,245. *Per Year:* $2,048,915.
Indian Loan Mortgagees Violations.	Housing Community Development Act of 1992 (12 U.S.C. 1715z–13a(g)(2)).	§ 30.40	*Per Violation:* $10,067. *Per Year:* $2,013,399.	*Per Violation:* $10,245. *Per Year:* $2,048,915.
Multifamily & Section 202 or 811 Owners Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–15(c)(2)).	§ 30.45	$50,334	$51,222.
Ginnie Mae Issuers & Custodians Violations.	HUD Reform Act of 1989 (12 U.S.C. 1723i(b)).	§ 30.50	*Per Violation:* $10,067. *Per Year:* $2,013,399.	*Per Violation:* $10,245. *Per Year:* $2,048,915.
Title I Broker & Dealers Violations.	HUD Reform Act of 1989 (12 U.S.C. 1703).	§ 30.60	*Per Violation:* $10,067. *Per Year:* $2,013,399.	*Per Violation:* $10,245. *Per Year:* $2,048,915.
Lead Disclosure Violation	Title X—Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1)).	§ 30.65	$17,834	$18,149.
Section 8 Owners Violations.	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z–1(b)(2)).	§ 30.68	$39,121	$39,811.
Lobbying Violation	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352).	§ 87.400	*Min:* $20,134. *Max:* $201,340.	*Min:* $20,489. *Max:* $204,892.
Fair Housing Act Civil Penalties.	Fair Housing Act (42 U.S.C. 3612(g)(3)).	§ 180.671(a)	*No Priors:* $21,039. *One Prior:* $52,596. *Two or More Priors:* $105,194.	*No Priors:* $21,410. *One Prior:* $53,524. *Two or More Priors:* $107,050.
Manufactured Housing Regulations Violation.	Housing Community Development Act of 1974 (42 U.S.C. 5410).	§ 3282.10	*Per Violation:* $2,924. *Per Year:* $3,654,955.	*Per Violation:* $2,976. *Per Year:* $3,719,428.

III. Justification for Final Rulemaking for the 2020 Adjustments

HUD generally publishes regulations for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (see 24 CFR 10.1). As discussed, this final rule makes the required 2020 inflation adjustment, which HUD does not have discretion to change. Moreover, the 2015 Act specifies that a delay in the effective date under the Administrative Procedure Act is not required for annual adjustments under the 2015 Act. HUD has determined, therefore, that it is unnecessary to delay the effectiveness of the 2020 inflation adjustments to solicit public comments.

Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that any HUD regulation implementing any provision of the Department of Housing

[1] Office of Management and Budget, M–20–05, Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. (*https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf*). (October 2019 CPI–U (257.346)/ October 2018 CPI–U (252.885) = 1.01764.)

[2] 28 U.S.C. 2461 note.

and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days. This rule does not authorize the imposition of a civil money penalty—rather, it makes a standard inflation adjustment to penalties that were previously authorized. As noted above, the 2020 inflation adjustments are made in accordance with a statutorily prescribed formula that does not provide for agency discretion. Accordingly, a delay in the effectiveness of the 2020 inflation adjustments in order to provide the public with an opportunity to comment is unnecessary because the 2015 Act exempts the adjustments from the need for delay, the rule does not authorize the imposition of a civil money penalty, and, in any event, HUD would not have the discretion to make changes as a result of any comments.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review) (58 FR 51735), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) (76 FR 3821) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) (82 FR 9339) requires that for every new regulation issued, at least two prior regulations be identified for removal, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. As discussed above in this preamble, this final rule adjusts existing civil monetary penalties for inflation by a statutorily required amount.

HUD determined that this rule was not significant under Executive Order 12866 and Executive Order 13563. Moreover, as this rule is not a significant regulatory action under Executive Order 12866, it is not considered an Executive Order 13771 regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) [3] requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identity and consider a reasonable number of regulatory alternatives before promulgating a rule.[4] However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') (64 FR 43255) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

[3] 2 U.S.C. 1532.

[4] 2 U.S.C. 1535.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgage insurance, Penalties.

24 CFR Part 87

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Investigations, Mortgages, Penalties, Persons with disabilities, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 28, 30, 87, 180, and 3282 as follows:

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812; 42 U.S.C. 3535(d).

■ 2. In § 28.10, revise paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) * * *

(1) A civil penalty of not more than $11,665 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

* * * * *

(b) * * *

(1) A civil penalty of not more than $11,665 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 3. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 1 note and 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 4. In § 30.20, revise paragraph (b) to read as follows:

§ 30.20 Ethical violations by HUD employees.

* * * * *

(b) *Maximum penalty.* The maximum penalty is $20,489 for each violation.

■ 5. In § 30.25, revise paragraph (b) to read as follows:

§ 30.25 Violations by applicants for assistance.

* * * * *

(b) *Maximum penalty.* The maximum penalty is $20,489 for each violation.

■ 6. In § 30.35, revise the first sentence in paragraph (c)(1) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c)(1) * * * The maximum penalty is $10,245 for each violation, up to a limit of $2,048,915 for all violations committed during any one-year period. * * *

* * * * *

■ 7. In § 30.36, revise the first sentence in paragraph (c) to read as follows:

§ 30.36 Other participants in FHA programs.

* * * * *

(c) * * * The maximum penalty is $10,245 for each violation, up to a limit of $2,048,915 for all violations committed during any one-year period. * * *

■ 8. In § 30.40, revise the first sentence in paragraph (c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) * * * The maximum penalty is $10,245 for each violation, up to a limit of $2,048,915 for all violations committed during any one-year period. * * *

■ 9. In § 30.45, revise paragraph (g) to read as follows:

§ 30.45 Multifamily and section 202 or 811 mortgagors.

* * * * *

(g) *Maximum penalty.* The maximum penalty for each violation under paragraphs (c) and (f) of this section is $51,222.

* * * * *

■ 10. In § 30.50, revise the first sentence in paragraph (c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) * * * The maximum penalty is $10,245 for each violation, up to a limit of $2,048,915 during any one-year period. * * *

■ 11. In § 30.60, revise paragraph (c) to read as follows:

§ 30.60 Dealers or sponsored third-party originators.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $10,245 for each violation, up to a limit for any particular person of $2,048,915 during any one-year period.

■ 12. In § 30.65, revise paragraph (b) to read as follows:

§ 30.65 Failure to disclose lead-based paint hazards.

* * * * *

(b) *Amount of penalty.* The maximum penalty is $18,149 for each violation.

■ 13. In § 30.68, revise paragraph (c) to read as follows:

§ 30.68 Section 8 owners.

* * * * *

(c) *Maximum penalty.* The maximum penalty for each violation under this section is $39,811.

* * * * *

PART 87—NEW RESTRICTIONS ON LOBBYING

■ 14. The authority citation for part 87 continues to read as follows:

Authority: 28 U.S.C. 1 note; 31 U.S.C. 1352; 42 U.S.C. 3535(d).

■ 15. In § 87.400, revise paragraphs (a), (b), and (e) to read as follows:

§ 87.400 Penalties.

(a) Any person who makes an expenditure prohibited by this part shall be subject to a civil penalty of not less than $20,489 and not more than $204,892 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B of this part) to be filed or amended if required by this part, shall be subject to a civil penalty of not less than $20,489 and not more than $204,892 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $20,489, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $20,489 and $204,892 as determined by the agency head or his or her designee.

* * * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 16. The authority citation for part 180 continues to read as follows:

Authority: 28 U.S.C. 1 note; 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

■ 17. In § 180.671, revise paragraphs (a)(1) through (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) $21,410, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $53,524, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) $107,050, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local government agency, to have committed two or more discriminatory housing

practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 18. The authority citation for part 3282 continues to read as follows:

Authority: 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

■ 19. Revise § 3282.10 to read as follows:

§ 3282.10 Civil and criminal penalties.

Failure to comply with this part may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be $2,976 for each violation, up to a maximum of $3,719,428 for any related series of violations occurring within one year from the date of the first violation.

Dated: February 13, 2020.

J. Paul Compton, Jr.,

General Counsel.

[FR Doc. 2020–04146 Filed 3–5–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9890]

RIN 1545–BN73, 1545–BN74, 1545–BO23, 1545–BN79, 1545–BO30

Regulations Relating to Withholding and Reporting Tax on Certain U.S. Source Income Paid to Foreign Persons; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9890) that were published in the **Federal Register** on Thursday, January 2, 2020. The final regulations provide guidance on certain due diligence and reporting rules applicable to persons making certain U.S. source payments to foreign person and guidance on certain aspects of reporting by foreign financial institutions on U.S. accounts.

DATES: This correction is effective on March 6, 2020 and is applicable to taxable years that begin on or after January 6, 2017.

FOR FURTHER INFORMATION CONTACT: John Sweeney at (202) 317- 6942 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9890) that are the subject of this correction are issued under section 1441of the Internal Revenue Code.

Need for Correction

As published, January 2, 2020 (85 FR 192), the final regulations (TD 9890) contain an error that needs to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1441–6 is amended by revising paragraph (b)(2)(iv)(D) to read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(D) *Example 4*—(*1*) *Facts.* Entity E is a business organization formed under the laws of Country Y. Country Y has an income tax treaty with the United States that contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W. E furnishes a beneficial owner withholding certificate to W claiming a reduced rate of withholding under the U.S.-Country Y tax treaty. However, E's beneficial owner withholding certificate does not specifically identify the limitation on benefits provision that E satisfies.

(*2*) *Analysis.* Because E's withholding certificate does not specifically identify the limitation on benefits provision under the U.S.-Country Y tax treaty that E satisfies as required by paragraph (b)(1)(i) of this section, W cannot rely on E's withholding certificate to apply the reduced rate of withholding claimed by E.

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2020–04113 Filed 3–5–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 233

[Docket ID: DOD–2019–OS–0103]

RIN 0790–AK90

Federal Voting Assistance Program (FVAP)

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

ACTION: Interim final rule.

SUMMARY: This regulatory action amends current policy and assignments of responsibility for the Federal Voting Assistance Program (FVAP). The FVAP assists overseas service members and other overseas citizens to exercising their voting rights by serving as a critical resource to successfully register to vote.

DATES: This rule is effective March 6, 2020. Comments must be received by April 6, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) number and title, by any of the following methods: Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: David Beirne, (571) 372–0727.

SUPPLEMENTARY INFORMATION:

Summary of New and Amended Regulatory Provisions and Their Impact

DoD is making these amendments to maximize voter awareness of Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) eligibility and resources.

This rule modifies existing regulations at 84 FR 59720 to:

- Include the United States Maritime Administration (MARAD) under agreement with the Department of Transportation and the United States Postal Service (USPS).
- Require DoD components to establish component-wide programs to communicate and disseminate voting information, with the goal of improving communication and clarity for the impacted population.
- Require federal agencies to enter into memorandums of understanding (MOU) with the DoD to provide accurate, nonpartisan voting information and assistance to ensure military and overseas voters understand their voting rights, how to register and apply for an absentee ballot, and how to return their absentee ballot successfully.

Entering into MOUs with other federal agencies will allow the FVAP to strengthen its communications by expanding its outreach through other federal agencies. This will allow agencies to link to the *FVAP.gov* website and augment existing voter assistance information. These efforts seek to boost voter awareness, education and participation in upcoming election cycles.

For example, including MARAD under agreement with the Department of Transportation will allow the FVAP to better serve Merchant Marine uniformed service members because MARAD will directly coordinate FVAP guidance and instructions to better communicate with Merchant Marine members about how to vote absentee under UOCAVA.

Because the USPS provides essential services to assure the distribution of balloting materials to eligible voters and voted ballots to election official this rule amendment will allow ballots to be more expeditiously carried and tracked by USPS. Thus more ballots will be successfully returned to election officials prior to the deadline to receive ballots.

Background and Legal Basis for This Rule

The FVAP administers the UOCAVA on behalf of the Secretary of Defense, as the Presidential designee under 52 U.S.C. 20301(a) and Executive Order (E.O.) 12642, ''Designation of Secretary of Defense as Presidential Designee'' (53 FR 21975, June 8, 1988). United States citizens under UOCAVA include:

- Members and eligible family members of the Uniformed Services (Army, Navy, Marine Corps, Air Force, Coast Guard, United States Public Health Service Commissioned Corps, and National Oceanic and Atmospheric Administration Commissioned Corps).
- Members of the Merchant Marine.
- U.S. citizens residing outside of the United States.

Under 52 U.S.C. 20506, State voter registration agencies must provide individuals the opportunity to register to vote or to change their voter registration data when they apply for or receive services or assistance. The Secretary of Defense, under 10 U.S.C. 1566, must prescribe regulations to require the Military Services (Army, Navy, Air Force, and Marine Corps) to implement voting assistance programs that comply with DoD directives.

The Military Services, under 10 U.S.C. 1566a, must designate Installation Voter Assistance Offices to make voting assistance available for military members, their eligible family members and eligible citizens. The Secretary of Defense may authorize the Secretaries of the Military Departments to designate offices on military installations as voter registration agencies under 52 U.S.C. 20506(a)(2) for all purposes of such act. Title 52 U.S.C. 20506(c) requires the Secretary of Defense jointly with each State, to develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces.

Finally, 52 U.S.C. 22301(c)(1) requires Government departments, agencies, and other entities, upon the Presidential designee's request to distribute balloting materials and cooperate in carrying out UOCAVA.

Additional information regarding internal DoD processes related to this program is contained in DoD Instruction 1000.04, ''Federal Voting Assistance Program (FVAP),'' which is publicly available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100004p.pdf?ver=2017-12-01-105434-817.*

Interim Final Rule Justification

- DoD is issuing this rulemaking as an interim final rule and has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it would be impracticable, unnecessary, and contrary to the public interest to delay a final regulation until a public notice-and-comment process has been completed.

The conclusion of a public notice-and-comment period before the rule is finalized would be impracticable because it would impede timely execution of DoD's responsibilities under UOCAVA. Younger uniformed Service members and their family members who have not previously voted make up a large percentage of military voters and may need more explicit instructions on how to vote absentee. This includes understanding the absentee voting process or finding information on registration deadlines. As service members and their families are often stationed outside of the United States, and thus outside of their voting jurisdiction, physically getting to a polling location on Election Day may be impracticable.

Extensive outreach has already begun at *www.fvap.gov* in preparation for this election cycle to provide specific and detailed voting information. Current outreach includes: identifying the eligible population of uniformed service members and their family members; ongoing efforts to communicate with potential enrollees about eligibility, enrollment, and key dates for enrolling in absentee voting; and FVAP's continuing work to ensure Service members, their eligible family members, and overseas citizens are aware of their right to vote and have the tools and resources to successfully do so from anywhere in the world.

Furthermore, the FVAP office has been working in coordination with the Military Services and federal agencies to inform the current population as absentee ballot voting began in December 2019. This 2020 election schedule requires this rule to be effective immediately for citizens voting under UOCAVA to be supported through enhanced voting assistance programs within the Federal departments and agencies.

The 2020 election cycle started with the February 11, 2020, New Hampshire Presidential Preference Primary and continues through the November 3, 2020, general election. Not having this rule in place would be contrary to the public interest for service members and their families

For these reasons, DoD has determined that good cause exists for waiving proposed rulemaking and instead issuing an Interim Final Rule. DoD will consider public comments received on this Interim Final Rule in a subsequent Final Rule.

Expected Impact of the Interim Final Rule

The amendment of the current policies is intended to establish uniform

framework within the Government on how to interact and disseminate communications with the impacted public populations overseas. This includes maximizing awareness of UOCAVA eligibility, and providing resources to the impacted public populations. The goal of these changes is to maximize voting assistance effectiveness and outcomes, addressing known concerns impacting the public, ahead of this upcoming election cycle.

DoD believes these amendments will facilitate the Government's coordination role in providing voter assistance to absent uniformed service voters and overseas voters. This will support the government's efforts to implement a comprehensive program to cover all Executive Branch agencies and overseas citizens more broadly under UOCAVA.

E.O. 12866, ''Regulatory Planning and Review''; E.O. 13563, ''Improving Regulation and Regulatory Review''; and E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs''

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' under Section 3(f) of E.O. 12866 and was not reviewed by the Office of Management and Budget. The rule is not is not expected to be an E.O. 13771 regulatory action, because it is not significant under E.O. 12866.

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

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

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will the rule affect private sector costs.

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

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

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

It has been determined that 32 CFR part 233 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

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

List of Subjects in 32 CFR Part 233

Civil rights, Elections, Voting rights.

For the reasons stated in the preamble, the Department of Defense amends 32 CFR part 233 as follows:

PART 233—FEDERAL VOTING ASSISTANCE PROGRAM (FVAP)

■ 1. The authority citation for part 233 is revised to read as follows:

Authority: E.O. 12642; 10 U.S.C. 1566a; 52 U.S.C. 20506; 52 U.S.C. Ch. 203.

■ 2. Amend § 233.2 by:

■ a. In paragraph (b), removing the period at the end of the first sentence and adding '', and the United States Maritime Administration (MARAD) under agreement with the Department of Transportation.''

■ b. Adding paragraph (d).

The addition reads as follows:

§ 233.2 Applicability.

* * * * *

(d) United States Postal Service pursuant to 52 U.S.C. 20304(b)(2) and (4).

■ 2. Amend § 233.6 by:

■ a. Adding paragraph (b)(5).

■ b. In paragraph (c)(1), after ''Department of Health and Human Services,'' removing ''are encouraged'' and adding in its place '' shall enter into agreements with the Presidential designee''.

The addition reads as follows:

§ 233.6 Procedures.

* * * * *

(b) * * *

(5) Establish a DoD Component-wide means to communicate effectively with and expeditiously disseminate voting information to Commanders, VAOs, and uniformed services and overseas DoD civilian members of the DoD Component and their voting age dependents. This communication effort should be coordinated with the FVAP.

* * * * *

Dated: February 19, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–03615 Filed 3–5–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD–2016–OS–0045]

RIN 0790–AK88

Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of the Under Secretary of Defense (Comptroller), Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

DATES: This rule is effective March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Kellie Allison, 703–614–0410.

SUPPLEMENTARY INFORMATION:

Background Information

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt

Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114–74, November 2, 2015, required agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act required that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of $1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment, exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the Department of Defense's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389–33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629–62631), effective that date. The revised methodology for agencies for 2020 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. The Department of Defense is adjusting the level of all civil monetary penalties under its jurisdiction by the Office of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2020 of 1.01764 prescribed in OMB Memorandum M–20–05, ''Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' dated December 16, 2019. The Department of Defense's 2020 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Defense after the effective date of the new CMP level.

Statement of Authority and Costs and Benefits

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Defense is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the Department of Defense, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the Department of Defense anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

Regulatory Procedures

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

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

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

This final rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

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

The Department of Defense determined that provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Executive Order 13132, ''Federalism''

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

List of Subjects in 32 CFR Part 269

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows.

PART 269—[AMENDED]

■ 1. The authority citation for 32 CFR part 269 continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. In § 269.4, revise paragraph (d) to read as follows:

§ 269.4 Cost of living adjustments of civil monetary penalties.

* * * * *

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

TABLE 1 TO PARAGRAPH (d)

United States code	Civil monetary penalty description	Maximum penalty amount as of 01/15/19	New adjusted maximum penalty amount
National Defense Authorization Act for FY 2005, 10 U.S.C 113, note.	Unauthorized Activities Directed at or Possession of Sunken Military Craft.	132,470	134,807
10 U.S.C. 1094(c)(1)	Unlawful Provision of Health Care	11,632	11,837
10 U.S.C. 1102(k)	Wrongful Disclosure—Medical Records:		
	First Offense	6,878	6,999
	Subsequent Offense	45,854	46,663
10 U.S.C. 2674(c)(2)	Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations.	1,895	1,928
31 U.S.C. 3802(a)(1)	Violation Involving False Claim	11,463	11,665
31 U.S.C. 3802(a)(2)	Violation Involving False Statement	11,463	11,665

Dated: February 21, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–03858 Filed 3–5–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0686]

RIN 1625–AA00

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone for all navigable waters within an area of one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. This safety zone is needed to protect personnel, transiting vessels, and Liquefied Gas carriers. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Juan or his designated representative.

DATES: This rule is effective without actual notice from March 6, 2020 through April 30, 2020. For the purposes of enforcement, actual notice will be used from February 29, 2020 through March 6, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0686 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 about this rulemaking, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2374, email *Pedro.L.Mendoza@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for issuing this temporary final rule because it continues to be necessary to safeguard incoming, moored, and outgoing LNG carriers within San Juan Harbor, San Juan, Puerto Rico. This rule extends the duration of the existing temporary safety zone on navigable waters within one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. This extension is necessary while we complete the rulemaking process for the associated NPRM,[1] which proposes to permanently revise the existing regulation in § 165.754 to add LNG carriers is ongoing. The first temporary rule was effective from September 13, 2019 until 11:59 p.m. on November 15, 2019. The second temporary rule extended the duration of the safety zone and is set to expire at 11:59 p.m. on February 28, 2020. This action extends the duration of the safety zone until 11:59 p.m. on April 30, 2020. This action allows for time to complete the rulemaking process for the associated NPRM. Therefore, it is impracticable and contrary to the public interest for the existing temporary safety zone to lapse.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. Potential hazards associated with LNG carriers continues to be a safety concern

[1] See NPRM entitled, ''Safety Zone; San Juan Harbor, San Juan, PR, which published on December 17, 2019 (84 FR 68860).

for anyone within 50-yards of these carriers. The purpose of this rule is to extend the current safety zone until April 30, 2020 to ensure the safety of vessels and the navigable waters within a 50-yard radius of LNG and LPG carriers transiting San Juan Harbor while the rulemaking process is completed for the NPRM, which proposes to revise the safety zone in § 165.754. This temporary final rule continues to safeguard vessels at an adjacent berthing location, Puerto Nuevo Berth B, which supplies LNG to the Puerto Rico Electric Power Authority (PREPA) and other industrial sectors.

IV. Discussion of the Rule

A moving safety zone is established in the following areas: (1) The waters around Liquefied Gas carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18–29.3N, 66–07.6W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8N, 66–06.5W. (2) The waters around Liquefied Gas carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. (3) The waters around Liquefied Gas carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8N, 66–06.5W when the vessel gets underway, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18–28.3N, 66–07.6W.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative. The Coast Guard will provide notice of the safety zone through Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and designated on-scene representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, available exceptions to the enforcement of the safety zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the safety zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 36 days that will prohibit entry within one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the separate rulemaking (84 FR 68860) to modify the San Juan Harbor, San Juan, Puerto Rico safety zone is properly proposed and implemented. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T07–0686 to read as follows:

§ 165.T07–0686 Safety Zone; San Juan Harbor, San Juan, PR.

(a) *Location.* A moving safety zone is established in the following area:

(1) The waters around Liquefied Gas carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18–29.3N, 66–07.6W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8N, 66–06.5W. All coordinates are North American Datum 1983.

(2) The waters around Liquefied Gas carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B.

(3) The waters around Liquefied Gas carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8N, 66–06.5W when the vessel gets underway, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18–28.3N, 66–07.6W. All coordinates referenced use datum: NAD 83.

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

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone unless authorized by the COTP San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the safety zones may contact the COTP San Juan or his designated representative to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.

(3) Vessels encountering emergencies, which require transit through the moving safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(4) The COTP and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787–289–2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF–FM channels 16 and 22A.

(5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

(d) *Notification.* The zone described in paragraphs (a)(1) through (3) of this section will be activated upon entry of an LNG carrier into the navigable waters of the United States in the San Juan Captain of the Port Zone. An LNG carrier will be identifiable by the requirement to fly the Bravo flag (red international signal flag under Pub. 102, International Code of Signals) from the outermost halyard (above the pilot house) where it can most easily be seen. In addition to visual identification of an LNG carrier, Coast Guard Sector San Juan will give notice through Mariners Broadcast Notice to Mariners for the purpose of enforcement of the temporary safety zone.

(e) *Enforcement period.* This rule is enforced from 12:01 a.m. on February 29, 2020 through 11:59 p.m. on April 30, 2020.

Dated: February 28, 2020.

E.P. King,

Captain, U.S. Coast Guard,

Captain of the Port San Juan.

[FR Doc. 2020–04429 Filed 3–5–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ62

Health Professional Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern the Health Professional Scholarship Program (HPSP). The amended regulations ensures that VA award not less than 50 HPSP scholarships each year to students who are accepted for enrollment or are enrolled in a program of education or training that leads to employment as a physician or dentist until such a date as VA determines the current staffing shortage is reduced. The amended regulation will also expand the number of years of obligated service that a HPSP participant would have to serve in VA as a physician or a dentist. This rulemaking implements the mandates of the VA MISSION Act of 2018.

DATES: This final rule is effective April 6, 2020.

FOR FURTHER INFORMATION CONTACT: Nicole Nedd, Director, Scholarships and Clinical Education. 1250 Poydras Street, Suite 1000, New Orleans, LA 70113. (504) 507–4895 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 25, 2019, VA published a proposed rule, which proposed to revise its regulations that govern VA's Health Professional Scholarship Program (HPSP). 84 FR 29824. VA provided a 60-day comment period, which ended on August 26, 2019. We received two comments on the proposed rule.

On June 6, 2018, section 301 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, amended title 38 of the United States Code (U.S.C.) 7612(b) and 7617, which govern the HPSP. This program is regulated under title 38 of the Code of Federal Regulations (CFR) 17.600 through 17.612. Section 7612(b) of 38 U.S.C. was amended to state that VA will ensure that not less than 50 HPSP scholarships are awarded each year to students who are accepted for enrollment or are enrolled in a program of education or training that leads to employment as a physician or dentist until such a date as VA determines that there is a staffing shortage of less than 500 individuals in these health care professions in VA. The VA MISSION Act of 2018 further amended section 7612(b) to state that after such a date, VA will award HPSP scholarships each year to not less than 10 percent of the total staffing shortage of physicians and dentists. Section 7612 was also amended by expanding the number of years of obligated service that a participant who pursues a course of study leading to employment as a physician or dentist would have to serve in VA in a discipline for which the HPSP was awarded. For those individuals who are accepted for enrollment or enrolled in a program of education or training leading to employment as a physician or dentist, instead of one year of obligated service for each school year or part thereof for which the participant was awarded a scholarship, the VA MISSION Act of 2018 requires that the participant serve 18 months of obligated service for each school year or part thereof for which the participant was awarded a scholarship. The VA MISSION Act of 2018 additionally amended 38 U.S.C. 7617 by adding that a participant has breached the service agreement if the participant fails to successfully complete post-graduate training leading to eligibility for board certification for employment as a physician. This final rulemaking implements the mandates of section 301 of the VA MISSION Act of 2018 by amending 38 CFR 17.603, 17.607, and 17.610.

One commenter was in favor of the rule and stated that making more scholarships available for students who are going to study in a field that is quite expensive is a great idea that will help society in the long run, especially fields leading to employment as a physician or dentist. However, the commenter recommended that the minimum scholarship number should always be 10 percent the number of vacancies so if there are 600 vacancies, VA should be required to give out 60 scholarships instead of capping at 50 so that more and more people can be helped. As previously stated in this rule, 38 U.S.C. 7612(b) states that not less than 50 HPSP scholarships are awarded each year to students who are accepted for enrollment or are enrolled in a program of education or training that leads to employment as a physician or dentist until such a date as VA determines that there is a staffing shortage of less than 500 individuals in these health care professions in VA. Therefore, for instances where there are 600 vacancies, as the commenter stated, there would not be a cap at 50 scholarships. Fifty scholarships would be the minimum amount of scholarships that may be offered to qualifying individuals. The commenter requested that the minimum number of scholarships offered by VA always be ten percent of the shortage of VA physicians and dentists. However, the statutory ten percent requirement only comes into effect when the number of vacancies is less than 500. When there are more than 500 vacancies for physicians and dentists, VA may offer not less than 50 HPSP scholarships per year. VA has the authority to provide more than 50 scholarships, but VA chooses to maintain the statutory limit in order to allow VA to utilize HPSP funds in disciplines other than physician and dentists as allowed under § 17.603(b)(2) for other healthcare disciplines experiencing severe staffing shortages. We are not making any changes based on this comment.

Another commenter was in support of the rule stating that they are pleased that VA is making the HPSP available to other health care professionals and encourages VA to place priority on the inclusion of nurse practitioners in this program. The commenter further stated that VA has long recognized the value of nurse practitioner-led care and it is important that these scholarship opportunities be available to nurse practitioners as well as other health care professionals to provide veterans with a robust health care workforce. The HPSP has always been available to applicants who pursue a course leading to nurse practitioner. Current § 17.603(b) states that VA will grant HPSP scholarships in a course of study in those disciplines or programs where recruitment is necessary for the improvement of health care of veterans. Those disciplines or programs are listed in 38 U.S.C. 7401(1) and (3), which includes nurse practitioners. However, the purpose of this rulemaking is to implement the mandates of the VA MISSION Act of 2018 by expanding the number of HPSP that may be awarded to individuals who pursue a program of education or training that leads to employment as a physician or dentist, not nurse practitioners. Therefore, we are not making any changes based on this comment.

Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule and in this final rule, VA is adopting the proposed rule with no edits to the rule.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 17.604, which is not being amended by this rule, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for § 17.604 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0793.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions associated with this rulemaking are not processed by any other entities outside of VA. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD.

This final rule is not expected to be an E.O. 13771 regulatory action because this final rule is not significant under E.O. 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

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).

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on January 24, 2020, for publication.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, we are amending 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The general authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Amend § 17.603 by revising paragraph (b) to read as follows:

§ 17.603 Availability of HPSP scholarships.

* * * * *

(b) *Qualifying fields of education*—(1) *Physicians and dentists*—(i) VA will award not less than 50 HPSP scholarships each year to individuals who are accepted for enrollment or are enrolled in a program of education or training leading to employment as a physician or dentist until such date as VA determines that the staffing shortage of physicians and dentists in VA is less than 500.

(ii) Once the staffing shortage of physicians and dentists is less than 500, VA will award HPSP scholarships to individuals in an amount equal to not less than ten percent of the staffing shortage of physicians and dentists in VA.

(2) *Other health care professions.* VA will grant HPSP scholarships in a course of study in those disciplines or programs other than physician or dentist where recruitment is necessary for the improvement of health care of veterans as listed in 38 U.S.C. 7401(1) and (3).

* * * * *

■ 3. Amend § 17.607 by revising paragraph (c)(1) to read as follows.

§ 17.607 Obligated service.

* * * * *

(c) *Duration of service*—(1) *Full-time student*—(i) *Physician or dentist.* A participant who attended school as a full-time student will agree to serve as a full-time physician or dentist in the Veterans Health Administration for 18 months for each school year or part thereof for which a scholarship was awarded.

(ii) *Other health care profession.* A participant who attended school as a full-time student in a health care profession other than physician or dentist will agree to serve as a full-time clinical employee in the Veterans Health Administration for 1 calendar year for each school year or part thereof for which a scholarship was awarded, but for no less than 2 years.

* * * * *

■ 4. Amend § 17.610 by:
■ a. Redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6).
■ b. Adding a new paragraph (b)(4).
The addition to read as follows

§ 17.610 Failure to comply with terms and conditions of participation.

* * * * *

(b) * * *

(4) Who is enrolled in a program or education or training leading to employment as a physician, fails to successfully complete post-graduate training leading to eligibility for board certification in a specialty.

* * * * *

[FR Doc. 2020–04164 Filed 3–5–20; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3025

[Docket No. RM2020–3; Order No. 5439]

Procedures Related to Commission Views

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission revises to its rules related to the Commission's process for developing views submitted to the Secretary of State on certain international mail matters.

DATES: *Effective date:* April 21, 2020.

ADDRESSES: For additional information, Order No. 5439 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Relevant Statutory Requirements

Section 407(c)(1) of title 39 of the United States Code requires that the Secretary of State, before concluding a treaty, convention, or amendment establishing a market dominant rate or classification, request the Commission's views on the consistency of such rate or classification with the modern rate-setting criteria of 39 U.S.C. 3622. Commission views entail the review and analysis of numerous proposals from the Universal Postal Union (UPU) or its member countries, which are typically posted on the UPU website pursuant to a series of deadlines that begin about 6 months before a Congress convenes.

II. Background

In Docket No. RM2015–14, the Commission adopted rules formalizing its procedures related to Commission views submitted pursuant to 39 U.S.C. 407(c)(1).[1] The adopted rules reflected the Commission's commitment to both transparency and improved public accessibility by establishing dockets that informed the public about the availably of relevant proposals, Commission views, and other related documents, and by allowing all documents to be incorporated into one comprehensive record.

III. Basis and Purpose of Final Rules

After years of experience in participating in both traditional UPU Congresses as well as two extraordinary Congresses, the Commission adopts clarifying changes to the rules in order to better reflect the Commission's procedures related to the posting of relevant proposals and Commission views.[2]

IV. Changes to Final Rules

Due to Commission action in another proceeding, the Commission notes several non-substantive changes to the rules as proposed in Order No. 5353. These changes do not affect the text of the rules themselves and largely relate to the numbering of the rules. In Order No. 5353, the Commission proposed rule revisions to 39 CFR part 3017 on December 17, 2019. *See* section I, *supra; see also* Order No. 5353. On January 16, 2020, the Commission issued a final rulemaking in a separate proceeding that, among other things, renumbered several parts in title 39.[3] In Order No. 5407, 39 CFR part 3017 was redesignated as 39 CFR part 3025. *Id.* at 24. In addition, the Commission redesignated §§ 3017.1 through 3017.5 as §§ 3025.101 through 3025.105 of the chapter and revised the part's heading to ''Procedures Related to Commission Views Submitted to the Secretary of State.'' [4] The revisions set forth in Order No. 5407 go into effect on April 20, 2020. Order No. 5407 at 21–22. In order to avoid any confusion that may be associated with these overlapping changes, the final rules adopted in this Order will go into effect on April 21, 2020, after the renumbering of parts in title 39 is complete. As such, the rule revisions herein reflect the numerical and heading changes adopted as part of Order No. 5407.

[1] *See generally,* Docket No. RM2015–14, Order Adopting Final Rules on Procedures Related to Commission Views, December 20, 2015 (Order No. 2960), 81 FR 869 (January 8, 2016).

[2] Notice of Proposed Rulemaking to Amend Procedures Related to Commission Views, December 17, 2019 (Order No. 5353), 84 FR 70466 (December 23, 2019).

[3] Docket No. RM2019–13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020 (Order No. 5407), 85 FR 9614 (February 19, 2020).

[4] *Id.* at 26; 85 FR 9656 (February 19, 2020).

List of Subjects for 39 CFR Part 3025

Administrative practice and procedure, Postal Service, Treaties.

For the reasons stated in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations by revising part 3025 to read as follows:

PART 3025—PROCEDURES RELATED TO COMMISSION VIEWS SUBMITTED TO THE SECRETARY OF STATE

Sec.

Authority: 39 U.S.C. 407; 503.

§ 3025.101 Definitions in this part.

(a) *Commission views* refers to the opinion the Commission provides to the Secretary of State pursuant to 39 U.S.C. 407(c)(1) on the consistency of a relevant proposal with modern rate regulation.

(b) *Modern rate regulation* refers to the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

(c) *Relevant proposal* means a proposed change to a treaty, convention, or amendment that establishes a market dominant rate or classification.

§ 3025.102 Purpose.

The rules in this part are intended to facilitate public participation in, and promote the transparency of, the development of Commission views.

§ 3025.103 Establishment and scope of docket.

(a) On or about 150 days before a Universal Postal Union Congress convenes or such advance time as the Commission determines for any other 39 U.S.C. 407(c)(1) matter, the Commission shall establish a docket in order to solicit public comments as part of the development of Commission views.

(b) The Commission shall post relevant proposals in the applicable docket established pursuant to paragraph (a) of this section and may also include other materials related to the development of Commission views, such as other documents or related actions.

(c) Public comments should focus on the specific relevant proposals posted by the Commission and the general principles that should guide the development of Commission views as

well as any other materials posted in the applicable docket pursuant to paragraph (b) of this section.

(d) The Commission shall arrange for publication in the **Federal Register** of the notice establishing each docket authorized under this part.

§ 3025.104 Comment deadline(s).

(a) The Commission shall establish a deadline for comments upon establishment of the docket that is consistent with timely submission of Commission views to the Secretary of State. The Commission may establish other deadlines for comments as appropriate.

(b) The Commission may suspend or forego solicitation of comments if it determines that such solicitation is not consistent with timely submission of Commission views to the Secretary of State.

§ 3025.105 Issuance of Commission views.

(a) The Commission will review timely filed comments responding to a Commission solicitation pursuant to § 3025.103(a) prior to submitting its views to the Secretary of State.

(b) After Commission views are developed, the Commission shall post Commission views in the applicable docket established pursuant to § 3025.103(a) and submit Commission views to the Secretary of State pursuant to 39 U.S.C. 407(c)(1).

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–04038 Filed 3–5–20; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0552; FRL–10005–75–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Negative Declaration for the Oil and Gas Control Techniques Guideline

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 District of Columbia. This revision pertains to a negative declaration for the October 2016 Oil and Natural Gas Control Techniques Guideline (CTG) (2016 Oil and Gas CTG). This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on April 6, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0552. 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 November 21, 2019 (84 FR 64244), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia. In the NPRM, EPA proposed approval of the District's SIP revision concerning the negative declaration for the 2016 Oil and Gas CTG. The formal SIP revision was submitted by the District on July 17, 2019. For additional information on the CTG please see the NPRM.

II. Summary of SIP Revision and EPA Analysis

In its submittal, the District of Columbia's Department of Energy and Environment (DOEE) conducted a search of its sources to determine if the District has any sources that fall within the applicability of the 2016 Oil and Gas CTG. DOEE reviewed the following sources of information: DOEE's Air Quality Division's permitting database for potential sources subject to the 2016 Oil and Gas CTG, the Energy Information Administration's data regarding natural gas pipelines and areas of oil and gas development, the Department of Homeland Security's database of critical infrastructure which includes natural gas compressor stations, the District's Department of Consumer and Regulatory Affairs database which would include a basic business license for broad categories of businesses, and the District's point and area source inventory. Within each database or system reviewed, the District found no sources subject to the 2016 Oil and Gas CTG. After completing this search, the District has declared that no sources subject to the 2016 Oil and Gas CTG exist within the District.

III. Response to Comments

EPA received five sets of anonymous comments in response to the NPRM, two of which were duplicative.

Comment 1: One commenter stated that approval of the District's negative declaration, ''might set a dangerous precedent for the further regulation and control of the emissions of volatile organic compounds (VOCs),'' and could cause, ''a much larger issue for the future control of VOCs.''

Response 1: EPA understands the commenter's concern with regards to setting a precedent, however, EPA has historically allowed states to submit a negative declaration for a particular CTG category if the state finds that no sources exist in the state which would be subject to that CTG. EPA has addressed the idea of negative declarations numerous times and for various national ambient air quality standards (NAAQS) including in the General Preamble to the 1990 Amendments,[1] the 2006 RACT Q&A Memo,[2] and the 2008 Ozone Implementation Rule.[3] In each of these documents, EPA asserted that if no sources exist in the nonattainment area for a particular CTG category, the state would be allowed to submit a negative declaration SIP revision.

In addition, EPA has approved negative declarations in the past for this CTG category in other states as well as other CTG categories for the District. For example, EPA has approved negative declarations for the District for the following categories with respect to the 1997 ozone NAAQS: Automotive and Light-duty Truck Manufacturing; Storage of Petroleum Liquids in Fixed-roof Tanks; Bulk Gasoline Plants; Petroleum Refinery Sources; Graphic

[1] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498 at 13512 (April 16, 1992)).

[2] ''RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers'' Memorandum from William T. Harnett, May 18, 2006.

[3] ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' (80 FR 12263 at 12278 (March 6, 2015)).

Arts Systems; Shipbuilding and Repair; Wood Furniture Coatings; and more. *See* 74 FR 28447 (June 16, 2009) and 74 FR 12778 (March 25, 2009). More recently EPA approved negative declarations for the 2008 ozone NAAQS for these same CTG categories. *See* 84 FR 54507 (October 10, 2019). With respect to the 2016 Oil and Gas CTG, EPA has already approved negative declarations for Delaware, Indiana, Vermont, and California's El Dorado County and Yolo-Solano Air Quality Management Districts.[4] Thus, no precedent is being set by approving the District's negative declaration with respect to the 2016 Oil and Gas CTG.

Comment 2: One commenter stated that economic effects should be considered, particularly whether the SIP revision will, ''harm the economy to compensate for the environment and if the benefits of doing so exceed the harm it will cause.''

Response 2: EPA disagrees with this comment. In the case of a negative declaration, the state is merely certifying that no sources exist which would necessitate a regulation being developed for a CTG category. Because there are no sources in the District that could potentially be subject to the 2016 Oil and Gas CTG, the District does not have to develop and implement a regulation to meet the RACT requirements of the CTG, and thus, no costs will be imposed on sources in the District.

Comment 3: One commenter explained that ozone nonattainment areas classified as Moderate or higher must implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990 and the date of attainment; the commenter suggested that EPA should update this date to reflect regulations made in current environmental conditions.

Response 3: The November 15, 1990 date is established by statute in CAA section 182(b)(2). EPA cannot through rulemaking change this date. Changing this date would require legislation passed by Congress and signed by the President into law.

Comment 4: One commenter suggested EPA should disapprove the District's SIP pending review by the ''OSG Intergovernmental Panel on Climate Change (IPCC) and other available independent scientific assessments of risks and impacts.'' The commenter claims that EPA is unable to predict accurately how these gases will alter the climate system over the next century. The commenter also suggested EPA disapprove the District's SIP because nothing in the negative declaration accounts for future development in the oil and natural gas field. The commenter claims that EPA must require a regulation to ensure future compliance with the CTG and not allow the District to increase emissions of VOCs or greenhouse gases (GHGs) like methane.

Response 4: First, with respect to disapproving the District's SIP pending external review, EPA disagrees with the commenter. Nothing in the District's negative declaration SIP revision requires external review with respect to climate change because the negative declaration is merely certifying that no sources in the District are subject to the 2016 Oil and Gas CTG. A review of climate change, or its impacts, are not relevant to the District's SIP revision.

Second, with respect to disapproving the District's SIP because the SIP revision does not account for future development and does not contain a regulation to ensure future compliance with the CTG or restrict emissions of VOCs and GHGs, EPA disagrees with the commenter. Nothing in the CAA or EPA's implementing rules or guidance suggests that states must have a SIP-approved regulation for a category of CTG sources that does not exist in the state. Should a new source of the type covered by the existing CTG be constructed in a state after approval of a negative declaration, EPA expects the state to develop a regulation and submit it to EPA for approval into the SIP in accordance with the relevant timing provided for by the CAA. At this time, because the District does not have any sources subject to the 2016 Oil and Gas CTG, no regulation is required to be developed and submitted to EPA for SIP approval.

IV. Final Action

EPA is approving the District's SIP revision concerning the negative declaration for the 2016 Oil and Gas CTG, which was submitted on July 17, 2019.

V. 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 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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

[4] See 84 FR 32624 (July 9, 2019) for Delaware, 84 FR 68050 (December 13, 2019) for Indiana, 84 FR 65009 (November 26, 2019) for Vermont, 83 FR 67696 (December 31, 2018) for El Dorado, and 83 FR 31072 (July 3, 2018) for Yolo-Solano.

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 May 5, 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 District's negative declaration for the 2016 Oil and Gas CTG, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 12, 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 J—District of Columbia

■ 2. Amend § 52.470 in the table in paragraph (e) by adding an entry for ''Negative Declaration for the 2016 Oil and Natural Gas CTG'' at the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	* *	
Negative Declaration for the 2016 Oil and Natural Gas CTG.	District of Columbia	7/17/19	*3/*6, 2020, [*Insert* **Federal Register** *citation*].	Docket 2019–0552.

[FR Doc. 2020–03670 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0467; FRL–10006–00-Region 5]

Air Plan Approval; Michigan; Second Limited Maintenance Plans for 1997 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Michigan. On July 24, 2019, the state submitted the 1997 ozone National Ambient Air Quality Standard (NAAQS) Limited Maintenance Plans (LMPs) for the Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County areas. EPA is approving these Michigan LMPs because they provide for the maintenance of the 1997 ozone NAAQS through the end of the second 10-year portion of the maintenance period. EPA proposed to approve the submission on December 4, 2019, and received two comments. This approval makes certain commitments related to maintenance of the 1997 ozone NAAQS in these areas federally enforceable as part of the Michigan SIP.

DATES: This final rule is effective on April 6, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2019–0467. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

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

I. Background Information

On December 4, 2019 (84 FR 66347), EPA proposed to approve the 1997 ozone NAAQS LMPs for the Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek, Lansing-East Lansing, and Mason County areas, submitted by Michigan on July 24, 2019. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking. EPA will not reiterate the reasons for approval in this rule. The public comment period ended on January 3, 2020. EPA received two comments on the proposal.

II. Response to Comments

EPA received two anonymous comments during the comment period. A summary of each comment precedes EPA's response. The full comments are in the rulemaking docket, see Addresses for details on accessing the docket.

Comment 1: Please explicitly state when the second maintenance period ends. Also, please explain what happens to the state's maintenance plan once the second maintenance plan ends.

Response: EPA approved maintenance plans for the Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek, Lansing-East Lansing, and Mason County areas effective on May 16, 2007 (72 FR 27425). The LMPs for these areas provide for the maintenance of the 1997 ozone NAAQS through the end of the second 10-year portion of the maintenance period. Thus, the maintenance period ends on May 16, 2027.

At the end of the 20-year maintenance period the maintenance plan remains in place and in effect. A state may revise its SIP, including its maintenance plan, after the 20-year period, subject to a CAA section 110(l) demonstration.

Comment 2: EPA should disapprove the contingency measures until the state comes up with better, more specific and not yet implemented contingency measures.

Response: Contrary to the commenter's assertion, Michigan has included a list of specific potential contingency measures in its maintenance plan. These measures are the same list as was included in the original maintenance plans for the areas. While some of the measures may have been implemented, this is certainly not the case for all such as portable fuel container replacement rule, reduce idling program, transit improvements, etc. Even if the State has adopted some measures in a category, that doesn't preclude the State from adopting additional measures in the same category. For example, if a state had adopted a reduced idling program, the state could still implement a more stringent program across a wider portion of the vehicle fleet. Furthermore, because it is not possible to determine what control measure will be most appropriate and effective should a contingency measure be triggered at some point in the future, Michigan is not limited to selecting measures only from its list. If a contingency measure is triggered, Michigan may adopt a contingency measure from this list or chose another contingency measure which has been determined to be effective.

III. Final Action

EPA is approving the LMPs for the Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County areas in Michigan for the 1997 ozone NAAQS. EPA finds the LMPs are adequate to provide for maintenance of the 1997 ozone NAAQS in these areas through the end of the second 10-year portion of the maintenance period.

IV. Statutory and Executive Order Reviews

Under section 175A of 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 it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 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,

Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 21, 2020.

Kurt A. Thiede,

Regional Administrator, Region 5.

Amend 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by revising the three entries for ''1997 8-hour ozone'' under ''Maintenance Plans'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Maintenance Plans				
*	*	*	*	*
1997 8-hour ozone	Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek, Lansing-East Lansing, and Mason County.	7/24/2019	3/6/2020, [insert **Federal Register** citation].	2nd limited maintenance plan.
1997 8-hour ozone	Benton Harbor, Cass County, and Muskegon	6/13/2006, 8/25/2006, and 11/30/2006.	5/16/2007, 72 FR 27425.	
1997 8-hour ozone	Detroit-Ann Arbor	3/6/2009	6/29/2009, 74 FR 30950.	
*	*	*	*	*

* * * * *

[FR Doc. 2020–04356 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0130; FRL–10004–08]

Trifloxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of trifloxystrobin in or on pea and bean, dried shelled, except soybean, subgroup 6C. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 6, 2020. Objections and requests for hearings must be received on or before May 5, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0130, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0130 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 5, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0130, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 7, 2019 (84 FR 26630) (FRL–9993–93), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F8729) by Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide, trifloxystrobin (benzeneacetic acid, (*E,E*)-alpha-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-methyl ester) and the free form of its acid metabolite CGA–321113 ((*E,E*)-methoxyimino-[2-[1-(3-trifluoromethylphenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid) in or on dried shelled pea and bean (except soybean) subgroup 6C at 0.06 parts per million (ppm). That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the crop group name to be consistent with Agency nomenclature.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for trifloxystrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with trifloxystrobin follows.

On February 15, 2019 (84 FR 4340) (FRL–9985–23), EPA published in the **Federal Register** a final rule establishing a tolerance for residues of the fungicide trifloxystrobin in or on flax seed and amending an existing tolerance for aspirated grain fractions based on the Agency's conclusion that aggregate exposure to trifloxystrobin is safe for the general population, including infants and children. *See* 84 FR 4340 (FRL–9985–23). That document contains a summary of the toxicological profile and points of departure, assumptions for exposure assessment, and Agency's determination regarding the children's safety factor, which have not changed. The Agency conducted a revised risk assessment to incorporate additional exposure to residues of trifloxystrobin approved since that rulemaking and including the use on pea and bean, dried shelled, except soybean, subgroup 6C.

EPA's exposure assessments have been updated to include the additional exposure from use of trifloxystrobin from use on pea and bean, dried shelled, except soybean, subgroup 6C, *i.e.,* reliance on tolerance-level residues and an assumption of 100 percent crop treated (PCT). EPA's aggregate exposure assessment incorporated this additional dietary exposure, as well as exposure in drinking water and from residential sources, although those latter exposures are not impacted by the new uses on pea and bean and thus have not changed since the last assessment. Further information about EPA's risk assessment and determination of safety supporting the tolerances established in the February 15, 2019 **Federal Register** action, as well as the new trifloxystrobin tolerance can be found at *http://www.regulations.gov* in the document entitled ''Trifloxystrobin. Human Health Risk Assessment for the Proposed New Use on Flax Seed and Increase of Established Tolerance on Aspirated Grain Fractions,'' dated October 31, 2018, in docket ID EPA–HQ–OPP–2017–0532.

Acute dietary risks are below the Agency's level of concern: 3.4% of the acute population adjusted dose (aPAD) for females 13 to 49 years old, the only population group of concern. Chronic dietary risks are below the Agency's level of concern: 58% of the chronic population adjusted dose (cPAD) for all infants less than 1 year old, the group with the highest exposure. There is not expected to be any handler exposure, and there is no adverse systemic hazard via the dermal route of exposure, so the only residential post-application scenario assessed was for the incidental short-term oral exposure of children 1 to less than 2 years old. Using the exposure assumptions described for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs above the LOC of 100 for all scenarios assessed and are not of concern.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to trifloxystrobin residues. More detailed information on the subject action to establish a tolerance in or on pea and bean, dried shelled, except soybean, subgroup 6C can be found in the document entitled, ''Trifloxystrobin. Human Health Aggregate Risk Assessment for New Use on Dry Beans and Proposed Crop Group Expansion from Dry Pea to Crop

Subgroup 6C'' by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2019–0130.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography method with nitrogen phosphorus detection (GC/NPD)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has established an MRL of 0.01 ppm for several of the commodities in subgroup 6C with the exception of broad bean, chickpea, cowpea, guar, lupin, blackeyed pea, crowder pea, pigeon pea and southern pea for which no MRL is established. U.S. tolerances for residues in the commodities of subgroup 6C are not harmonized with Codex. Since the Codex MRL is significantly lower for some commodities, harmonization is not possible because lowering the U.S. tolerance could cause U.S. growers to have violative residues despite legal use of the pesticide.

V. Conclusion

Therefore, tolerances are established for residues of trifloxystrobin in or on pea and bean, dried shelled, except soybean, subgroup 6C at 0.06 ppm. Additionally, the existing tolerance on ''pea, dry, seed'' is removed as unnecessary since it is part of the new subgroup 6C tolerance.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.555, amend the table in paragraph (a) as follows:

■ a. Add alphabetically the entry for ''Pea and bean, dried shelled, except soybean, subgroup 6C''; and

■ b. Remove the entry for ''Pea, dry, seed''.

The addition reads as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pea and bean, dried shelled, except soybean, subgroup 6C	0.06
* * * * *	

* * * * *

[FR Doc. 2020–04208 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2018–0320; FRL–10005–48]

RIN 2070–AK21

Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing requirements for regulated entities to substantiate certain confidential business information (CBI) claims made under the Toxic Substances Control Act (TSCA) to protect the specific chemical identities of chemical substances on the confidential portion of the TSCA Inventory, and the Agency's plan for reviewing certain CBI claims for specific chemical identities. The substantiation requirements describe the applicable procedures and provide instructions for regulated entities. The Agency's plan sets out the review criteria and related procedures that EPA will use to complete the reviews within the five-year timeframe set in TSCA.

DATES: This final rule is effective on May 5, 2020.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0320, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Scott M. Sherlock, Environmental Assistance Division (Mail code 7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@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. Executive Summary

A. What action is the Agency taking?

This final rule establishes the CBI substantiation requirements for manufacturers (which under TSCA includes importers) and processors who claimed specific chemical identities as CBI in previously filed Notices of Activity (NOAs) Form A (Ref. 1) in accordance with the 2017 TSCA Inventory Notification (Active-Inactive) Requirements rule (hereinafter ''2017 Active-Inactive Rule,'' which is summarized in more detail in Unit III and codified in 40 CFR part 710, subpart B) (Ref. 2). This final rule also amends the existing CBI substantiation requirements for manufacturers and processors who have filed or will file NOAs Form B (Ref. 3) and claimed or claim specific chemical identities as CBI. Manufacturers and processors who previously provided substantiations in NOAs Form A or B for CBI claims for specific chemical identities pursuant to the 2017 Active-Inactive Rule will be required to supplement those substantiations to include responses to two new questions related to a specific chemical identity's susceptibility to reverse engineering. All substantiations must be submitted to the Agency using EPA's Central Data Exchange (CDX), the Agency's electronic reporting portal.

This final rule describes the Agency's plan to review the CBI claims for specific chemical identities that were asserted in NOAs Form A during the one-time retrospective reporting period under the 2017 Active-Inactive Rule, including procedures for the Agency's publication of annual review goals and results. EPA will review each specific chemical identity CBI claim and substantiation, and approve or deny each claim consistent with the procedures and substantive criteria in TSCA sections 8(b)(4) and 14 and 40 CFR part 2, subpart B.

EPA is amending the existing regulations in 40 CFR part 710, subpart B, and is adding provisions about the NOA Form A substantiation process and the Agency's review plan to a new subpart C.

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

EPA is issuing this rule pursuant to the authority in TSCA section 8(b), 15 U.S.C. 2607(b).

C. Why is the Agency taking this action?

TSCA section 8(b)(4)(C) requires EPA to promulgate a rule that establishes the Agency's plan to review all CBI claims for the specific chemical identities of chemical substances on the confidential portion of the TSCA Inventory that were asserted in an NOA Form A pursuant to the one-time retrospective reporting under the 2017 Active-Inactive Rule. The 2017 Active-Inactive Rule required any reporter who sought to maintain an existing CBI claim for a specific chemical identity to assert that claim as part of the submission of an NOA Form A, but the rule did not require substantiation of those claims at that time. This final rule implements the statutory substantiation and review requirements so as to ensure that only those specific chemical identities that currently qualify for confidential treatment are protected from disclosure by the Agency.

This final rule also addresses a Federal court remand of the 2017 Active-Inactive Rule by amending that rule to add two substantiation questions which will be applicable to all NOA Form B reporters who seek to maintain an existing CBI claim for a specific chemical identity, and by including the same two questions in the newly finalized substantiation requirements for NOA Form A reporters who seek to maintain an existing CBI claim for a specific chemical identity. These substantiation questions address whether a specific chemical identity is readily discoverable through reverse engineering and will ensure the submission of information that EPA will use to evaluate CBI claims for specific chemical identities.

D. Who does this action apply to?

You may be affected by this action if you reported a confidential chemical substance under the 2017 Active-Inactive Rule using an NOA Form A or NOA Form B and sought to maintain an existing CBI claim for a specific chemical identity. You may also be affected by this action if you anticipate

reporting a confidential chemical substance under the 2017 Active-Inactive Rule through an NOA Form B in the future and anticipate seeking to maintain an existing CBI claim for a specific chemical identity at that time. The following North American Industrial Classification System (NAICS) codes are not intended to be exhaustive, but rather provide a guide to help readers determine whether this action may apply to them:

- Chemical manufacturing or processing (NAICS code 325).
- Petroleum and coal products manufacturing (NAICS code 324).

''Manufacture'' is defined in TSCA section 3(9) (15 U.S.C. 2602(9)) and 40 CFR 710.3(d) to include ''import.'' Accordingly, all references to manufacture in this document should be understood to include import.

If you have any questions regarding the applicability of this action to a particular entity after reading the regulatory text, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential incremental impacts of this rulemaking in an economic analysis (EA), titled ''Economic Analysis for the Final Rule: Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory'' (Ref. 4), which is available in the docket, discussed in Unit IV., and briefly summarized here.

1. Benefits. The benefits of the rule include improvements in the management of CBI claims for specific chemical identities, including a decrease in the number of unsupported claims of confidentiality. There would also be a corresponding increase in transparency for the public with regard to specific chemical identity information. Overall, the rule results in a more efficient means of enacting the various requirements and duties prescribed to EPA in TSCA, while also providing the potential for a greater level of transparency with regard to the specific chemical identities of chemical substances on the TSCA Inventory.

2. Costs. Over the course of the first ten years after the effective date of the final rule, EPA estimates a one-time total burden and cost for regulated entities of 5,259 hours and approximately $407,000, respectively and an ongoing, annual burden and cost of approximately 0.38 hours and $29, respectively.

II. Background

A. How were CBI claims for specific chemical identities addressed in the 2017 Active-Inactive Rule?

Pursuant to TSCA section 8(b), the 2017 Active-Inactive Rule (codified in 40 CFR part 710, subpart B) required manufacturers, and allowed processors, to report those chemical substances on the TSCA Inventory that were manufactured or processed for a nonexempt commercial purpose during the 10-year time period ending on June 21, 2016. EPA used these retrospective notifications—filed on an NOA Form A—to designate chemical substances as ''active'' or ''inactive,'' and EPA now includes those active and inactive designations on the TSCA Inventory. Going forward, the 2017 Active-Inactive Rule requires notification if manufacturing or processing of an inactive chemical substance for a nonexempt commercial purpose is expected to resume. On receiving such a forward-looking notification—filed on an NOA Form B—EPA will change the designation of the pertinent chemical substance on the TSCA Inventory from inactive to active. The one-time submission period for NOA Form A ended on October 5, 2018, while the NOA Form B is submitted on an ongoing basis.

Consistent with TSCA sections 8(b)(4)(B)(ii) and (5)(B)(ii), the 2017 Active-Inactive Rule provided that manufacturers and processors filing an NOA Form A or B could seek to maintain an existing CBI claim for a specific chemical identity by including such a request on their NOA Form A or B, through the process established in 40 CFR 710.37(a). NOA Form A submitters were permitted to voluntarily substantiate their CBI claims for specific chemical identities at the time of filing their NOA Form A by answering the substantiation questions set forth in 40 CFR 710.37(c). NOA Form B submitters were (and are, subject to the amendments effectuated through this rule) required to substantiate their CBI claims not later than 30 days after submitting their NOA Form B by answering the same substantiation questions.

On April 26, 2019, the U.S. Court of Appeals for the District of Columbia Circuit entered a judgment in *Environmental Defense Fund* v. *EPA,* 922 F.3d 446 (D.C. Cir. 2019), granting in part and denying in part a petition for review of the 2017 Active-Inactive Rule (Ref. 5). The court decision impacted the CBI substantiation provisions set forth in 40 CFR 710.37 as discussed in more detail in the supplemental proposed rule (Ref. 6).

B. What did EPA propose?

On April 23, 2019, EPA proposed to establish a plan to review all CBI claims for specific chemical identities asserted in an NOA Form A, including the procedures for submitter substantiation and EPA review of those claims (Ref. 7).

In response to the court decision of April 26, 2019, EPA issued a supplemental proposed rule on November 8, 2019 that included revisions to the existing substantiation requirements in the 2017 Active-Inactive Rule at 40 CFR 710.37 and supplemented the proposed rule issued in April 2019. Specifically, EPA proposed two additional questions addressing a specific chemical identity's susceptibility to reverse engineering that manufacturers and processors would be required to answer to substantiate CBI claims for specific chemical identities asserted in an NOA Form A or B; and proposed procedures for manufacturers and processors to use in supplementing substantiations that had already been submitted under the 2017 Active-Inactive Rule to include responses to the two additional questions.

C. Public Comments

EPA received seven comments during the public comment period for the proposed rule, and an additional five comments during the comment period for the supplemental proposed rule. Submitted comments generally focused on the Agency's proposed substantiation and review processes as well as the duration of protection of CBI from disclosure. A number of commenters requested clarification or provided suggestions that EPA considered in preparing this final rule. EPA has summarized the comments and provided detailed responses in a Response to Comments document that is available in the docket (Ref. 8).

III. Final Rule

After careful consideration of the public comments received, EPA is finalizing the substantiation requirements and the Agency's review plan as discussed in this unit.

A. CBI Claims for Specific Chemical Identities Asserted in NOAs Form A

1. Substantiation Requirements

a. Scope. This final rule establishes the substantiation requirements for manufacturers and processors who previously filed NOAs Form A seeking to maintain existing CBI claims to protect the specific chemical identities of active chemical substances on the

confidential portion of the TSCA Inventory.

b. Persons subject to substantiation requirements. This final rule provides that any person who filed an NOA Form A requesting to maintain an existing CBI claim for a specific chemical identity must substantiate that confidentiality claim by addressing the substantiation questions in this rule, unless the person is eligible for an exemption. There are two exemptions in this rule which set forth reduced requirements for certain persons who have previously substantiated their CBI claims. These exemptions are substantively unchanged from the supplemental proposed rule.

The first exemption applies to those persons who previously completed the voluntary substantiation process set forth in the 2017 Active-Inactive Rule at 40 CFR 710.37(a)(1). These persons may rely on their previously submitted substantiation in lieu of answering the first six substantiation questions in this rule, and are only required to submit answers to the two questions relevant to reverse engineering that are being finalized in 40 CFR 710.45(b)(7) and (8), signed and dated by an authorized official, and to complete the certification statement in 40 CFR 710.37(e).

The second exemption applies to those persons who previously substantiated their CBI claims for specific chemical identities in different submissions made to EPA less than five years before the substantiation deadline set forth in this rule. So long as that prior substantiation contains information that is responsive to all substantiation questions set forth in this rule at 40 CFR 710.45, these persons may rely on their prior substantiation in lieu of answering the substantiation questions in this rule. To establish eligibility for this exemption and to ensure that EPA can locate and match the prior substantiation with the proper NOA Form A filer, persons who seek to rely on this exemption must report to EPA the submission date; submission type; and case number, transaction ID, or equivalent identifier for the previous submission that contained the substantiation, not later than the deadline specified in this rule. For example, substantiations for CBI claims for specific chemical identities submitted with 2016 or 2020 Chemical Data Reporting (CDR) submissions in accordance with the substantiation procedures at 40 CFR 711.30(b)(1), or with Notices of Commencement (NOCs) in accordance with the substantiation procedures at 40 CFR 720.85(b)(3)(iv), serve as a basis for this exemption.

A person who is eligible for an exemption may choose whether to take advantage of the reduced reporting under this rule afforded by the exemption or submit a new full substantiation in accordance with all requirements of this rule. Persons who have previously submitted a substantiation may prefer to complete a new substantiation under this rule if, for example, they wish to provide updated or additional information to support their CBI claim for a specific chemical identity.

c. Contents of substantiation. The final rule provides that a person substantiating a CBI claim for a specific chemical identity must submit written answers to the questions set forth in the rule at 40 CFR 710.45, signed and dated by an authorized official, and complete a certification statement. If information submitted in response to the substantiation questions is itself claimed as CBI, the submitter must clearly indicate such by marking that information as CBI.

In response to public comments, EPA has revised several of the proposed substantiation questions to improve clarity and reduce any unnecessary burden. First, EPA has chosen not to finalize one proposed question that asked whether the information claimed as confidential is exempt from substantiation pursuant to TSCA section 14(c)(2). EPA agrees with several commenters who noted that the question was neither necessary nor appropriate because no TSCA section 14(c)(2) exemption would ever apply to the CBI claims for specific chemical identities at issue in this rule. Second, in response to comments, EPA has clarified several of the substantiation questions proposed. While these questions remain substantively the same as those proposed (which, with the exception of the two reverse engineering questions addressed in the supplemental proposal, were identical to the questions in the 2017 Active-Inactive Rule at 40 CFR 710.37(c)), they have been re-written for clarity and to more clearly solicit answers potentially more responsive to the substantive criteria the Agency employs in making CBI determinations. Relevant public comments and the resulting changes to the substantiation questions are discussed in greater detail in the Response to Comments document (Ref. 8).

Most notably, EPA divided into three sub-questions the proposed substantiation question asking whether the confidential information appears in any public documents. Though the question as originally worded was intended to capture information in patents and patent applications, state, local, or Federal agency files, and any document required to be publicly disclosed under any other Federal law, EPA rewrote the question to make this more explicit. In addition, EPA clarified the proposed reverse engineering question asking whether the chemical substance can be identified by analysis of the product. The finalized question asks more directly whether the specific chemical identity can be readily discovered by analysis of the substance (*e.g.,* product, effluent, or emission), in light of existing technologies and any associated costs, difficulties, or limitations. Finally, EPA clarified the proposed substantiation question pertaining to substantial competitive harm to make clearer that responses should include an explanation of how a competitor could use such information and the causal relationship between the disclosure and the harmful effects.

d. When to submit substantiation or information on previous substantiation. The final rule provides at 40 CFR 710.47 that manufacturers and processors seeking to maintain CBI claims for specific chemical identities asserted in an NOA Form A will have 180 days from the effective date of the rule to submit substantiations, including responses to the two new substantiation questions, or, in the case of one of the exemptions, information identifying a previously submitted substantiation. This deadline applies to all persons who asserted CBI claims for specific chemical identities in an NOA Form A, including (1) persons newly substantiating their claims; (2) persons who voluntarily substantiated under the 2017 Active-Inactive Rule and need only submit responses to two substantiation questions under this rule; and (3) persons who substantiated their claims in some other submission within the last five years and need only submit information identifying that prior substantiation. EPA is finalizing a 180-day deadline in response to several comments from industry groups expressing concerns about meeting the proposed 90-day deadline.

e. Failure to report. In the proposed rule, EPA addressed the situation where a person filed an NOA Form A and asserted a CBI claim for a specific chemical identity, but never, either as a voluntary submission or per this rule, provided a substantiation or notice of prior substantiation. EPA had proposed to treat the CBI claim for a specific chemical identity as deficient because no substantiation was provided or referenced and proposed that the Agency may release the specific

chemical identity to the public without further notice to the NOA Form A submitter. In response to comments, the final rule provides that when a person who asserted a CBI claim for a specific chemical identity in an NOA Form A failed to timely submit a substantiation or notice of prior substantiation, the CBI claim will be denied, and the submitter will be provided notice and an opportunity to seek judicial review of the final confidentiality determination in accordance with TSCA section 14(g)(2) and 40 CFR 2.306(e).

f. Electronic filing. The final rule provides that information must be submitted electronically via CDX in accordance with the existing regulation at 40 CFR 710.39. Prior to submission, this information must be generated and completed using the e-NOA software module. This is unchanged from what was proposed.

g. *Record-keeping requirements.* The final rule provides that persons subject to this rule must retain records for a period of five years beginning on the last day of the submission period. This is unchanged from what was proposed.

2. EPA's Review Plan

This final rule also addresses the CBI claim review process, the duration of protection from disclosure, TSCA Inventory updates, the posting of annual review goals and results, and the timeframe for completion of Agency reviews. These provisions are substantively unchanged from the proposal.

a. Review criteria and procedures. The final rule provides that CBI claims for specific chemical identities asserted in NOAs Form A will be reviewed and approved or denied in accordance with the criteria and procedures in TSCA section 14 and 40 CFR part 2, subpart B. The final rule differs from the proposal in that a TSCA section 14 reference is added to the regulatory text to make explicit that the Agency's review criteria and procedures will follow the statutory requirements of TSCA. To the extent that there is any conflict between TSCA section 14 and 40 CFR part 2, subpart B, the statutory provision controls.

b. Duration of protection from disclosure. The final rule provides that a specific chemical identity whose CBI claim was approved by EPA will generally be protected from disclosure for a period of 10 years from the date on which the confidentiality claim was first asserted by any submitter after June 22, 2016. The main exceptions to this period of protection from disclosure are (1) that if prior to the expiration of the period, the claimant notifies EPA that the person is withdrawing the confidentiality claim, EPA will not protect the information from disclosure from that date forward; or (2) if EPA otherwise becomes aware that the information does not qualify for protection from disclosure, the Agency will take the actions described in TSCA section 14(g)(2) to notify the claimant of EPA's intent to disclose the information. The period of protection is also subject to the exceptions and extensions to protection from disclosure enumerated in TSCA section 14. This is unchanged from what was proposed.

c. *Updating the TSCA Inventory.* The final rule provides that EPA will periodically update the TSCA Inventory based on the results of the reviews of the confidentiality claims for a specific chemical identity. This is unchanged from what was proposed.

d. *Posting annual goals and numbers of reviews completed.* The final rule provides that at the beginning of each calendar year until all reviews are completed, EPA will publish an annual goal for reviews and the number of reviews completed in the prior year on the Agency website. This activity will begin in 2021, because substantiations are not required to be submitted to EPA until late 2020. The setting of annual review goals will take into consideration the number of claims needing review, available resources, and the statutory target completion date for all reviews to be completed not later than February 19, 2024. The final rule reflects a minor modification from the proposal to clarify that the posting of annual goals and number of reviews completed will cease upon completion of all reviews.

e. *Extension.* The final rule provides, consistent with the statute, that in the event that EPA determines that the target completion date cannot be met based on the number of claims needing review and the available resources, then EPA will publish a notice in the **Federal Register** announcing an extension of the deadline to complete its review of all confidentiality claims. The extension may not be for more than two additional years. EPA will provide an explanation of the reasons for the extension in the **Federal Register**. This is unchanged from what was proposed.

B. CBI Claims for Specific Chemical Identities Asserted in NOAs Form B

This final rule amends existing substantiation requirements set forth in 40 CFR 710.37(a)(2) and (c)(2) for CBI claims for specific chemical identities asserted in an NOA Form B. These amendments add two substantiation questions relevant to a specific chemical identity's susceptibility to reverse engineering, which claimants will be required to answer when substantiating such CBI claims in the future. The amendments also require any person who has already submitted an NOA Form B and substantiation on that form before the effective date of this final rule to supplement that substantiation within 30 days of the effective date of the final rule by adding responses to the two new questions. All other existing regulatory provisions in 40 CFR 710.37 applicable to the assertion, substantiation, certification, and review of CBI claims remain unchanged.

IV. Economic Analysis

The estimated incremental impacts of this rulemaking are briefly summarized in this unit and the complete Economic Analysis is available in the docket (Ref. 4). The rule requirements involve an incremental reporting effort for respondents who asserted CBI claims for one or more specific chemical identities in NOAs Form A during the one-time reporting period in 40 CFR part 710, subpart B. The rule requirements also involve an incremental reporting effort for respondents who assert(ed) CBI claims for one or more specific chemical identities in NOAs Form B. These reporting efforts consist of activities that are the same as or similar to those in the 2017 Active-Inactive Rule.

Respondents who submitted an NOA Form A and would potentially be subject to an incremental reporting effort fall into three groups based on the information provided in their submission. The first group (Group (1)) consists of those respondents who voluntarily submitted upfront CBI substantiation as part of the NOA submission process. The second group (Group (2)) consists of those respondents who did not voluntarily submit upfront CBI substantiation, but will be able to use the exemption offered under this rule by referencing a previous substantiation, such as one submitted under the 2016 or 2020 Chemical Data Reporting (CDR) rule (40 CFR part 711) or with a Notice of Commencement. The third group (Group (3)) consists of the remaining respondents who did not voluntarily submit upfront CBI substantiation in their NOA Form A submissions and would be required to provide full substantiation under this rule.

In addition to the three NOA Form A reporting groups, respondents who assert(ed) CBI claims for one or more specific chemical identities in NOAs Form B are subject to an incremental reporting effort. This includes respondents who will submit an NOA Form B as part of ongoing reporting, as

well as a set of 54 companies who asserted CBI claims for one or more specific chemical identities in NOAs Form B that was submitted during a one-time transitional reporting period.

Under this rule, the 275 companies who asserted CBI claims for one or more specific chemical identities in NOAs Form A incur a one-time burden and cost. For Group (1), the average one-time burden and costs per company are estimated at approximately 7 hours and $543, respectively (involving an average of 21 chemicals per company) for rule familiarization, providing answers for two substantiation questions relating to reverse engineering, and recordkeeping. For Group (2), the average one-time burden and costs per company are estimated at 5 hours and $390, respectively (involving an average of four chemicals per company), for rule familiarization, identification of a previous substantiation, and recordkeeping. For Group (3), the average one-time burden and costs per company are estimated at 39 hours, and $3,039, respectively (involving an average of 27 chemicals per company), for rule familiarization, full substantiation, and recordkeeping.

Respondents who have filed or will file an NOA Form B that asserts a CBI claim for a specific chemical identity would be required to provide answers for two additional substantiation questions relating to reverse engineering. For NOA Form B submissions occurring on an annual basis, the average incremental burden and costs per company are estimated at approximately 0.38 hours and $29, respectively (involving an average of two chemicals per company). For the 265 NOA Form B submissions from a total of 54 companies that were received during a one-time transitional reporting period, the total one-time burden and cost across all companies are estimated at approximately 50 hours and $3,903, respectively.

The burden and cost estimates associated with the rule include a one-time burden associated with NOA Form A submissions, as well as an ongoing burden and one-time burden associated with NOA Form B submissions. A total of 275 companies are subject to a one-time burden associated with substantiating CBI claims for specific chemical identities asserted in NOAs Form A, including: Group (1), consisting of 149 companies, Group (2), consisting of 23 companies, and Group (3), consisting of 103 companies. The ongoing burden associated with NOA Form B submissions is based on the expectation that each year one company will submit an NOA Form B that includes CBI claims for two specific chemical identities and, therefore, incur a burden associated with ongoing reporting. Additionally, the one-time burden and cost estimates associated with this rule take into account a set of 265 NOA Form B submissions from a total of 54 companies that were received during a one-time transitional reporting period.

The total burden and costs associated with this rule consist of a one-time burden and cost for regulated entities estimated at 5,259 hours and $406,852 and an ongoing annual burden and cost estimated at approximately 0.38 hours and $29 for each year of a ten-year period. The equivalent annualized costs are expected to be $47,729 at a three percent discount rate and $57,968 at a seven percent discount rate (Ref. 4).

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Notice of Activity Form A; Final, 2017.
2. EPA. TSCA Inventory Notification (Active-Inactive) Requirements; Final Rule. **Federal Register**, 82 FR 37520, August. 11, 2017 (FRL–9964–22).
3. EPA. Notice of Activity Form B; Final, 2017.
4. EPA. Economic Analysis for the Final Rule: Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory (RIN 2070–AK21). February 4, 2020.
5. U.S. Court of Appeals for the District of Columbia Circuit entered a judgment in *Environmental Defense Fund* v. *EPA,* 922 F.3d 446 (DC Cir. 2019).
6. EPA. Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory; Revisions to the CBI Substantiation Requirements; Supplemental notice of proposed rulemaking. **Federal Register**, 84 FR 60363, November 8, 2019 (FRL–10001–44).
7. EPA. Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory; Proposed Rule. **Federal Register**, 84 FR 16826, April 23, 2019 (FRL–9992–05).
8. EPA. Response to Comments on the Proposed Rule, Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory. February 4, 2020.
9. EPA. Information Collection Request (ICR) Supporting Statement. Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory (Notice of Activity Form As). EPA ICR No.: 2594.03, OMB Control No.: 2070–0210. February 4, 2020.

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 the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not a regulatory action under Executive Order 13771 (82 FR 9339, February 3, 2017) 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 the Office of Management and Budget (OMB) under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Requests (ICR) are assigned EPA ICR number ICR No. 2594.03 and OMB Control No. 2070–0210 (Ref. 9). You can find a copy of the ICR in the docket and it is briefly summarized here.

The reporting requirements identified in this action will provide EPA with information necessary to evaluate confidentiality claims and determine whether the claims qualify for protection from disclosure. EPA will review each CBI claim for specific chemical identity and related substantiation, and approve or deny each claim consistent with the procedures and substantive criteria in TSCA sections 8(b)(4) and 14 and 40 CFR part 2, subpart B.

Respondent's obligation to respond: Mandatory under TSCA section 8 and 40 CFR part 710.

Estimated total number of potential respondents: 329 companies (one time) and 1 company annually (ongoing).

Frequency of response: Once per chemical substance.

Estimated total burden: 5,259 hours (one time) and 0.38 hours annually (ongoing). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: $406,852 (one time) and $29 annually (ongoing), includes no annualized capital investment or maintenance and operational costs.

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 and are displayed on the related collection instrument or form. When OMB approves this ICR, 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 activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The small entities subject to the requirements of this action are manufacturers (including importers) and processors of chemical substances. The estimated economic impacts on small entities are presented in the Economic Analysis, (Ref. 4), which is available in the docket and briefly summarized here.

As a conservative approach, this small entity analysis applies the highest unit cost to all small entities. When considering the highest estimated average cost per company, the rule is not anticipated to have cost impacts greater than 1% on any small entities. Details of this analysis are included in the accompanying Economic Analysis for this final rule (Ref. 4).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is not expected to impose enforceable duty on any state, local or tribal governments, and the requirements imposed on the private sector are not expected to result in annual expenditures of $100 million or more for the private sector. As such, EPA has determined that the requirements of UMRA sections 202, 203, 204, or 205 do not apply to this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, E.O. 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on energy supply, distribution, or use.

J. National Technology Transfer and Advancement Act (NTTAA)

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

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not establish an environmental health or safety standard. This action establishes an information requirement and does not affect the level of protection provided to human health or the environment.

VII. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and 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 710

Environmental protection, Chemicals, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 19, 2020.

Andrew R. Wheeler,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, is amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a) and (b).

Subpart B—Commercial Activity Notification

■ 2. Amend § 710.37 by adding paragraph (a)(2)(i) and reserved paragraph (a)(2)(ii) and revising paragraph (c)(2) to read as follows:

§ 710.37 Confidentiality claims.

(a) * * *

(2) * * *

(i) Persons who submitted the information described in paragraph (a)(2) of this section before May 5, 2020 must submit answers to the questions in paragraphs (c)(2)(ii) and (iii) of this section not later than June 4, 2020.

(ii) [Reserved]

* * * * *

(c) * * *

(2) *Substantiation for confidentiality claims for specific chemical identity.* (i) Is the confidential chemical substance publicly known to have ever been offered for commercial distribution in the United States? If you answered yes, explain why the information should be treated as confidential.

(ii) Does this particular chemical substance leave the site of manufacture (including import) or processing in any form, *e.g.,* as a product, effluent, or emission? If yes, please explain what measures have been taken, if any, to guard against the discovery of its identity.

(iii) If the chemical substance leaves the site in a form that is available to the public or your competitors, can the chemical identity be readily discovered by analysis of the substance (*e.g.,* product, effluent, or emission), in light of existing technologies and any costs, difficulties, or limitations associated with such technologies? Please explain why or why not.

* * * * *

■ 3. Add subpart C to read as follows:

Subpart C—Review Plan

Sec.

§ 710.41 Scope.

This subpart applies to the substantiation and review of claims of confidentiality asserted in Notices of Activity Form A to protect the specific chemical identities of chemical substances.

§ 710.43 Persons subject to substantiation requirement.

(a) *Who must substantiate.* Any person who filed a Notice of Activity Form A requesting to maintain an existing confidentiality claim for a specific chemical identity must substantiate that confidentiality claim as specified in §§ 710.45 and 710.47 unless eligible for an exemption in paragraph (b) of this section.

(b) *Exemptions.* (1) Any person who completed the voluntary substantiation process set forth in § 710.37(a)(1) is exempt from the substantiation requirement of this subpart pertaining to the submission of answers to the questions in § 710.45(b)(1) through (6). All remaining requirements of § 710.45 must be met in accordance with the deadline specified in § 710.47(a), including the requirement to submit answers to the questions in § 710.45(b)(7) and (8), signed and dated by an authorized official, and to complete the certification statement in § 710.37(e).

(2) A person who has previously substantiated the confidentiality claim for a specific chemical identity that the person requested to maintain in a Notice of Activity Form A, by submitting information that is responsive to all questions in § 710.45, is exempt from the substantiation requirement of this subpart if both of the following conditions are met:

(i) The previous substantiation was submitted to EPA on or after November 1, 2015; and

(ii) The person reports to EPA the submission date, submission type, and case number, transaction ID, or equivalent identifier for the previous submission that contained the substantiation, not later than the deadline specified in § 710.47.

§ 710.45 Contents of substantiation.

(a) *The submission.* A person substantiating a confidentiality claim for a specific chemical identity must submit written answers to the questions in paragraph (b) of this section, signed and dated by an authorized official, and complete the certification statement in § 710.37(e). If any of the information contained in the answers to the questions listed in paragraph (b) of this section is itself claimed as confidential, the submitter must clearly indicate such by marking that information as confidential business information.

(b) *Substantiation questions.* (1) Will disclosure of the information claimed as confidential likely cause substantial harm to your business's competitive position? If you answered yes, describe the substantial harmful effects that would likely result to your competitive position if the information is disclosed, including but not limited to how a competitor could use such information and the causal relationship between the disclosure and the harmful effects.

(2) To the extent your business has disclosed the information to others (both internally and externally), has your business taken precautions to protect the confidentiality of the disclosed information? If yes, please explain and identify the specific measures, including but not limited to internal controls, that your business has taken to protect the information claimed as confidential.

(3)(i) Is any of the information claimed as confidential required to be publicly disclosed under any other Federal law? If yes, please explain.

(ii) Does any of the information claimed as confidential otherwise appear in any public documents, including (but not limited to) safety data sheets; advertising or promotional material; professional or trade publications; state, local, or Federal agency files; or any other media or publications available to the general public? If yes, please explain why the information should be treated as confidential.

(iii) Does any of the information claimed as confidential appear in one or more patents or patent applications? If yes, please provide the associated patent number or patent application number (or numbers) and explain why the information should be treated as confidential.

(4) Is the claim of confidentiality intended to last less than 10 years? If yes, please indicate the number of years (between 1–10 years) or the specific date/occurrence after which the claim is withdrawn.

(5) Has EPA, another Federal agency, or court made any confidentiality determination regarding information associated with this chemical substance? If yes, please provide the circumstances associated with the prior determination, whether the information was found to be entitled to confidential treatment, the entity that made the decision, and the date of the determination.

(6) Is the confidential chemical substance publicly known (including by your competitors) to have ever been offered for commercial distribution in the United States? If yes, please explain why the specific chemical identity should still be afforded confidential status (*e.g.,* the chemical substance is publicly known only as being distributed in commerce for research and development purposes, but no other information about the current commercial distribution of the chemical substance in the United States is publicly available).

(7) Does this particular chemical substance leave the site of manufacture (including import) or processing in any form, *e.g.,* as a product, effluent, or emission? If yes, please explain what measures have been taken, if any, to guard against the discovery of its identity.

(8) If the chemical substance leaves the site in a form that is available to the public or your competitors, can the chemical identity be readily discovered by analysis of the substance (*e.g.,* product, effluent, or emission), in light of existing technologies and any costs, difficulties, or limitations associated with such technologies? Please explain why or why not.

§ 710.47 When to submit substantiation or information on previous substantiation.

(a) All persons required to substantiate a confidentiality claim pursuant to § 710.43(a) or (b)(1) must submit their substantiation not later than November 1, 2020.

(b) All persons who seek an exemption under § 710.43(b)(2) must submit the information specified in

§ 710.43(b)(2)(ii) not later than November 1, 2020.

§ 710.49 Failure to report.

If neither the substantiation required under § 710.43(a) or (b)(1), nor the information specified in § 710.43(b)(2)(ii), is submitted to EPA in accordance with the provisions of this subpart, then EPA will deny the confidentiality claim in accordance with the procedures set forth in TSCA section 14(g)(2) and 40 CFR part 2, subpart B.

§ 710.51 Electronic filing.

EPA will accept information submitted under this subpart only if submitted in accordance with § 710.39.

§ 710.53 Recordkeeping requirements.

Each person who is subject to this part must retain records that document any information reported to EPA. Records must be retained for a period of 5 years beginning on the last day of the submission period.

§ 710.55 Claim review, duration of protection, TSCA Inventory maintenance, posting results, and extension.

(a) *Review criteria and procedures.* Except as set forth in this subpart, confidentiality claims for specific chemical identities asserted in Notices of Activity Form A will be reviewed and approved or denied in accordance with the criteria and procedures in TSCA section 14 and 40 CFR part 2, subpart B.

(b) *Duration of protection from disclosure.* Except as provided in 40 CFR part 2, subpart B, and section 14 of TSCA, a specific chemical identity that is the subject of an approved confidentiality claim under this subpart will be protected from disclosure for a period of 10 years from the date on which the confidentiality claim was first asserted by any submitter after June 22, 2016, unless, prior to the expiration of the period, the claimant notifies EPA that the person is withdrawing the confidentiality claim, in which case EPA will not protect the information from disclosure; or EPA otherwise becomes aware that the information does not qualify for protection from disclosure, in which case EPA will take the actions described in TSCA section 14(g)(2) to notify the claimant of EPA's intent to disclose the information.

(c) *Updating the TSCA Inventory.* EPA will periodically update the TSCA Inventory based on the results of the reviews of the confidentiality claims asserted in Notices of Activity Form A.

(d) *Posting of annual goals and numbers of reviews completed.* At the beginning of each calendar year until all reviews are completed, EPA will publish an annual goal for reviews and the number of reviews completed in the prior year on the Agency website. Determination of annual review goals will take into consideration the number of claims needing review, available resources, and a target completion date for all reviews under this subpart not later than February 19, 2024.

(e) *Extension.* If EPA determines that the target completion date in paragraph (d) of this section cannot be met based on the number of claims needing review and the available resources, then EPA will publish a document in the **Federal Register** announcing the extension of the deadline to complete its review of all confidentiality claims under this subpart for not more than two additional years, together with an explanation of the reasons for the extension.

[FR Doc. 2020–03868 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–311; DA 20–148; FRS 16523]

Local Franchising Authorities' Regulation of Cable Operators and Cable Television Services

AGENCY: Federal Communications Commission.

ACTION: Interpretive rule.

SUMMARY: In this document, the Media Bureau, Federal Communications Commission (Commission), clarifies a Media Bureau order denying a motion for stay of the Commission's Third Report and Order in the above-mentioned docket.

DATES: This interpretive rule is effective on March 6, 2020 and applicable beginning February 11, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Media Bureau, Policy Division, at *Raelynn.Remy@fcc.gov* or (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Order on Reconsideration, DA 20–148, adopted and released on February 11, 2020. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *https://docs.fcc.gov/public/attachments/DA-20-148A1.docx.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. By this *Order,* we grant NCTA—The internet & Television Association's (NCTA's) Petition for Clarification [1] of the Media Bureau's Order Denying Motion for Stay of the Commission's Third Report and Order [2] in the above-captioned proceeding.[3] In its *Petition,* NCTA requests that the Bureau remove from the *Stay Denial Order* certain language in paragraph 21 that ''creates the potential for confusion and the appearance of a conflict with the *Third Report and Order.*'' In particular, NCTA asks that the Bureau excise two statements from paragraph 21. These statements are: ''The rules in the [*Third Report and Order*] did not supersede provisions in existing franchise agreements on their effective date'' and ''[i]f negotiations fail, the terms in the franchise remain in effect unless and until a cable operator challenges those terms and proves that the terms violate the [*Third Report and Order's*] requirements.''

2. After reviewing the record developed in response to the *Petition*,[4]

[1] NCTA Petition for Clarification of Order Denying Motion for Stay, MB Docket No. 05–311, filed Nov. 15, 2019 (*Petition*). Although NCTA did not title its submission as a petition for reconsideration, we will treat it as a petition for reconsideration because it seeks further review of the *Stay Denial Order.*

[2] The *Third Report and Order* became effective on September 26, 2019 (84 FR 44725, Aug. 27, 2019).

[3] An extensive discussion of the historical background of this proceeding is set forth in the *Third Report and Order* and the *Stay Denial Order* (*https://docs.fcc.gov/public/attachments/DA-19-1149A1.docx*); thus, we do not reiterate it at length here. After the *Stay Denial Order* was issued, certain municipalities sought a judicial stay of the *Third Report and Order* in the Ninth Circuit. That court subsequently transferred challenges to the *Third Report and Order* then pending before it, including the motion for judicial stay, to the Sixth Circuit.

[4] The Media Bureau issued a Public Notice seeking comment on NCTA's petition (84 FR 66186, Dec. 3, 2019). One party filed comments opposing the *Petition.* One party filed comments in support of the *Petition.*

we agree with NCTA that these statements could be interpreted ''to conflict with the *Third Report and Order's* plain directives and require procedures not mandated by the Commission.'' In particular, we note that the *Third Report and Order* states that ''[i]f a franchising authority refuses to modify any provision of a franchise agreement that is inconsistent with this Order, that provision is subject to preemption under section 636(c).'' We also note that the *Third Report and Order* ''encourage[s] the parties to negotiate franchise modifications within a reasonable time,'' and ''find[s] that 120 days should be, in most cases, a reasonable time for the adoption of franchise modifications.'' Contrary to these statements in the *Third Report and Order,* the statements that NCTA is seeking to excise from the *Stay Denial Order* could be construed as authorizing local franchising authorities (LFAs) to enforce unlawful franchise provisions unless and until a cable operator has proven to a court that they are unlawful.

3. We disagree with the National Association of Telecommunications Officers and Advisors (NATOA) that removing the relevant statements from paragraph 21 of the *Stay Denial Order* undermines our reasons for denying the stay petition. That argument ignores our two primary reasons for finding that LFAs will not suffer irreparable harm, absent a stay. First, we concluded in the *Stay Denial Order* that the injury claimed by LFAs (municipalities' loss of critical facilities and services) is speculative. We determined that localities can maintain access to critical facilities and services by adjusting revenues and expenses in response to changes in franchise fee revenue streams—for example, LFAs can maintain critical facilities and services ''either by prioritizing some in-kind contributions over others or by prioritizing in-kind contributions over the fees they would otherwise recover.'' [5] Second, we concluded that the harm alleged by LFAs (loss of free services) was an economic loss, which under well-established case law, does not, in and of itself, constitute irreparable harm. These grounds alone were sufficient for denying the administrative stay request.

4. NATOA claims that budget amendments and procurement processes to authorize payment for services previously furnished pursuant to a cable franchise are often lengthy, and that LFAs ''cannot . . . start the process without knowing what value a cable operator will assert for non-monetary franchise obligations that [would be] offset against franchise fee payments.'' [6] However, NATOA provides no evidence that any cable operator would abruptly cease services or take other unilateral action during the pendency of the appeal that would adversely affect municipalities, or create immediate or irreparable harm. Instead, as we explained in the *Stay Denial Order,* ''the *Order* encouraged LFAs, in response to a request from a cable operator, to negotiate franchise terms that conform to the *Order* in a reasonable amount of time . . . Thus, for example, an LFA is not required to assess the costs of in-kind contributions that it currently receives from a cable operator (*e.g.,* free cable service) against the franchise fee until the cable operator asks the LFA to amend the terms of its franchise.'' Accordingly, consistent with the terms of this order, we grant NCTA's petition.

5. We therefore conclude that the following two sentences in paragraph 21 of the *Stay Denial Order* misinterpret the *Order:* ''The rules in the [*Third Report and Order*] did not supersede provisions in existing franchise agreements on their effective date'' and ''[i]f negotiations fail, the terms in the franchise remain in effect unless and until a cable operator challenges those terms and proves that the terms violate the [*Third Report and Order's*] requirements.'' The same is true of the sentence in paragraph 21 of the *Stay Denial Order* that reads: ''At that point, the LFA and the cable operator have 120 days to renegotiate the franchise agreement.'' Instead, we find, in accordance with the *Third Report and Order,* that the LFA and the cable operator have a reasonable period of time to renegotiate the franchise agreement, which in most cases is 120 days. If negotiations fail, the cable operator and the LFA can continue to rely on the processes and remedies that may be contained in their franchise agreement or that are otherwise available.[7]

6. Accordingly, it is ordered that, pursuant to the authority contained in sections 4(i), 4(j), 303(r), and 405 of the Communications Act of 1934, as–amended, 47 U.S.C. 154(i)–(j), 303(r), and 405 and the authority delegated in §§ 0.61, 0.283, and 1.106 of the Commission's rules, 47 CFR 0.61, 0.283, and 1.106, this *Order* in MB Docket No. 05–311 is adopted. It is further ordered that the Petition for Clarification of Order Denying Motion for Stay pending judicial review of the *Third Report and Order* in this proceeding, filed by NCTA, is granted to the extent indicated above. It is further ordered that this *Order* shall be effective upon its release.

Federal Communications Commission.

Thomas Horan,

Media Bureau.

[FR Doc. 2020–04707 Filed 3–5–20; 8:45 am]

BILLING CODE 6712–01–P

[5] As NCTA notes, ''revenues would be recoverable in the event that the *Third Report and Order* is ultimately overturned on appeal, further undermining the notion that such losses could constitute irreparable harm.''

[6] NCTA asserts that this argument is baseless and states that ''[a]ll NCTA seeks in its Petition is what the *Third Report and Order* already provided: Clarification that parties should negotiate timely and in good faith to reach mutually agreeable franchise terms that comply with the Cable Act and rulings set forth in the Order.''

[7] For example, the cable operator and the LFA can take the dispute to court or, in the case of an interpretive dispute regarding the scope of the rules adopted in the *Third Report and Order,* request a declaratory ruling from the Commission.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02]

RTID 0648–XS025

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2019–2020 Commercial Hook-and-Line Closure for King Mackerel in the Gulf of Mexico Southern Zone

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) to close the hook-and-line component of the commercial sector for king mackerel in the Gulf of Mexico (Gulf) southern zone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: This temporary rule is effective from 12:01 a.m. local time on March 4, 2020, through June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery

Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf migratory group king mackerel (Gulf king mackerel) apply as either round or gutted weight.

The commercial sector for Gulf king mackerel is divided into western, northern, and southern zones, which have separate commercial quotas. The southern zone for Gulf king mackerel encompasses an area of the exclusive economic zone (EEZ) south of a line extending due west from the boundary of Lee and Collier Counties on the Florida west coast, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the Florida east coast, and includes the EEZ off Collier and Monroe Counties in south Florida (50 CFR 622.369(a)(1)(iii)).

The commercial quota for the hook-and-line component of the commercial sector in the southern zone is 575,400 lb (260,997 kg) for the current fishing year, July 1, 2019, through June 30, 2020 (50 CFR 622.384(b)(1)(iii)(A)).

Regulations at 50 CFR 622.8(b) and 622.388(a)(1) require NMFS to close any component of the king mackerel commercial sector when its applicable quota has been reached or is projected to be reached by filing a notification with the Office of the Federal Register. NMFS has determined the 2019–2020 hook-and-line commercial quota for Gulf king mackerel in the southern zone will be reached by March 4, 2020. Accordingly, the hook-and-line component of the commercial sector for Gulf king mackerel in the southern zone is closed from March 4, 2020, through the end of the fishing year on June 30, 2020. The commercial hook-and-line component for Gulf king mackerel in the southern zone will reopen on July 1, 2020.

NMFS has also determined that the Gulf king mackerel commercial quota for vessels using run-around gillnet gear in the southern zone was reached on February 25, 2020, and therefore on that date, NMFS closed the southern zone to commercial king mackerel fishing using run-around gillnet gear (85 FR 11861, February 28, 2020). Accordingly, all commercial fishing for Gulf king mackerel in the southern zone is closed effective at 12:01 a.m. local time on March 4, 2020. The commercial hook-and-line component for Gulf king mackerel in the southern zone will reopen on July 1, 2020. The commercial run-around gillnet component will reopen at 6 a.m. local time on January 19, 2021.

A person aboard a vessel that has a valid Federal commercial permit for king mackerel may continue to retain king mackerel under the recreational bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)).

During the commercial closure, king mackerel caught with hook-and-line gear from the closed zone may not be purchased or sold, including those harvested under the recreational bag and possession limits. This prohibition does not apply to king mackerel caught with hook-and-line gear from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

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

This action is taken under 50 CFR 622.8(b) and 622.388(a)(1), and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds 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), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to implement immediately this action to protect the Gulf king mackerel stock, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

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

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

Dated: March 2, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–04587 Filed 3–3–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200225–0063]

RIN 0648–BF57

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approval of New Gear Under Small-Mesh Fisheries Accountability Measures

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

ACTION: Final rule.

SUMMARY: This action approves new selective trawl gear for use in several non-groundfish fisheries when subject to the Georges Bank yellowtail flounder accountability measure. The selective gear reduces bycatch of groundfish species, while allowing the target fisheries to continue operating when selective trawl gear is required. This selective trawl gear will provide the fishing industry with more flexibility when accountability measures are triggered because there are limited selective trawl gears currently approved for use.

DATES: Effective April 6, 2020.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930, and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285. Copies of the studies referenced in this final rule may also be submitted to Michael Pentony at the above listed address.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Management

Specialist, phone: (978) 281–9116; email: *Emily.Keiley@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Northeast Multispecies Fishery Management Plan (FMP) requires the use of selective trawl gear in certain times and areas. The FMP specifies the list of selective trawl gear that are approved for use and that meet the required selectivity standards. The FMP also authorizes NMFS to approve additional selective gear, at the request of the New England Fishery Management Council, if the gear meets the regulatory requirements for new selective gear. The regulations (§ 648.85 (b)(6)(iv)(J)(*2*)(*i*)) require that new selective gear must either: (1) Demonstrate a statistically significant reduction in catch of at least 50 percent, by weight, on a trip-by-trip basis, of each regulated species stock of concern or non-groundfish stocks that are overfished or subject to overfishing; or (2) catch of stocks of concern must be less than five percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). Groundfish species (stocks) of concern are defined as a stock that is overfished and, or is subject to overfishing. The New England Fishery Management Council submitted two requests to add the large-mesh belly panel to the list of approved selective gears for: (1) The Georges Bank yellowtail accountability measure (AM); and (2) the southern windowpane AM.

The small-mesh trawl fishery (*e.g.,* whiting and squid) has a sub-annual catch limit (ACL) and AM for Georges Bank yellowtail flounder. If catch exceeds the sub-ACL, the AM requires small-mesh trawl vessels to use selective trawl gear that reduces flatfish catch in certain areas in a subsequent fishing year.

Southern windowpane flounder is allocated to three fishery components: Groundfish; scallops; and other (non-groundfish) fisheries. The other (non-groundfish) component is primarily the scup, fluke, squid, and whiting fisheries. If the AM for the other (non-groundfish) component is triggered, vessels fishing with any trawl gear with a codend mesh size greater than or equal to five inches (12.7 cm) are required to use one of the approved selective trawl gears to reduce bycatch (*e.g.,* flounder stocks) in certain areas in Southern New England in a subsequent year.

The selective trawl gears approved for use under these AMs are: Haddock separator trawl; Ruhle trawl; and rope separator trawl. When the New England Fishery Management Council developed, and we adopted, the AMs for the non-groundfish fisheries, many industry members expressed concern that the selective trawl gears currently approved for use were not suitable for their fisheries.

To address this concern, Cornell University conducted a series of studies to test the effectiveness of the large-mesh belly panel in several non-groundfish fisheries. The experimental gear included a large-mesh panel to replace the first bottom belly of the trawl net that allows flatfish such as windowpane and yellowtail flounder to escape. The studies compared catch in a standard trawl for each fishery with a trawl outfitted with the large-mesh belly panel. On Georges Bank when the large-mesh belly panel was compared to a standard small-mesh trawl, catch of all species of concern was reduced on a trip-by-trip basis by 50 percent or more. When the large-mesh belly panel was tested in the southern windowpane flounder AM area, and compared to a net typical of those used in the scup fishery, it reduced catch of windowpane flounder by more than 50 percent on average, but not on each trip. The large-mesh belly panel did not reduce catch of all species of concern by at least 50 percent on a trip-by-trip basis. The results are described in more detail in the proposed rule (83 FR 57395), and copies of the Cornell reports are available from NMFS at the mailing address listed under **ADDRESSES**.

Based on the results of the Cornell studies, we determined that the large-mesh belly panel meets the necessary gear performance standards for use in the Georges Bank yellowtail AM area, and we are approving the use of this gear in that area. We also determined that the large-mesh belly panel does not meet the gear standard in the southern windowpane AM area because it did not reduce catch of all species of concern by at least 50 percent on a trip-by-trip basis. We are denying the request to approve its use in that area. These AM areas are only triggered when there are ACL overages. Based on fishing year 2018 catch, we will not trigger either AM for fishing year 2020.

Comments and Responses

We received six comments on the proposed rule. One comment was not related to the rulemaking and is not discussed further. All relevant comments were supportive of the proposal to approve the large-mesh belly panel for use when the Georges Bank yellowtail flounder AM is triggered for the small-mesh fisheries. Two commenters suggested the addition of clarifying text in the regulatory definition of the large-mesh belly panel gear. This final rule contains a revised gear definition based on these comments.

Comment 1: One member of the public supported the large-mesh belly panel for use in the Georges Bank yellowtail AM area because the results of the Cornell University study demonstrated that the gear meets the regulatory standards.

Response: We agree. This final rule approves the large-mesh belly panel as a selective gear permitted for use in the Georges Bank yellowtail flounder AM area, when the AM is triggered.

Comment 2: Two commenters, a gear researcher and a gear manufacturer, commented on the proposed gear definition. Both comments supported the proposed definition but suggested adding additional information to ensure that the area being covered by the large mesh panel is the same as the area of the panel being replaced. If the large-mesh panel inserted into the net was too wide, the gear would not fish as intended, and the effective mesh size would be reduced.

Response: We agree. The design and construction of the large-mesh belly panel outfitted for an existing small mesh trawl is based on the premise that the large-mesh panel will have the same coverage area as the belly-panel it is replacing. To that end, the first step is to determine the ratio of the mesh sizes involved. The large-mesh belly twine is 80 cm (31.5 inches) knot center to knot center full mesh (KKFM), two meshes deep with a 40-cm (15.8-inch) sewing seam on the top and bottom. In most cases, the existing first bottom belly twine sizes are 12 cm (4.7 inches) KKFM and 16 cm (6.3 inches) KKFM yielding ratios of 20:3 and 5:1, respectively. To determine the appropriate width of the large-mesh panel, in number of meshes, you divide the number of meshes of the existing belly by the ratio. Because this ratio is unique to each net, and mesh being replaced, we have not prescribed a specific ratio in the regulatory definition of the net, but have provided a description of how it should be calculated, and several examples of its application.

Comment 3: The researcher who conducted the studies cited in this rule commented in support of the approval of the large-mesh belly panel for the Georges Bank yellowtail flounder AM. The commenter also stated that the large-mesh belly panel significantly reduces the bycatch of windowpane flounder and should be approved for use when the AM for windowpane flounder is triggered for non-groundfish vessels fishing with trawl gear with a

codend mesh size greater than or equal to five inches (12.7 cm). The commenter suggested that NMFS should consider creating a new gear performance standard, consistent with accountability measure goals, to focus on evaluating the catch reductions specifically of the species the accountability measure was designed for, rather than all overfished/overfishing stocks.

Response: This final rule approves the large-mesh belly panel for the Georges Bank yellowtail flounder AM. We do not have the authority to approve the large-mesh belly panel for windowpane flounder because it does not meet the selectivity standards. We agree that the gear standard should be reviewed and revisions considered to allow the approval of selective gears specific to the objectives of an AM that are consistent with the FMPs goals and objectives and the Magnuson-Stevens Act requirements. The Council has recommended a modified gear standard when we are considering approval of a selective gear for use as an AM. This revision will be proposed in an upcoming action, Framework 59.

Comment 4: One member of the fishing industry, who participates in the small-mesh fishery, commented in support of the approval of the large-mesh belly panel as a selective gear that can be used in the Georges Bank yellowtail flounder AM area when it has been triggered. The commenter cited the importance of selective gear to enable targeting of healthy stocks while reducing bycatch.

Response: We agree. This final rule approves the large-mesh belly panel for the Georges Bank yellowtail flounder AM. We also agree that the continued development of opportunities that enable fishermen to target healthy stocks, while preventing, or reducing bycatch, is important to the success of the fishing industry and fish stocks.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that these measures are necessary for the conservation and management of the Northeast multispecies fishery and that the measures are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is considered an Executive Order 13771 deregulatory action. We cannot provide an estimate of cost savings due to the nature of this action. Cost savings will occur if the Georges Bank yellowtail AM is triggered and vessels opt to use the large-mesh belly panel gear to access the area. Use of an approved selective gear is required to access the AM area, when the AM has been triggered. This final rule approves the large-mesh belly panel as a selective gear for use in the Georges Bank yellowtail flounder AM area. The addition of a new selective gear provides increased opportunities for fishermen to access healthy target stocks when the area is otherwise closed to fishing. We do not know how many vessels will use the gear, or when the AM will be triggered in the future.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Requests to revise the collection-of-information approvals under control numbers 0648–0212 and 0648–0201 have been submitted to OMB for approval. Public reporting burden for gear code selection is estimated to average one minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *https://www.reginfo.gov/public/do/PRASearch #.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 25, 2020.

Samuel D. Rauch III,

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

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.84, add paragraph (f) to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

* * * * *

(f) *Large-mesh belly panel trawl.* A large-mesh belly panel trawl is defined as a four-seam bottom trawl net (*i.e.,* a net with a top and bottom panel and two side panels) modified to include a large-mesh panel to replace the first bottom belly, as further specified in paragraphs (f)(1) through (3) of this section.

(1) *Mesh size.* The minimum mesh size applied throughout the body of the trawl, as well as the codend mesh size, must be consistent with mesh size requirements specified in § 648.80. If a vessel is fishing in an exemption area or an exempted fishery, it must comply with all of the requirements and conditions of the exemption.

(2) *Large-mesh belly panel.* The large-mesh belly panel must have a minimum mesh size of 30 in (76.2 cm) measured using the standard defined in § 648.80(f)(2). The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the regulated portion of the net, as defined in this paragraph (f)(2), if it obstructs or constricts the meshes of the net in any manner. The width of the panel must extend the full width of the bottom panel (*i.e.,* from one bottom gore to the other bottom gore). To determine the width of the large-mesh panel please see the explanation, and example provided below. The depth must be at least 90 in (228.6 cm) and at least three meshes deep (two meshes deep with a 15-in (38.1-cm) sewing seam on top and bottom). No more than six meshes of the small-mesh net may be left behind the sweep, before the large-mesh panel is sewn in.

(3) *Determining panel width example.* Assume the large-mesh twine is 30 in (76.2 cm) knot center to knot center (KKFM), two meshes deep with a 15-in

(38.1-cm) sewing seam on the top and bottom. In most cases, the existing first bottom-belly twine sizes are 12 cm (4.7 in) KKFM and 16 cm (6.3 in) KKFM yielding ratios of 20:3 and 5:1, respectively. Therefore, to determine the required width of large mesh panel, take the number of meshes of the existing belly and divide by the ratio. If the existing twine is 16 cm (6.3 in) KKFM, and the belly, six meshes behind the sweep is 150 meshes wide, you would divide 150 by 5:1 to get the width of the large-mesh panel, 30 meshes.

■ 3. In § 648.90, revise paragraph (a)(5)(v), to read as follows:

§ 648.90 NE multispecies assessment, framework procedures, and specifications, and flexible area action system.

* * * * *

(a) * * *

(5) * * *

(v) *AM if the small-mesh fisheries GB yellowtail flounder sub-ACL is exceeded.* If NMFS determines that the sub-ACL of GB yellowtail flounder allocated to the small-mesh fisheries, pursuant to paragraph (a)(4)(iii)(G) of this section, is exceeded, NMFS shall implement the AM specified in this paragraph consistent with the Administrative Procedures Act. The AM requires that small-mesh fisheries vessels, as defined in paragraph (a)(4)(iii)(G)(*1*) of this section, use one of the following approved selective trawl gear in the GB yellowtail flounder stock area, as defined at § 648.85(b)(6)(v)(H): A haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); a large-mesh belly panel trawl, as specified in § 648.84(f); or any other gear approved consistent with the process defined in § 648.85(b)(6). If reliable information is available, the AM shall be implemented in the fishing year immediately following the year in which the overage occurred only if there is sufficient time to do so in a manner consistent with the Administrative Procedure Act. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined after the start of Year 2 that the small-mesh fisheries sub-ACL for GB yellowtail flounder was exceeded in Year 1, the applicable AM would be implemented at the start of Year 3. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an overage of the small-mesh fisheries sub-ACL did not occur, NMFS shall rescind the AM, consistent with the Administrative Procedure Act.

* * * * *

[FR Doc. 2020–04204 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200227–0068]

RTID 0648–XX035

Fisheries of the Northeastern United States; Atlantic Spiny Dogfish Fishery; 2020 Spiny Dogfish Specifications

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

ACTION: Final rule.

SUMMARY: We are implementing specifications for the 2020 spiny dogfish fishery, including an annual catch limit and commercial quota. This action is necessary to ensure allowable harvest levels to prevent overfishing while allowing harvest of optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act. This action is intended to establish 2020 specifications, consistent with the Spiny Dogfish Fishery Management Plan and previously announced multi-year specifications.

DATES: The final specifications for the 2020 Atlantic spiny dogfish fishery are effective May 1, 2020, through April 30, 2021.

ADDRESSES: Copies of these specifications, including the original Environmental Assessment, Regulatory Flexibility Act Analyses, and other supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org/dogfish.*

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

SUPPLEMENTARY INFORMATION: The New England and Mid-Atlantic Fishery Management Councils jointly manage the Atlantic spiny dogfish fishery in Federal waters under the Spiny Dogfish Fishery Management Plan (FMP), with the Mid-Atlantic Council serving as the administrative lead. The Atlantic States Marine Fisheries Commission manages the fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The FMP requires the specification of an annual catch limit (ACL), annual catch target (ACT), and the total allowable landings (TAL) for up to a 5-year period; however, the Councils often choose to only set specifications up to 3 years at a time. This action implements specifications for the 2020 spiny dogfish fishery that begins on May 1, 2020.

On May 15, 2019, we approved specifications for the 2019 fishing year (84 FR 21723) and projected specifications for fishing years 2020 and 2021. These were based on recent fishery data from the 2018 stock assessment update. The approved measures substantially reduced the coastwide commercial quota in 2019 to prevent overfishing, but included projections for increased quota in 2020 and 2021. The final 2020 spiny dogfish specifications, which are summarized in Table 1, represent a 13-percent increase in commercial quota from fishing year 2019. All other management measures, including the 6,000-lb (2,722-kg) Federal trip limit, remain unchanged.

TABLE 1—SPINY DOGFISH SPECIFICATIONS FOR FISHING YEAR 2020

	Metric tons
Acceptable Biological Catch	14,126
ACL = ACT	14,077
TAL	10,602
Commercial Quota	10,521

We have reviewed available 2019 fishery information, and we do not expect that the 2019 annual catch limit will be exceeded. Further, there is no new biological information that would require altering the projected 2020 specifications. Neither the Council nor the Commission recommended any changes to the previously projected multi-year specifications. Based on this, we are implementing the 2020 specifications as projected and outlined in the 2019–2021 spiny dogfish specifications final rule (84 FR 21723, May 15, 2019). These final 2020 specifications will be effective from May 1, 2020, until April 30, 2021. We will finalize the 2021 fishing year specifications prior to May 1, 2021, by publishing another rule following a similar review.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS

Assistant Administrator has determined that this final rule is consistent with the Atlantic Spiny Dogfish FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

Pursuant to 5 U.S.C. 553(b)(B), we find good cause to waive prior public notice and opportunity for public comment on the final 2020 spiny dogfish specifications, because allowing time for notice and comment is unnecessary. The proposed rule for the 2019 specifications and the projected 2020 and 2021 specifications (84 FR 11923, March 29, 2019) provided the public with the opportunity to comment on these 2020 specifications. While comments received on the multi-year (2019–2021) specifications were mixed on the general issue of whether quotas should be liberalized or made more restrictive, no substantive comments were received on the projected 2020 specifications. Furthermore, this final rule contains no changes from the projected 2020 specifications that were included in both the March 29, 2019, proposed rule (84 FR 11923), and the May 15, 2019, final rule (84 FR 21723). Additionally, the public and industry participants expect this action, because we previously alerted the public (in the March 29, 2019, proposed rule, and the May 15, 2019, final rule) that we would conduct this interim-year review of the multi-year specifications after reviewing the latest fisheries data, with the intent of announcing the final 2020 commercial quota prior to the May 1 start of the fishing year. Thus, the process for issuing the proposed and final rules containing the 2019 specifications and the projected 2020 and 2021 specifications provided a full opportunity for the public to comment on this action. As a result, there is no need to reopen the comment period before issuing this final rule.

A final regulatory flexibility analysis (FRFA) was prepared for this action pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 604(a)), and was included in the May 15, 2019, final rule on the 2019–2021 spiny dogfish specifications. That FRFA incorporated the initial regulatory flexibility analysis (IRFA), and a summary of analyses completed to support the action. Because this action makes no changes to what was originally projected in those proposed and final rules for fishing year 2020 specifications, no changes need to be made to the FRFA in the May 15, 2019, final rule, and no additional analyses are necessary. Furthermore, because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act (as discussed above), or any other law, the analytical requirements of the RFA do not apply to this rule. For all of these reasons, no new regulatory flexibility analysis is required, and none has been prepared.

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

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

Dated: February 28, 2020.

Samuel D. Rauch III,

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

[FR Doc. 2020–04412 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 45
Friday, March 6, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2020–0065]

Transfer of Very Low-Level Waste to Exempt Persons for Disposal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed interpretive rule; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a proposed interpretation of its low-level radioactive waste disposal regulations that would permit licensees to dispose of waste by transfer to persons who hold specific exemptions for the purpose of disposal. The NRC will consider approval of requests for specific exemptions for the purpose of disposal if they are for the disposal of very low-level radioactive waste by land burial. Therefore, the NRC's intent is that this interpretive rule will allow licensees to transfer very low-level radioactive waste to exempt persons for the purpose of disposal by land burial. The NRC is requesting comment on this proposed interpretive rule.

DATES: Submit comments on the proposed interpretive rule by April 20, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0065. 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: Marlayna Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178; email: *Marlayna.Doell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0065 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–2020–0065.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document 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–2020–0065 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The NRC's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20, Subpart K, ''Waste Disposal,'' govern the disposal of licensed material by NRC licensees. Section 20.2001 provides the general requirements for disposal, and paragraph (a) requires that a licensee only dispose of licensed material using the methods listed in that paragraph. The authorized method of disposal listed in paragraph (a)(1) is ''transfer to an authorized recipient as provided in § 20.2006 or in the regulations in parts 30, 40, 60, 61, 63, 70, and 72 of this chapter.'' Parts 30, 40, and 70 of 10 CFR contain provisions that authorize the transfer of material to exempt persons. Specifically, §§ 30.41(b)(3)–(b)(4), 40.51(b)(3)–(b)(4), and 70.42(b)(3)–(b)(4) each provide that ''[e]xcept as otherwise provided in his license . . . any licensee may transfer [byproduct, source, or special nuclear] material: [t]o any person exempt from the licensing requirements of the Act and regulations in this part, to the extent permitted under such exemption; [or] [t]o any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption.'' The NRC's guidance on § 20.2001 states that the transfer of material to exempt persons is not an authorized method of disposal. This guidance is contained in NUREG–1736, ''Consolidated Guidance: 10 CFR part 20—Standards for Protection Against Radiation,'' Section 3.20.2001. This

guidance explains that an ''authorized recipient is a person or an organization licensed to possess the material being transferred.'' With respect to exemptions, the guidance explains that ''[e]xemption of certain types, quantities, or concentrations of materials from the licensing requirements applies to the initial decision of whether or not the material should be licensed. However, once licensed, no quantity of that material, however small, is exempt from the applicable regulations in this section.''

The proposed interpretive rule provided in this notice would modify the current guidance that states that § 20.2001 only allows the transfer of licensed material for disposal to licensed persons. The proposed interpretive rule would allow the transfer of licensed material to persons who hold specific exemptions, issued pursuant to §§ 30.11, 40.14, or 70.17, if those exemptions are for the purpose of disposal.

III. Proposed Interpretive Rule

Pursuant to § 20.2001(a)(1), licensees may dispose of licensed material by transfer, in accordance with §§ 30.41(b)(3)–(b)(4), 40.51(b)(3)–(b)(4), and 70.42(b)(3)–(b)(4), to persons who hold specific exemptions issued pursuant to §§ 30.11, 40.14, and 70.17 for the purpose of disposal.

This interpretive rule would only apply to persons who hold specific exemptions from the licensing requirements of the Atomic Energy Act and the regulations in Parts 30, 40, or 70. The basis for this limitation is that Parts 30, 40, and 70 are the only parts listed in § 20.2001(a)(1) that contain provisions, namely §§ 30.41, 40.51, and 70.42, that explicitly permit the transfer of licensed material to exempt persons. Therefore, this interpretive rule would not apply to exemptions issued under other parts of 10 CFR. For example, this interpretive rule would not apply to exemptions issued under § 61.6, because no provision in Part 61 permits the transfer of licensed material to exempt persons.

This interpretive rule would also only apply to the transfer of licensed material to persons who hold specific exemptions for disposal because §§ 30.41, 40.51, and 70.42 only permit transfer to exempt persons ''to the extent permitted under such exemption.'' The NRC's regulations contain several regulatory exemption provisions, for example, §§ 30.14, ''Exempt concentrations,'' and 30.18, ''Exempt quantities.'' These provisions exempt persons from the requirement to obtain a license to receive, possess, use, transfer, own, or acquire certain material. However, these provisions do not permit the exempt person to dispose of licensed material. In other words, most regulatory provisions that exempt persons from the requirement to obtain a license to possess or use material do not authorize that exempt person to receive licensed material from others and then dispose of that material. Under this interpretation, such an exempt person must hold a specific exemption for possession and disposal in order to be authorized to dispose of that material. The NRC may grant specific exemptions for disposal in accordance with the ''Specific exemption'' provisions in §§ 30.11, 40.14, and 70.17. The section in this notice titled ''Specific Exemptions for Disposal'' explains the criteria that the NRC will use to review applications for specific exemptions for the purpose of disposal.

This interpretive rule would not supplant any disposal method currently authorized under the NRC's regulations. Rather, this interpretive rule would modify the guidance in NUREG–1736 that states that licensees may only dispose of licensed material under § 20.2001(a)(1) by transferring it to licensed persons. By modifying the guidance in this way, the interpretive rule describes a method by which licensees could dispose of licensed material—by transfer to persons who hold specific exemptions for the purpose of disposal.

In accordance with §§ 30.41(b)(4), 40.51(b)(4), and 70.42(b)(4), this interpretive rule would permit NRC licensees to transfer licensed materials to persons who hold specific exemptions for disposal issued by Agreement States as well. Like the NRC, Agreement States have the authority to exempt persons from the requirement to hold a license when doing so continues to adequately protect the public health and safety from radiation hazards. The NRC recognizes that Agreement States' exemptions may not be titled ''exemption'' or be in the same form as NRC exemptions. Agreement States' regulatory approvals might be exemptions or be in another form, such as an approval letter. This is due, in part, to the fact that the exemption provisions in §§ 30.11, 40.14, and 70.17 are category D compatibility regulations, which Agreement States are not required to adopt for purposes of compatibility. Where Agreement States have exercised their exemption authority to authorize persons who do not hold a license to receive and dispose of licensed material, this interpretive rule contemplates the transfer of licensed material to those persons for disposal.

Licensees must verify that the exemption holder is authorized to receive the licensed material for disposal. The transfer provisions in §§ 30.41, 40.51, and 70.42 only allow transfer ''to the extent permitted under such exemption;'' therefore, licensees must verify that the exemption authorizes receipt of the type, form, and quantity of material for disposal that the licensee plans to transfer. Licensees may perform this verification in the same manner that they would verify that a licensee is authorized to receive licensed material for disposal in accordance with §§ 30.41(c)–(d), 40.51(c)–(d), or 70.42(c)–(d). Licensees must maintain records of transfers of material for disposal in accordance with §§ 20.2108, 30.51, and 40.61.

IV. Discussion

This interpretive rule would apply to persons who hold specific exemptions for disposal, as well as those that would transfer licensed material to such persons for disposal. Consistent with longstanding NRC guidance on disposal by land burial outside of facilities licensed under Part 61, such disposal would also apply only to exemptions for the disposal of very low-level waste (VLLW) by land burial. Therefore, the NRC's intent is that this interpretive rule would in effect only provide for the transfer of VLLW to persons who hold specific exemptions for disposal of VLLW by land burial.

The term VLLW is not defined by statute or in the NRC's regulations. The lowest portion of Class A waste has been referred to as VLLW. The NRC has described VLLW as waste that contains some residual radioactivity, including naturally occurring radionuclides, which may be safely disposed of in hazardous or municipal solid waste landfills. VLLW poses a small fraction of the hazard of waste at the Class A limits in Part 61. Currently, VLLW is typically disposed of either in a low-level waste disposal facility licensed under Part 61 or equivalent Agreement State regulations, or in accordance with a § 20.2002 approval of proposed disposal procedures. The NRC plans to limit the specific exemptions it issues for disposal to VLLW, because the intent is that only the least hazardous level of waste may be disposed of in exempt facilities. Additionally, the NRC also plans to limit the specific exemptions it issues for disposal to land burial, because the intent of such disposal is to safely isolate waste from people and the environment.

The NRC expects that this interpretive rule would provide an efficient means by which the NRC may issue specific exemptions for disposal, and by which licensees may transfer appropriate material to these exempt facilities. The NRC currently issues specific exemptions for the purpose of disposal in conjunction with individual § 20.2002 authorizations for offsite disposal of VLLW at unlicensed facilities. The NRC reviews licensees' § 20.2002 requests for approval of proposed alternate disposal procedures on a case-by-case basis. If a licensee proposes to dispose of the material in an unlicensed facility under NRC jurisdiction, then the NRC would issue the specific exemption to the disposal facility in conjunction with the issuance of a § 20.2002 approval to the licensee if the proposal is acceptable. If the NRC licensee proposes to dispose of the material in an unlicensed facility under Agreement State jurisdiction, then the Agreement State would separately authorize such disposal, whether by license, exemption, or other regulatory vehicle. For these types of offsite disposals, the § 20.2002 process remains an available disposal method, and the NRC will continue to review § 20.2002 disposal requests on a case-by-case basis, and issue specific exemptions in conjunction with these approvals for disposal facilities under NRC jurisdiction, as appropriate.

V. Specific Exemptions for Disposal

Consistent with longstanding NRC guidance on disposal by land burial outside of facilities licensed under Part 61, the NRC would only consider the issuance of a specific exemption for VLLW disposal by land burial. The NRC would consider approval of such an exemption if the cumulative dose were to be maintained below 25 millirem per year. Agreement States may issue exemptions subject to different criteria, consistent with their adequate and compatible programs. Applicants should request exemptions pursuant to §§ 30.11, 40.14, or 70.17. Applications should explain why the requested exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Applications should include a safety analysis containing: (i) A description of the proposed method of land burial at the disposal facility (*e.g.,* steps after arrival at the disposal facility to disposal in the ground); (ii) a description of the source term (*i.e.,* radionuclide identification and concentration); (iii) a description of the proposed disposal site (*e.g.,* name, location, and design and size of the disposal area including any unique features of the disposal facility); (iv) a discussion regarding the conceptual and mathematical models and parameters used in the applicant's dose assessment related to proposed disposal (*e.g.,* site specific parameters and modeling data and results); and (v) site-specific dose assessments or sensitivity and uncertainty analyses when performing the dose assessments to estimate the radiological impacts to members of the public and ensure that the 25 millirem per year cumulative dose limit is not exceeded. The applicant should address the cumulative effects of multiple VLLW disposals, ensuring that the dose limit is not exceeded.

VI. Backfit Considerations

The NRC staff considered whether the proposed interpretive rule would constitute a backfit. Backfitting occurs when the NRC imposes new or changed regulatory requirements or staff interpretations of the regulations or requirements on nuclear power reactor licensees, certain nuclear power reactor applicants, or select nuclear material licensees. The backfitting requirements are in §§ 50.109, 70.76, 72.62, and 76.76. Provisions analogous to the backfitting requirements, referred to as issue finality provisions, are set forth in Part 52. The proposed interpretive rule is a non-mandatory, voluntary relaxation. The NRC licensee could continue to comply with the requirements of its current licensing basis or choose to adopt the alternative method of sending VLLW to a specifically exempted facility under §§ 30.11, 40.14, or 70.17. If a licensee chooses to adopt the alternative method of disposal, then it must comply with the applicable requirements. This is not backfitting because it is an additional available option that the licensee may choose to adopt.

VII. Specific Requests for Comment

The NRC is interested in receiving comments from a broad range of stakeholders, including professional organizations, licensees, Agreement States, and members of the public, related to the proposed interpretive rule. Although all comments are appreciated, the NRC is seeking stakeholders' input on the following specific areas. The NRC asks that commenters provide the bases for their comments (*i.e.,* the underlying rationale for the position stated in the comment) to enable the NRC to have a complete understanding of commenters' positions.

(1) This interpretive rule would authorize the transfer of licensed material to persons who hold specific exemptions for disposal without a case-by-case review and approval of the transfers. Do you think that case-by-case review and approval of these transfers is necessary?

(2) Transboundary transfer of VLLW associated with the approved disposal actions is an important consideration. What issues associated with transboundary transfer of VLLW should be considered with this interpretive rule?

(3) 10 CFR 20.2006 states that ''[a]ny licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on NRC's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with appendix G to 10 CFR part 20.'' Should the exempt persons authorized to dispose of certain VLLW that would be considered § 20.2001 ''authorized recipients'' under this proposed interpretive rule be required to use Uniform Waste Manifests (consistent with § 20.2006) for waste transferred to the exempted disposal facility?

(4) Are there any other criteria that the NRC should consider when it reviews a request for a specific exemption for the purpose of disposal?

(5) The regulation in § 20.2001 is currently identified as a compatibility C regulation for purposes of Agreement State compatibility. In light of this proposed interpretive rule, does the compatibility designation raise issues that the NRC should consider?

VIII. Public Meeting

During the comment period, the NRC will conduct a public meeting at the NRC's Headquarters and via Webinar that will address questions on this proposed interpretive rule. Information regarding the public meeting, including agenda, scheduling, and meeting location information, will be posted on the NRC's public meeting website at least 10 calendar days before the meeting. The NRC's public meeting website is located at *https://www.nrc.gov/public-involve.html.*

The NRC will also post the meeting notice on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2020–0065. The NRC may post materials related this proposed interpretive rule, including public comments, on the Federal rulemaking website. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–

2020–0065); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

The NRC will treat all feedback provided at this public meeting as public comments on the proposed interpretive rule.

Dated at Rockville, Maryland, this 2nd day of March, 2020.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–04506 Filed 3–5–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0135; Airspace Docket No. 19–ANM–17]

RIN 2120–AA66

Proposed Amendment of Air Traffic Service (ATS) Route V–187; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend one domestic Very High Frequency Omnidirectional Range (VOR) Federal airway V–187 in the western United States. The modifications are necessary due to the planned decommissioning of McChord, WA, VOR portion of the VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), which provides navigation guidance for portions of the affected ATS route. The McChord, WA, VOR is being decommissioned due to ongoing maintenance problems.

DATES: Comments must be received on or before April 20, 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: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0135; Airspace Docket No. 19–ANM–17 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations 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: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0135; Airspace Docket No. 19–ANM–17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0135; Airspace Docket No. 19–ANM–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. 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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., 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.

Background

The DoD requested decommissioning of the McChord, WA, VOR due to ongoing maintenance issues, but have agreed to continue operation of the TACAN portion of the NAVAID to support the Distance Measuring Equipment (DME) needs of NexGen procedures in the area. The remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airway. As such, proposed modification to V–187 would result in a gap in the ATS route structure. To overcome the gap in V–187, instrument flight rules (IFR) traffic could use VOR Federal airway V–298 at THICK INT (INT Yakima 331° (T) 310° (M) and Ellensburg, 274°(T) 253°(M) radials) to BEEZR INT. Follow V–2 or V–298 northwest bound to Seattle, WA VORTAC, and then southwest bound on V–27 to CARRO INT. From there, follow V–165 or V–287 southbound to Olympia VORTAC and resume V–187 from there. Alternatively, aircraft could follow V–25 from Ellensburg, WA, VOR southbound to Yakima, WA, VORTAC and intercept V–204 westbound to Olympia, WA, VORTAC and resume V–187 from there. Additionally, IFR traffic could file point to point through the affected area using fixes that will remain in place, or receive air traffic control (ATC) radar vectors through the area. Furthermore, the loss of the segment on V–187 will be mitigated through the establishment of the T–137 airway for RNAV equipped aircraft, which overlays the gap in V–187. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airway V–187. Full route description is in ''The Proposed Amendment'' section of this notice.

The proposed ATS route change is outlined below.

V–187: V–187 currently extends between the Socorro, NM, VORTAC to the Astoria, OR, VOR. V–187 will be amended on the segment between the intersection of Yakima 310° (M) 331° (T) and Ellensburg 253° (M) 274° (T) radials and the Olympia, WA, VOR. The proposed amendment would stop at THICK intersection (INT Yakima, WA 310°(M) 331°(T) and Ellensburg, WA, 253°(M) 274°(T) radials) and then resume at the Olympia, WA VOR. The unaffected portion of the existing route will remain as charted.

Domestic VOR Federal airways are published in paragraph 6010 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 Domestic VOR Federal airway listed in this document will be subsequently published 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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6010 Domestic VOR Federal Airways.

V–187 [Amended]

From Socorro, NM; via INT Socorro 015° and Albuquerque, NM, 160° radials: Albuquerque, Rattlesnake, NM; 50 miles, 62 miles, 115 MSL, Grand Junction, CO; 75 miles, 50 miles, 112 MSL, Rock Springs, WY; 20 miles, 37 miles, 95 MSL, INT Rock Springs 026° and Riverton, WY, 180° radials; Riverton; Boysen Reservoir, WY; 9 miles, 78 miles, 105 MSL, Billings, MT; INT Billings 317° and Great Falls, MT, 122° radials; Great Falls; Missoula, MT; Nez Perce, ID; Pasco, WA; INT Pasco 321° and Ellensburg, WA, 107° radials; Ellensburg; INT Yakima 310° (M) 331° (T) and Ellensburg 253° (M) 274° (T) radials; then from Olympia; to Astoria, OR.

Issued in Washington, DC, on February 25, 2020.

Scott Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–04417 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0874; Airspace Docket No. 18–ANM–6]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Dillon, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace area, designated as a surface area, by reducing the radius of the airspace and adding an extension to the northeast of the Dillon Airport, Dillon, MT. Also, this action proposes to amend the Class E airspace extending upward from 700 feet above the surface, by reducing the circular radius of the airport and adding extensions to the southwest and north of the airport. Additionally, this action proposes to amend the Class E airspace extending upward from 1,200 feet above the surface, by significantly reducing the dimensions of the area and sizing it to properly contain IFR arrivals and departures. Further, this action proposes an administrative correction to the

airport's legal descriptions. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before April 20, 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: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0874; Airspace Docket No. 18–ANM–6, 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 amend the Class E airspace at Dillon Airport, Dillon MT to support instrument flight rules (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 and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0874; Airspace Docket No. 18–ANM–6''. 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 at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending the Class E airspace area, designated as a surface area, via a reduction of the area from a 6.1-mile radius to a 5.2-mile radius and adding an extension northeast of the airport. This area would be described as follows: That airspace extending upward from the surface within a 5.2-mile radius of the airport, and 2.4 miles each side of the 026° bearing from the airport, extending from the 5.2-mile radius to 6.8 miles northeast of the Dillon Airport.

Also, this action proposes to amend Class E airspace extending upward from 700 feet above the surface, by reconfiguring the area from a 9.2-mile radius of the airport to a 5.2-mile radius of the airport, with rectangular extensions southwest and north of the airport. This area would be described as follows: That airspace extending upward from 700 feet above the surface within 5.2-mile radius of the airport, and within 3 miles each side of the 205° bearing from the airport, extending from the 5.2-mile radius to 9.9 miles southwest of the airport, and within eight miles west and four miles east of the 005° bearing extending from the 5.2-mile radius to 16 miles north of the Dillon Airport.

Additionally, this action proposes to amend the Class E airspace extending upward from 1,200 feet above the surface from a 45-mile radius of the airport to an 8-mile radius of the airport.

Lastly, this action proposes an administrative correction to the Class E airspace legal description. The Class E airspace, designated as a surface area, should be full time. The following two sentences do not accurately represent the time of use for the airspace and need to be removed: ''This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

Class E2 and Class E5 airspace designations are published in paragraphs 6002 and 6005, respectively, 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 designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM MT E2 Dillon, MT [Amended]

Dillon Airport, MT

(Lat. 45°15′19″ N, long. 112°33′09″ W)

That airspace extending upward from the surface within a 5.2-mile radius of the airport, and within 2.4 miles each side of the 026° bearing from the airport, extending from the 5.2-mile radius to 6.8 miles northeast of the Dillon Airport.

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

* * * * *

ANM MT E5 Dillon, MT [Amended]

Dillon Airport, MT

(Lat. 45°15′19″ N, long. 112°33′09″ W)

That airspace extending upward from 700 feet above the surface within a 5.2-mile radius of the airport, and within 3 miles each side of the 205° bearing from the airport, extending from the 5.2-mile radius to 9.9 miles southwest of the airport, and that airspace within 8 miles west and 4 miles east of the 005° bearing from the airport, extending from the 5.2-mile radius to 16 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 8-mile radius of the Dillon Airport.

Issued in Seattle, Washington, on February 26, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–04409 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 314

Public Workshop Examining Information Security for Financial Institutions and Information Related to Changes to the Safeguards Rule

AGENCY: Federal Trade Commission.

ACTION: Public workshop and request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is holding a public workshop relating to its April 4, 2019, Notice of Proposed Rulemaking (''NPRM'') announcing proposed changes to the Commission's Safeguards Rule. The workshop will explore information concerning the cost of information security for financial institutions, the availability of information security services for smaller financial institutions, and other issues raised in comments received in response to the NPRM.

DATES: The public workshop will be held on May 13, 2020, from 9:00 a.m. until 4:30 p.m., at the Constitution Center Conference Center, located at 400 7th Street SW, Washington, DC. Requests to participate as a panelist must be received by March 13, 2020. Any written comments related to agenda topics or the issues discussed by the panelists at the workshop must be received by June 12, 2020.

ADDRESSES: Interested parties may file a comment or a request to participate as a panelist online or on paper, by following the instructions in the Filing Comments and Requests to Participate as a Panelist part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Safeguards Rule, 16 CFR part 314, Project No. P145407,'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Lincicum (202–326–2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1999,[1] Congress enacted the Gramm Leach Bliley Act (''GLB'' or ''GLBA''). The GLBA provides a framework for regulating the privacy and data security practices of a broad range of financial institutions. Among other things, the GLBA requires financial institutions to implement security safeguards for customer information. Pursuant to the GLBA, the Commission promulgated the Safeguards Rule in 2002. The Safeguards Rule became effective on May 23, 2003.

The Safeguards Rule requires a financial institution to develop, implement, and maintain a comprehensive information security program that consists of the

[1] Public Law 106–102, 113 Stat. 1338 (1999).

administrative, technical, and physical safeguards the financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.[2] The information security program must be written in one or more readily accessible parts.[3] The safeguards set forth in the program must be appropriate to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of any customer information at issue.[4] The safeguards must also be reasonably designed to ensure the security and confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.[5]

In order to develop, implement, and maintain its information security program, a financial institution must identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, including in the areas of: (1) Employee training and management; (2) information systems, including network and software design, as well as information processing, storage, transmission, and disposal; and (3) detecting, preventing, and responding to attacks, intrusions, or other systems failures.[6] The financial institution must then design and implement safeguards to control the risks identified through the risk assessment, and must regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.[7] The financial institution is also required to evaluate and adjust its information security program in light of the results of this testing and monitoring, as well as any material changes in its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on its information security program.[8] The financial institution must also designate an employee or employees to coordinate the information security program.[9]

Finally, the Safeguards Rule requires financial institutions to take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for customer information and require those service providers by contract to implement and maintain such safeguards.[10]

On August 29, 2016, the Commission solicited comments on the Safeguards Rule as part of its periodic review of its rules and guides.[11] The Commission sought comment on a number of general issues, including the economic impact and benefits of the Rule; possible conflicts between the Rule and state, local, or other federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Commission received 28 comments from individuals and entities representing a wide range of viewpoints.[12] Most commenters agreed that there is a continuing need for the Rule and that it benefits consumers and competition.[13]

After reviewing the comments, the Commission published a Notice of Proposed Rulemaking (''NPRM'') proposing to amend the Rule to include more detailed requirements for the development and establishment of the information security program required under the Rule, including requirements for encrypting financial information, the use of multifactor authentication, a written incident response plan, and the creation of periodic reports for the financial institution's board of directors.[14] In addition, the Commission proposed amendments to the definition of ''financial institution'' and the addition of examples previously contained in the Privacy Rule to clarify the Safeguards Rule.[15] The Commission sought public comment on these proposed amendments as well as requesting information about the cost, benefits and options for information security for financial institutions, particularly smaller institutions. The Commission received 48 comments.[16] Thirteen comments from consumer groups, individuals, academic institutions, and government groups generally supported the addition of more detailed requirements as proposed. Twenty-four comments from industry groups and individuals generally opposed the addition, on the grounds that they would impose unwarranted costs on financial institutions.

II. Issues for Discussion at the Workshop

As part of the Safeguards Rule rulemaking, the FTC has decided to seek additional information about the costs and benefits of the proposed rule changes and the ability of financial institutions to comply with them. The workshop will seek information, empirical data, and testimony from security professionals who have worked with financial services companies, and will cover such topics as:

(1) Price models for specific elements of information security programs;

(2) Industry standards for security in various industries;

(3) How risks of cybersecurity events change based on the size of the financial institutions;

(4) Availability of third party information security services aimed at different sized institutions;

(5) Different methods of achieving continuous monitoring of information security systems;

(6) Costs and optimal frequency of penetration and vulnerability testing and the factors that affect that determination;

(7) Best uses for security logs and audit trails;

(8) The advantages and disadvantages of having a single person responsible for the information security program;

(9) How different corporate governance structures can affect performance of information security programs;

(10) Costs of encryption and multifactor authentication, and possible alternatives to these technologies

(11) Whether SMS is an appropriate factor for multifactor authentication;

(12) The optimal balance between documentation and implementation of security measures.

A more detailed agenda will be published at a later date, in advance of the scheduled workshop.

[2] 16 CFR 314.2(c).

[3] 16 CFR 314.3(a).

[4] 16 CFR 314.3(a), (b).

[5] 16 CFR 314.3(a), (b).

[6] 16 CFR 314.4(b).

[7] 16 CFR 314.4(c).

[8] 16 CFR 314.4(e).

[9] 16 CFR 314.4(a).

[10] 16 CFR 314.4(d).

[11] Safeguards Rule, Request for Comment, 81 FR 61632 (Sept. 7, 2016).

[12] The comments are posted at: *https://www.ftc.gov/policy/public-comments/initiative-674*. The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

[13] *See, e.g.,* Mortgage Bankers Association (Comment #39); National Automobile Dealers Association (Comment #40); Data & Marketing Association (Comment #38); Electronic Transactions Association (Comment #24); State Privacy & Security Coalition (Comment #26).

[14] 84 FR 13158 (April 4, 2019).

[15] *Id.*

[16] The comments are posted at *https://www.regulations.gov/document?D=FTC-2019-0019-0011.*

III. Public Participation Information

A. Workshop Attendance

The workshop is free and open to the public, and will be held at the Constitution Center, 400 7th Street SW, Washington, DC. It will be webcast live on the FTC's website. For admittance to the Constitution Center, all attendees must show valid government-issued photo identification, such as a driver's license. Please arrive early enough to allow adequate time for this process.

This event may be photographed, videotaped, webcast, or otherwise recorded. By participating in this event, you are agreeing that your image—and anything you say or submit—may be posted indefinitely at *www.ftc.gov* or on one of the Commission's publicly available social media sites.

B. Requests To Participate as a Panelist

The workshop will be organized into panels, which will address the designated topics. Panelists will be selected by FTC staff. Other attendees will have an opportunity to comment and ask questions. The Commission will place a transcript of the proceeding on the public record. Requests to participate as a panelist must be received on or before March 13, 2020, as explained Section IV below. Persons selected as panelists will be notified on or before March 27, 2020. Disclosing funding sources promotes transparency, ensures objectivity, and maintains the public's trust. If chosen, prospective panelists will be required to disclose the source of any support they received in connection with participation at the workshop. This information will be included in the published panelist bios as part of the workshop record.

C. Electronic and Paper Comments

The submission of comments is not required for participation in the workshop. If a person wishes to submit paper or electronic comments related to the agenda topics or the issues discussed by the panelists at the workshop, such comments should be filed as prescribed in Section IV, and must be received on or before June 12, 2020.

IV. Filing Comments and Requests To Participate as a Panelist

You can file a comment, or request to participate as a panelist, online or on paper. For the Commission to consider your comment, we must receive it on or before June 12, 2020. For the Commission to consider your request to participate as a panelist, we must receive it by March 13, 2020. Write ''Safeguards Rule, 16 CFR 314, Comment, Project No. P145407'' and your comment and ''Safeguards Rule, 16 CFR 314, Request to Participate, Project No. P145407'' on your request to participate. 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 publicly available website, *https://www.regulations.gov.*

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, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://www.regulations.gov.*

Because your comment will be placed on a publicly accessible website, *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 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 comments to be withheld from the public record.[17] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website, 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.

Requests to participate as a panelist at the workshop should be submitted electronically to *safeguardsworkshop2020@ftc.gov,* or, if mailed, should be submitted in the manner detailed below. Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the workshop will focus as well as their contact information, including a telephone number and email address (if available), to enable the FTC to notify them if they are selected.

If you file your comment or request on paper, write ''Safeguards Rule, 16 CFR part 314, Comment, Project No. P145407'' on your comment and on the envelope and ''Safeguards Rule, 16 CFR part 314, Request to Participate, Project No. P145407,'' on your request 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 F), 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 F). If possible, submit your paper comment or request to the Commission by courier or overnight service.

Visit the Commission website at *https://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 June 12, 2020. The Commission will consider all timely requests to participate as a panelist in the workshop that it receives by March 13, 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.*

V. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside

[17] *See* 16 CFR 4.9(c).

party to any Commissioner or Commissioner's advisor, will be placed on the public record.[18]

By direction of the Commission.

April J. Tabor,

Acting Secretary.

Concurring Statement of Commissioners Christine S. Wilson and Noah Joshua Phillips

Today the Commission announced a public workshop relating to its April 4, 2019 notice of proposed rulemaking (''NPRM'') recommending changes to the Commission's Safeguards Rule. Although we dissented from the issuance of the NPRM, we concur with the decision to hold this workshop. Our dissent from the issuance of the NPRM [1] was based in part on the fact that the FTC lacked an adequate evidentiary basis for the proposed rule's requirements, so we applaud the FTC's willingness to seek additional information, empirical data, and testimony from stakeholders and experts to inform the agency's analysis of potential changes to the Safeguards Rule.

Our dissent expressed several concerns that subsequently were echoed in comments submitted to the FTC during the NPRM process:

• First, we were concerned that the proposed revisions are overly prescriptive. We are wary of trading flexibility for a costly one-size-fits-all approach that would divert company resources away from risk management initiatives specifically tailored to each entity's unique data collection, usage, and storage practices.[2] Our wariness was exacerbated by the fact that the proposal would apply remedies imposed in specific data security enforcement actions—generally outside the context of the Safeguards Rule and only to the firms named in those actions—to financial information generally, without a basis to conclude that the Safeguards Rule is not adequate or that covered firms systematically have worse data security than those not covered, such that additional regulation beyond the current Rule would be warranted.

• Second, we were concerned that this new and prescriptive approach would impose significant incremental costs without materially reducing data security risks or significantly increasing consumer benefits.[3] The submission from NADA, by way of example, highlights the incremental costs imposed by the proposed revisions: NADA estimates that it would cost the average car dealership one-time, up-front costs of $293,975, with $276,925 in additional costs each year.[4] These incremental costs will be particularly burdensome for new entrants and smaller companies, which may ultimately hinder competition with larger and better-established rivals.

• Third, we were concerned that the suggested Rule revisions substituted the Commission's judgment for a private firm's governance decisions.[5]

• Fourth, we were concerned that the Rule was premature because the proposed regulations are substantially based on relatively new New York State Department of Financial Services regulations that have not been market-tested for feasibility and efficacy.[6]

The workshop will enable the FTC to obtain additional information about the costs and benefits of the proposed rule changes and the ability of companies that fall within the Rule's scope to comply with the proposed changes. We continue to encourage stakeholders, including experts in security for financial services companies, to comment and provide evidence for this workshop. We are particularly interested in hearing from those who are knowledgeable about security for small businesses. In light of the significant proposed changes to the Safeguards Rule, and the concerns expressed by many commenters thus far, we view this additional solicitation of input from stakeholders as vital.

Statement of Commissioner Rohit Chopra Joined by Commissioner Rebecca Kelly Slaughter

Summary

• Corporate America's surveillance of our personal data is not just about privacy. Foreign actors are stealing and stockpiling this data, which threatens our national security.

• Companies like Equifax, with their unquenchable thirst for data and their shoddy security practices, are not victims. We must act to curtail the collection, abuse, and misuse of data.

• Rather than ''hold our breath and wait'' for Congress, the FTC should use the legal authority it has today to protect our citizens, our economy, and our country.

A few weeks ago, U.S. Attorney General William Barr announced criminal indictments against four members of the Chinese People's Liberation Army for conspiring to hack Equifax's computer systems. The Attorney General noted that China has a ''voracious appetite for the personal data of Americans'' and linked China with several other high-profile hacks of personal data held by large U.S. corporations, including the intrusions into one of America's largest hotel chains, Marriott, and one of America's largest health insurers, Anthem.[1]

The threat posed by China's hacks goes far beyond identity theft. As explained by Attorney General Barr, ''these thefts can feed China's development of artificial intelligence tools as well as the creation of intelligence targeting packages.'' [2] Safeguarding personal data is undoubtedly a national security issue.

In spite of these risks, lax security practices continue to expose our data. According to an alert by the Department of Homeland Security, 85 percent of targeted attacks are preventable.[3] For example, it is hard to call Equifax a victim. Their shoddy approach to security was practically an invitation for the Chinese People's Liberation Army to raid Americans' data. Equifax received critical alerts on the need to patch

[18] *See* 16 CFR 1.26(b)(5).

[1] Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson, Regulatory Review of Safeguards Rule (Mar. 5, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1466705/reg_review_of_safeguards_rule_cmr_phillips_wilson_dissent.pdf.*

[2] Comments express similar concerns that the proposal is overly prescriptive and creates costs that may not significantly reduce data security risks or increase consumer benefits. *See* Comments submitted by Office of Advocacy, U.S. Small Business Administration, National Automobile Dealers Association, Mortgage Bankers Association, Global Privacy Alliance, Software Information & Industry Association, and U.S. Chamber of Commerce. NPRM Comments are posted at *https://www.regulations.gov/document?D=FTC-2019-0019-0011.*

[3] *See* Comment from the National Independent Automobile Dealers Association (noting the considerable costs imposed on financial institutions from the proposed revisions and the need for the FTC to demonstrate a clear link between its proposal and reductions in data security risks and increases in consumer benefits).

[4] Comment from the National Automobile Dealers Association (NADA), 42.

[5] This sentiment is reflected in the comment from the Software Information & Industry Association.

[6] Comments express similar concerns that the FTC's proposed regulations rely on untested frameworks and recommend allowing time to assess the impacts of the model legislation. See Comments from the Office of Advocacy, US Small Business Administration, CTIA, National Automobile Dealers Association, and Consumer Data Industry Association (CDIA).

[1] William P. Barr, U.S. Attorney General, Attorney General William P. Barr Announces Indictment of Four Members of China's Military for Hacking into Equifax, Remarks as Prepared for Delivery, (Feb. 10, 2020), *https://www.justice.gov/opa/speech/attorney-general-william-p-barr-announces-indictment-four-members-china-s-military*

[2] *Id.*

[3] Press Release, Department of Homeland Security, Alert (TA15–119A) Top 30 Targeted High Risk Vulnerabilities, (Sept. 29, 2016), *https://www.us-cert.gov/ncas/alerts/TA15-119A.*

software systems, but failed to do so. Equifax even stored sensitive usernames and passwords in plain text.[4]

The costs of maintaining the status quo approach are significant and mounting. According to industry analysis, the majority of small businesses currently ''do not have a cyberattack prevention plan,'' [5] yet nearly half of them have experienced at least one breach within the last year.[6] Data breaches can be particularly perilous for small businesses and new entrants, with one survey finding that 66 percent could face temporary or permanent closure if their systems are compromised.[7]

The process of putting into place clear rules requiring corporations to prevent abuse and misuse personal data is long overdue. As the agency responsible for data protection across most of the economy, the Federal Trade Commission plays a central role.

While the effort to update the Safeguards Rule is a start, its reach will be limited to certain nonbank financial institutions like Equifax, and violations don't even come with any civil penalties. Given the ongoing harms to individuals and our country, we should use every tool in our toolbox to address data security issues. The Commission has urged Congress to act, but I agree with Commissioner Rebecca Kelly Slaughter, who has argued that ''we cannot simply hold our breath and wait.'' [8] There are many ways that we can curtail the collection, misuse, and abuse of personal data, including launching a rulemaking that broadly applies to companies across sectors so there are meaningful sanctions for violators. We have this authority today.

Commissioners Wilson and Phillips argue that we must consider the impact of data security on competition. I agree. Data security must also be top of mind in our competition enforcement work across sectors of the economy. We should be reviewing how mergers can lead to a race to the bottom on data security. We need to rigorously scrutinize data deals. Companies are being bought and sold based on the data they have and the data they can continue to collect. Acquired data is being merged into larger databases and used in ways that people may not have authorized when they signed up for the service or initially provided their information.

We need to continue to take a close look at what promises were made in exchange for data access and whether those promises were upheld when the data was sold. We also need to examine how companies are integrating different security systems, whether strong security standards are being maintained, and whether sensitive data is being handled appropriately.

Finally, we need to consider whether there are limits to the amount of data one company can collect and compile, the types of data one company can combine, and the ways in which data can be used and monetized. The scale and scope of data collection that large companies are engaging in has made them—and us—sitting ducks for malicious actors. Since these companies are more fixated on monetizing that data than securing it, their mass surveillance has become a national security threat. Our adversaries know that these large firms have essentially done the dirty work of collecting intelligence on our citizens, and lax security standards make it easy to steal. Ultimately, we need to fix the market structures and incentives that drive firms to harvest and traffic in our private information, so that complacent companies are punished when they don't care about our security needs or expectations.

The extraordinary step of criminal indictments of members of the Chinese People's Liberation Army announced by the Attorney General is yet another wake-up call. Until we take serious steps to curb corporate surveillance, the risks to our citizens and country will only grow as bad actors continue to steal and stockpile our data. The FTC will need to act decisively to protect families, businesses, and our country from these unquantifiable harms.

[FR Doc. 2020–04610 Filed 3–5–20; 8:45 am]

BILLING CODE 6750–01–P

[4] *Fed. Trade Comm'n* v. *Equifax,* Case 1:19-mi-99999-UNA, U.S. District Court for the Northern District of Georgia, Atlanta Division, Complaint for Permanent Injunction and Other Relief at 7–8 (July 22, 2019), *https://www.ftc.gov/system/files/documents/cases/172_3203_equifax_complaint_7-22-19.pdf.*

[5] Craig Lurey, *Cyber Mindset Exposed: Keeper Unveils its 2019 SMB Cyberthreat Study,* Keeper Security, (July 24, 2019), *https://www.keepersecurity.com/blog/2019/07/24/cyber-mindset-exposed-keeper-unveils-its-2019-smb-cyberthreat-study/.*

[6] *Hiscox Cyber Readiness Report 2019,* Hiscox Ltd., (Apr. 23, 2019), *https://www.keepersecurity.com/blog/2019/07/24/cyber-mindset-exposed-keeper-unveils-its-2019-smb-cyberthreat-study/.*

[7] Press Release, *VIPRE Announces Launch of VIPRE Endpoint Security—Cloud Edition,* Business Wire, (Oct. 2, 2017), *https://www.businesswire.com/news/home/20171002005176/en.*

[8] Last year, Commissioner Slaughter described how the FTC could use its existing authority to initiate a data protection rulemaking. *See* Rebecca Kelly Slaughter, Commissioner, Fed. Trade Comm'n, Remarks at the Silicon Flatirons Conference at the University of Colorado Law School: The Near Future of U.S. Privacy Law, (September 6, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf.*

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 641, 655, 656, 658, 667, 683, and 702

Office of the Secretary of Labor

29 CFR Parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96

Office of Labor-Management Standards

29 CFR Parts 417 and 471

Wage and Hour Division

29 CFR Parts 501 and 580

Occupational Health and Safety Administration

29 CFR Parts 1978 Through 1988

Office of Federal Contract Compliance Programs

41 CFR Parts 50–203 and 60–30

RIN 1290–AA39

Discretionary Review by the Secretary

AGENCY: Office of the Secretary, DOL.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor is issuing this Notice of Proposed Rulemaking to seek public comments on a proposal to establish a system of discretionary secretarial review over cases pending before or decided by the Board of Alien Labor Certification Appeals and to make technical changes to Departmental regulations governing the timing and finality of decisions of the Administrative Review Board and the Board of Alien Labor Certification Appeals to ensure consistency with the new discretionary review processes proposed in this rule and established in Secretary's Order 01–2020.

DATES: The Department invites interested persons to submit comments on the proposed rules. To ensure consideration, comments must be in writing and must be submitted (transmitted, postmarked, or delivered) by April 6, 2020.

ADDRESSES: You may send comments, identified by Regulatory Identification Number (RIN) 1290–AA39, by either one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting

comments. To facilitate receipt and processing of comments, the Department encourages interested parties to submit their comments electronically.

• *Mail, hand delivery, express mail, courier service, or email. You may submit your comments and attachments* to Mr. Thomas Shepherd, Clerk of the Appellate Boards, Room S–5220, 200 Constitution Avenue NW, Washington, DC 20210, or you may submit them by email to *Shepherd.Thomas@dol.gov.* The Office of the Clerk is open during business hours on all days except Saturdays, Sundays, and federal holidays, from 8:30 a.m. to 5:00 p.m., Eastern Time.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov*.

SUPPLEMENTARY INFORMATION: This preamble is divided into five sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides general background information on the development of the proposed rulemaking; Section III summarizes the proposed regulatory text; Section IV covers the administrative requirements for this proposed rulemaking; and Section V provides additional information and instructions to those wishing to comment on the rule.

This proposed rule is not expected to be an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this as not a major rule as defined by 5 U.S.C. 804(2).

I. Proposed Rule Published Concurrently With Companion Direct Final Rule

The Department is simultaneously publishing with this proposed rule a ''direct final'' rule elsewhere in this issue of the **Federal Register**, which makes identical changes to the regulatory text. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comments within a specified period. If the agency receives no significant adverse comments in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comments, the agency withdraws the direct final rule and treats such comments as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed revisions to the Department's internal adjudicatory processes would establish a mechanism by which the Secretary can review cases pending before or decided by BALCA, and make other conforming amendments to Departmental regulations to align with this new system of discretionary review as well as the similar system of discretionary review established in Secretary's Order 01–2020 over decisions of the ARB. These are rules of agency management and personnel and are entirely procedural changes to how officers within the Department of Labor exercise delegated authority on behalf of the Secretary; therefore, the Department is not required to engage in a notice and comment process to issue them. *See* 5 U.S.C. 553(a)(2), (b)(A). Indeed, the vast majority of the proposed changes are merely technical amendments to rules governing the manner in which the ARB issues decisions that are designed to eliminate any potential for confusion or ambiguity in light of the issuance of Secretary's Order 01–2020. Further, discretionary review by an agency head over adjudicatory decisions exists in many other executive branch agencies, including at the Department of Justice, the Department of the Interior, and the Department of Education. The proposed rules are thus consistent with well-known and well-established models of internal agency review. In consequence, the proposed changes to the Department's internal adjudicatory processes should not be controversial.

The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule will also be considered as comments regarding the direct final rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains: (1) Why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) Why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the direct final rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the public. All interested parties should comment at this time because the Department will not initiate an additional comment period on the proposed rule even if it withdraws the direct final rule.

II. Background of This Rulemaking

Two of the four review boards within the Department of Labor were created by voluntary delegations of authority by previous Secretaries of Labor. Specifically, the Administrative Review Board (ARB)—which has authority to hear appeals from the decisions of the Department's Office of Administrative Law Judges (OALJ) about certain immigration, child labor, employment discrimination, federal construction/service contracts, and other issues—and the Board of Alien Labor Certification Appeals (BALCA)—which has authority over appeals from the decisions of the Employment and Training Administration's adjudication of foreign labor certification applications—were created, respectively, by a Secretary's Order and by regulation. Their existence is neither compelled nor governed by statute. Notably, before the ARB was created in 1996, many of the types of cases now subject to its jurisdiction were decided directly by the Secretary. Each board was also entrusted with the power to issue final agency decisions in the name of the Secretary. Currently, the Secretary's Order and regulations establishing the ARB and BALCA provide no mechanism by which the Secretary can review, where necessary, the decisions of the officers who exercise power on his behalf.

To ensure that the Secretary has the ability to properly supervise and direct the actions of the Department, the Department proposes to establish systems of discretionary secretarial review over the decisions of the ARB and decisions of and appeals before BALCA, which will be accomplished through the proposed rule contained herein and the simultaneous issuance of a Secretary's Order governing the ARB. The Department's authority to effect

these reforms derives from 5 U.S.C. 301, which authorizes the heads of agencies to regulate the internal operations of their departments, 5 U.S.C. 305, which provides for continuing review of agency operations, and the Secretary's authority to administer the statutes and programs at issue in ARB and BALCA proceedings. In combination, these statutes establish many of the powers of the Department within the Office of the Secretary, and give the Secretary wide latitude to delegate those powers to his subordinates on the terms he deems appropriate. Thus, the Secretary has the power to delegate his authority to appropriately supervise the adjudicatory process within the Department, and is now exercising that same authority to assert his decision-making prerogatives duly assigned to him by Congress by modifying the terms on which the members of the ARB and BALCA exercise his delegated authority.

The proposed reforms to BALCA (and conforming edits to various Departmental regulations governing the ARB, BALCA, and the OALJ) preserve the existing structures by which the Department processes adjudications while giving the Secretary the option, in his sole discretion, to initiate review directly in a case where the Secretary's involvement is necessary and appropriate. Again, Congress has assigned the administration of various statutes to the Secretary of Labor, meaning that the Secretary is obligated to ensure that those laws are administered, executed, interpreted, and enforced according to law and Executive Branch priorities and policies. Under these reforms, the Secretary will rely on the ARB and BALCA to assist him in identifying cases where secretarial review may be warranted. Consistent with the practice of other agencies, the Department does not anticipate that the power of secretarial review will be used often. The Department similarly anticipates that secretarial review—while completely within the Secretary's discretion as the officer assigned to administer the laws in the first place—will typically be reserved for matters of significant importance. Finally, the Department will ensure that the secretarial review process will be accomplished in a manner that complies with any applicable legal requirements.

Because of significant differences between how the ARB and BALCA operate, the proposed systems of review for each board are designed somewhat differently. Most importantly, whereas with respect to the ARB the Secretary will not exercise review over cases until after a decision has been rendered, the proposed regulations modifying BALCA's authority would allow the Secretary to assume jurisdiction over most cases even before a decision has been issued. This is because BALCA processes significantly more cases each year than does the ARB, and, due to the nature of the temporary visa programs and DOL's role in administering these programs, does so much more quickly than does the ARB. As a result, under the BALCA regulations, the Secretary will be able to initiate review of a case even before BALCA has issued a decision.

The Department appreciates the expeditious nature of many types of BALCA proceedings, such as those involving temporary labor certification, and does not anticipate that the new system of secretarial review established over such cases will significantly disrupt or otherwise impede the way such cases are currently processed. As noted above, the department expects that secretarial review over BALCA decisions will, as with agency head review at other departments, likely not be exercised often. Further, the proposed changes to 29 CFR 18.95 provide that a BALCA decision is the Secretary's final administrative decision unless the Secretary assumes jurisdiction over the case. For example, once the BALCA issues a decision that grants a labor certification or remands for further processing, the private party in the case will be able to proceed immediately to the next step of the application process, and will only be delayed in doing so if the Secretary later decides to undertake review. Moreover, the revised 29 CFR 18.95 limits any potential uncertainty that may exist because of the possibility of secretarial review by placing strict time limits on when the Secretary will have the option of assuming jurisdiction over a case.

III. Analysis of Proposed Rules

The Department proposes to revise several sections of the Code of Federal Regulations including 20 CFR parts 641, 655, 656, 658, 667, 683, and 702; 29 CFR parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96; 29 CFR part 471; 29 CFR parts 501 and 580; 29 CFR parts 1978–1988; and 41 CFR parts 50–203 and 60–30 to harmonize the manner in which the ARB issues decisions on behalf of the Secretary under the Department's regulations with the scope of the final decision-making authority delegated to the ARB by the Secretary in Secretary's Order 01–2020. Specifically, references to final decisions of the ARB have been modified or removed to ensure that no regulation contradicts the terms on which an ARB decision becomes final under the Secretary's Order. Certain provisions governing the timing of petitions for review to the ARB and when the ARB is required to issue decisions have also been amended to eliminate potential ambiguity or confusion over the distinction between when the ARB is required to issue a decision and when such decision becomes the final action of the Department pursuant to the Secretary's Order.

The Department also proposes to revise 29 CFR part 18 by modifying the conditions under which a decision of BALCA becomes the final decision of the Department and by creating a process by which the Secretary of Labor can exercise discretionary review over cases pending before or decided by the BALCA. Technical amendments are also proposed to 20 CFR parts 655 and 656 to harmonize the manner in which BALCA issues decisions on behalf of the Secretary with the new system of discretionary review established in 29 CFR part 18.

The Department of Labor and the Department of Homeland Security (DHS) have determined that it is appropriate to issue a separate rule regarding the Secretary of Labor's review authority over H–2B cases under 29 CFR 18.95 to address the same issues addressed by this rule in the H–2B context. It is the Departments' intent to promulgate this separate rule after the publication of this rule. This determination follows conflicting court decisions concerning DOL's authority to issue legislative rules on its own to carry out its duties in the H–2B program. Although DOL and DHS each have authority to issue rules implementing their respective duties in the H–2B program, the Departments plan to make the amendments to the applicable regulations jointly to ensure that there can be no question about the authority underlying such technical amendments. This approach is consistent with the joint rulemaking governing the Temporary Non-Agricultural Employment of H–2B Aliens in the United States, 80 FR 24042 (Apr. 29, 2015) (codified at 8 CFR part 214, 20 CFR part 655, and 29 CFR part 503).

In order to ensure that all parties appearing before the ARB and BALCA have fair notice of the new systems of discretionary review established in this rulemaking and in Secretary's Order 01–2020, the Secretary will not exercise his review authority over any decision of either Board issued before the passage of 30 calendar days from the date on which the rule becomes effective.

IV. Administrative Requirements of the Proposed Rulemaking

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866. The Department of Labor, in coordination with the Office of Management and Budget (OMB), determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Accordingly, OMB has waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553 of the Administrative Procedure Act, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 603, 604, do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

The Department has determined that this proposed rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* as this rulemaking does not involve any collections of information. *See* 5 CFR 1320.3(c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The proposed rule does not ''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.''

V. Instructions for Providing Comments

A. APA Requirements for Notice and Comment

This proposed rule addresses matters of internal agency management and personnel, as well as matters of agency organization, practice and procedure, and consequently are exempt from the notice and public comments requirements of the Administrative Procedure Act. See 5 U.S.C. 553(a)(2), (b)(A). Nevertheless, the Department wishes to provide the public an opportunity to submit comments.

B. Publication of Comments

Please be advised that the Department will generally post all comments without making any change to the comments, including any personal information provided. The *www.regulations.gov* website is the Federal e-rulemaking portal, and all comments received electronically or by mail, hand delivery, express mail, or courier service will be available and accessible to the public on this website. Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, or email addresses in comments. It is the responsibility of the commenter to safeguard his or her information.

C. Access to Docket

In addition to all comments received by the Department being accessible on *www.regulations.gov,* the Department will make all the comments available for public inspection during normal business hours at the office listed in the **ADDRESSES** section above. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the proposed rule available, upon request, in large print or electronic file on portable digital media. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments or obtain the proposed rule in an alternate format, contact Thomas Shepherd at the office of the Clerk of the Appellate Boards, at (202)–693–6319 or *Shepherd.Thomas@dol.gov*.

Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Dated: February 21, 2020.

Eugene Scalia,

Secretary of Labor.

List of Subjects

20 CFR Part 641

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

20 CFR Part 655

Administrative practice and procedure, Labor certification processes for temporary employment.

20 CFR Part 656

Administrative practice and procedure, Fraud, Reporting and recordkeeping requirements, Wages.

20 CFR Part 658

Administrative practice and procedure, Complaint system; Discontinuation of services, State workforce agency compliance, Federal application of remedial action to state workforce agencies, Wagner-Peyser Act Employment Service.

20 CFR Part 667

Adjudication and Judicial Review, Administrative practice and procedure; Oversight and monitoring, Grievance procedures, complaints, and state appeal processes, Sanctions, corrective actions, and waiver of liability, Reporting and recordkeeping

requirements, Resolution of findings, Workforce Investment Act.

20 CFR Part 683

Adjudication and judicial review, Administrative practice and procedure, Funding and closeout, Grievance procedures, complaints, and State appeal processes; Oversight and resolution of findings, Pay-for-performance contract strategies, Reporting and recordkeeping requirements, Rules, costs, and limitations, Sanctions, corrective actions, and waiver of liability, Workforce Innovation And Opportunity Act.

20 CFR Part 702

Administrative practice and procedure, Claims, Penalties, Reporting and recordkeeping requirements, Whistleblowing, Workers' compensation.

29 CFR Part 2

Administrative practice and procedure, Claims, Courts, Government employees.

29 CFR Part 7

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 8

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 10

Administrative practice and procedure, Construction industry, Government procurement, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 13

Administrative practice and procedure, Government contracts, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 18

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

29 CFR Part 24

Administrative practice and procedure, Review of other proceedings and related matters, Review of wage determinations.

29 CFR Part 29

Administrative practice and procedure, Apprenticeship programs, Labor standards, State apprenticeship agencies.

29 CFR Part 38

Administrative practice and procedure, Compliance procedures, Obligations of recipients and governors, Workforce Innovation and Opportunity Act.

29 CFR Part 96

Administrative practice and procedure, Audit requirements, Grants, contracts, and other agreements.

29 CFR Part 417

Labor management standards, Procedures for removal of local labor organization officers.

29 CFR Part 471

Administrative practice and procedure, Complaint procedures, Compliance review, Contractor obligations, Federal labor law.

29 CFR Part 501

Administrative practice and procedure, Contract obligations; Enforcement, Immigration and Nationality Act, Temporary alien agricultural workers.

29 CFR Part 580

Administrative practice and procedure, Assessing and contesting, Civil money penalties.

29 CFR Part 1978

Administrative practice and procedure; Employee protection; Findings, Investigations, Litigation, Retaliation complaints, Surface Transportation Assistance Act of 1982.

29 CFR Part 1979

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

29 CFR Part 1980

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Sarbanes-Oxley Act of 2002.

29 CFR Part 1981

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Pipeline Safety Improvement Act of 2002, Retaliation complaints.

29 CFR Part 1982

Administrative practice and procedure, Employee protection, Federal Railroad Safety Act, Findings, Investigations, Litigation, National Transit Systems Security Act, Retaliation complaints.

29 CFR Part 1983

Administrative practice and procedure, Consumer Product Safety Improvement Act of 2008, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1984

Administrative practice and procedure, Affordable Care Act, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1985

Administrative practice and procedure, Consumer Financial Protection Act of 2010, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1986

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Seaman's Protection Act.

29 CFR Part 1987

Administrative practice and procedure, Employee protection, FDA Food Safety Modernization Act, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1988

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Moving Ahead for Progress in the 21st Century Act, Retaliation complaints.

41 CFR Part 50–203

Administrative practice and procedure, Government procurement, Minimum wages, Occupational safety and health.

41 CFR Part 60–30

Administrative practice and procedure, Equal opportunity, Executive Order 11246, Property management, Public contracts.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR chapters V and VI, 29 CFR subtitle A and chapters IV, V, and XVII, and 41 CFR parts 50–203 and 60–30 as follows:

Title 20: Employees' Benefits

Employment and Training Administration

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

■ 1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 et seq.; Pub. L. 114–144, 130 Stat. 334 (Apr. 19, 2016).

■ 2. In § 641.900, revise paragraph (e) to read as follows:

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

* * * * *

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

* * * * *

■ 3. In § 641.920, revise paragraph (d)(5) to read as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(d) * * *

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 4. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 5. In § 655.171, revise paragraphs (a) and (b)(2) to read as follows:

§ 655.171 Appeals.

* * * * *

(a) *Administrative review.* Where the employer has requested administrative review, within 5 business days after receipt of the ETA administrative file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO's decision, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, the CO, the OFLC Administrator and DHS by means normally assuring next-day delivery.

(b) * * *

(2) *Decision.* After a de novo hearing, the ALJ must affirm, reverse, or modify the CO's determination, or remand to the CO for further action, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, CO, OFLC Administrator, and DHS by means normally assuring next-day delivery.

■ 6. In § 655.181, revise paragraph (b)(3) to read as follows:

§ 655.181 Revocation.

* * * * *

(b) * * *

(3) *Appeal.* An employer may appeal a Notice of Revocation, or a final determination of the OFLC Administrator after the review of rebuttal evidence, according to the appeal procedures of § 655.171.

* * * * *

■ 7. In § 655.182, revise paragraph (f)(6) to read as follows:

§ 655.182 Debarment.

* * * * *

(f) * * *

(6) *ARB decision.* The ARB's decision must be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ. If the ARB fails to issue a decision within 90 days from the notice granting the petition, the ALJ's decision will be the final agency decision.

* * * * *

■ 8. In § 655.183, revise paragraph (c) to read as follows:

§ 655.183 Less than substantial violations.

* * * * *

(c) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (a) of this section, the OFLC Administrator will send a written notice to the employer, stating that the employer's otherwise affirmative H–2A certification determination will be reduced by 25 percent of the total number of H–2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year. Notice of such a reduction in the number of workers requested will be

conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written certification determination. The notice will offer the employer an opportunity to request administrative review or a de novo hearing before an ALJ. If administrative review or a de novo hearing is requested, the procedures prescribed in § 655.171 will apply, provided that if the ALJ or the Secretary affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (a) of this section, the reduction in the number of workers requested will be 25 percent of the total number of H–2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year.

■ 9. In § 655.461, revise paragraph (e) to read as follows:

§ 655.461 Administrative review.

* * * * *

(e) *Scope of review.* BALCA will, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, affirm, reverse, or modify the CO's determination, or remand to the CO for further action. BALCA will reach this decision after due consideration of the documents in the Appeal File that were before the CO at the time of the CO's determination, the request for review, and any legal briefs submitted. BALCA may not consider evidence not before the CO at the time of the CO's determination, even if such evidence is in the Appeal File, request for review, or legal briefs.

* * * * *

■ 10. In § 655.472, revise paragraph (b)(3) to read as follows:

§ 655.472 Revocation.

* * * * *

(b) * * *

(3) *Request for review.* An employer may appeal a Notice of Revocation or a final determination of the OFLC Administrator after the review of rebuttal evidence to BALCA, according to the appeal procedures of § 655.461.

* * * * *

■ 11. In § 655.473, revise paragraph (f)(6) to read as follows:

§ 655.473 Debarment.

* * * * *

(f) * * *

(6) *ARB Decision.* The ARB's decision must be issued within 90 calendar days from the notice granting the petition and served upon all parties and the ALJ.

■ 12. In § 655.845, revise paragraphs (h) and (i) to read as follows:

§ 655.845 What rules apply to appeal of the decision of the administrative law judge?

* * * * *

(h) The Board's decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Board's decision shall be served upon all parties and the administrative law judge.

(i) After the Board's decision becomes final, the Board shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § 655.850.

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 13. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101–649, 109 Stat. 4978; and Title IV, Public Law 105–277, 112 Stat. 2681.

■ 14. In § 656.27, revise paragraph (c) to read as follows:

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

* * * * *

(c) *Review on the record.* The Board of Alien Labor Certification Appeals must review a denial of labor certification under § 656.24, a revocation of a certification under § 656.32, or an affirmation of a prevailing wage determination under § 656.41 on the basis of the record upon which the decision was made, the request for review, and any Statements of Position or legal briefs submitted and, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, must:

(1) Affirm the denial of the labor certification, the revocation of certification, or the affirmation of the PWD; or

(2) Direct the Certifying Officer to grant the certification, overrule the revocation of certification, or overrule the affirmation of the PWD; or

(3) Direct that a hearing on the case be held under paragraph (e) of this section.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER–PEYSER ACT EMPLOYMENT SERVICE

■ 15. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

■ 16. In § 658.711, revise paragraph (b) to read as follows:

§ 658.711 Decision of the Administrative Review Board.

* * * * *

(b) The decision of the Administrative Review Board must be in writing, and must set forth the factual and legal basis for the decision. After the Board's decision becomes final, notice of the decision must be published in the **Federal Register**, and copies must be made available for public inspection and copying.

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

■ 17. The authority citation for part 667 continues to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 18. In § 667.830, revise paragraph (b) to read as follows:

§ 667.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 19. The authority citation for part 683 continues to read as follows:

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 20. In § 683.830, revise paragraph (b) to read as follows:

§ 683.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

Office of Workers' Compensation Programs Longshoremen's and Harbor Workers' Compensation Act and Related Statutes

PART 702—ADMINISTRATION AND PROCEDURE

■ 21. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 22. In § 702.433, revise paragraphs (e) and (f) to read as follows:

§ 702.433 Requests for hearing.

* * * * *

(e) The administrative law judge will issue a recommended decision after the termination of the hearing. The recommended decision must contain appropriate findings, conclusions, and a recommended order and be forwarded, together with the record of the hearing, to the Administrative Review Board for a decision. The recommended decision must be served upon all parties to the proceeding.

(f) Based upon a review of the record and the recommended decision of the administrative law judge, the Administrative Review Board will issue a decision.

■ 23. Revise § 702.434 to read as follows:

§ 702.434 Judicial review.

(a) Any physician, health care provider, or claims representative who participated as a party in the hearing may obtain review of the Department's final decision made by the Administrative Review Board or the Secretary, as appropriate, regardless of the amount of controversy, by commencing a civil action within sixty (60) days after the decision is transmitted to him or her. The pendency of such review will not stay the effect of the decision. Such action must be brought in the Court of Appeals of the United States for the judicial circuit in which the plaintiff resides or has his or her principal place of business, or the Court of Appeals for the District of Columbia pursuant to section 7(j)(4) of the Act, 33 U.S.C. 907(j)(4).

(b) As part of the Department's answer, the Administrative Review Board must file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith.

(c) The findings of fact contained in the Department's final decision, if based on substantial evidence in the record as a whole, shall be conclusive.

Title 29: Labor

Office of the Secretary of Labor

PART 2—GENERAL REGULATIONS

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

Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258; Executive Order 13559, 75 FR 71319, 3 CFR 2011 Comp., p. 273.

■ 25. Revise § 2.8 to read as follows:

§ 2.8 Final agency decisions.

Final agency decisions issued under the statutory authority of the U.S. Department of Labor may be issued by the Secretary of Labor, or by his or her designee under a written delegation of authority. The Administrative Review Board, an organizational entity within the Office of the Secretary, has been delegated authority to issue final agency decisions under the statutes, executive orders, and regulations according to, and except as provided in Secretary's Order 01–2020.

PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

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

Authority: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 3 CFR, 1949–1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755.

■ 27. In § 7.1, revise paragraph (d) to read as follows:

§ 7.1 Purpose and scope.

* * * * *

(d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020.

* * * * *

PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS

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

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357–359, 40 U.S.C. 327–332.

■ 29. In § 8.1, revise paragraph (c) to read as follows:

§ 8.1 Purpose and scope.

* * * * *

(c) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020.

* * * * *

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

■ 30. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 301; section 2, E.O. 13838, 83 FR 25341; section 4, E.O. 13658, 79 FR 9851; Secretary's Order 01–2014, 79 FR 77527.

■ 31. Revise § 10.57 to read as follows:

§ 10.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 10.51(c)(1) or (2), Administrator's rulings issued under § 10.58, and decisions of Administrative Law Judges issued under § 10.55.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

PART 13—ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

■ 32. The authority citation for part 13 continues to read as follow:

Authority: 5 U.S.C. 301; E.O. 13706, 80 FR 54697, 3 CFR, 2016 Comp., p. 367; Secretary's Order 01–2014, 79 FR 77527.

■ 33. Revise § 13.57 to read as follows:

§ 13.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 13.51(c)(1) or the final sentence of § 13.51(c)(2)(ii), Administrator's rulings issued under § 13.58, and decisions of Administrative Law Judges issued under § 13.55.

(2) *Limit on scope of review.* (i) The Administrative Review Board shall not have jurisdiction to pass on the validity of any provision of this part. The Administrative Review Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Administrative Review Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Administrative Review Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, any monetary or equitable relief described in § 13.44. Where the Administrator has sought imposition of debarment, the Administrative Review Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

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

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

■ 35. Revise § 18.95 to read as follows:

§ 18.95 Review of decision and review by the Secretary.

(a) *Review.* The statute or regulation that conferred hearing jurisdiction provides the procedure for review of a judge's decision. If the statute or regulation does not provide a procedure, the judge's decision becomes the Secretary's final administrative decision, except as provided in paragraph (b) of this section.

(b) *Finality.* A decision of the Board of Alien Labor Certification Appeals (BALCA) shall constitute the Secretary's final administrative decision except in those cases over which the Secretary has, in accordance with this paragraph (b) and paragraph (c) of this section, assumed jurisdiction:

(1) In any case for which administrative review is sought or handled in accordance with 20 CFR 655.171(a) or 20 CFR 655.461, at any point from when the BALCA receives a request for review until the passage of 10 business days after the date on which BALCA has issued its decision.

(2) In any case for which a de novo hearing is sought or handled under 20 CFR 655.171(b), at any point within 15 business days after the date on which the BALCA has issued its decision.

(3) In any case for which review is sought or handled in accordance with 20 CFR 656.26 and 20 CFR 656.27, at any point from when the BALCA receives a request for review until the passage of 30 business days after the BALCA has issued its decision.

(c) *Review by the Secretary*—(1) *Transmission of information.* (i) Whenever the BALCA receives a request for review, it shall immediately transmit a copy of such request to the Deputy Secretary.

(ii) Within 3 business days of when the BALCA issues a decision, the Chair of the BALCA, or his or her designee, shall transmit to the Deputy Secretary a copy of the decision and a concise recommendation as to whether the decision involves an issue or issues of such exceptional importance that review by the Secretary is warranted.

(2) *Review.* (i) The Secretary may, at any point within the time periods provided for in paragraph (b) of this section, and in his or her sole discretion, assume jurisdiction to review the decision or determination of the Certifying Officer, the Office of Foreign Labor Certification Administrator, the National Prevailing Wage Center Director, or the BALCA, as the case may be.

(ii) When the Secretary assumes jurisdiction over a case, the Secretary shall promptly notify the BALCA. The BALCA shall promptly notify the parties to the case of such action and shall submit the Appeal File and any briefs filed to the Secretary.

(iii) In any case the Secretary decides, the Secretary's decision shall be stated in writing and transmitted to the BALCA, which shall promptly transmit

it to the parties to the case. Such decision shall constitute final action by the Department and shall serve as binding precedent on all Department employees and in all Department proceedings involving the same issue or issues.

(iv) The Solicitor of Labor, or his or her designee, shall have the responsibility for providing legal advice to the Secretary with respect to the Secretary's exercise of review under this section, except that no individual involved in the investigation or prosecution of a case shall advise the Secretary on the exercise of review with respect to such case or a case involving a common nucleus of operative fact.

PART 24—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISIONS OF SIX ENVIRONMENTAL STATUTES AND SECTION 211 OF THE ENERGY REORGANIZATION ACT OF 1974, AS AMENDED

■ 36. The authority citation for part 24 is revised to read as follows:

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j–9(i)BVG, 5851, 6971, 7622, 9610; Secretary's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary's Order No. 01–2020.

■ 37. In § 24.110, revise paragraphs (a), (c), and (d) to read as follows:

§ 24.110 Decisions and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the ARB and the ARB accepts the case for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the order will order the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of employment, and compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate. At the request of the complainant, the ARB will assess against the respondent all costs and expenses (including attorney's fees) reasonably incurred.

* * * * *

■ 38. Revise § 24.112 to read as follows:

§ 24.112 Judicial Review.

(a) Except as provided under paragraphs (b) through (d) of this section, within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the ARB (or a decision issued by the Secretary upon his or her discretionary review) is not subject to judicial review in any criminal or other civil proceeding.

(b) Under the Federal Water Pollution Control Act, within 120 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(c) Under the Solid Waste Disposal Act, within 90 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(d) Under the Comprehensive Environmental Response, Compensation and Liability Act, after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States district court in which the violation allegedly occurred. For purposes of judicial economy and consistency, when a final order under the Comprehensive Environmental Response, Compensation and Liability Act also is issued under any other statute listed in § 24.100(a), the adversely affected or aggrieved person may file a petition for review of the entire order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. The time for filing a petition for review of an order issued under the Comprehensive Environmental Response, Compensation and Liability Act and any other statute listed in § 24.100(a) is determined by the time period applicable under the other statute(s).

(e) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the ARB or the ALJ, as appropriate, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of the court.

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

■ 39. The authority citation for part 29 continues to read as follows:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

■ 40. In § 29.10, revise paragraph (c) to read as follows:

§ 29.10 Hearings for deregistration.

* * * * *

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board, specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at the same time. Thereafter, the decision of the Administrative Law Judge remains final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

■ 41. In § 29.13, revise paragraph (g)(4) to read as follows:

§ 29.13 Recognition of State Apprenticeship Agencies.

* * * * *

(g) * * *

(4) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

* * * * *

■ 42. In § 29.14, revise paragraph (c)(3) to read as follows:

§ 29.14 Derecognition of State Apprenticeship Agencies.

* * * * *

(c) * * *

(3) *Requests a hearing.* The Administrator shall refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with § 29.13(g) and submit proposed findings and a recommended decision to the Administrative Review Board. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

* * * * *

PART 38—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

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

Authority: 29 U.S.C. 3101 *et seq.;* 42 U.S.C. 2000d *et seq.;* 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.;* and 20 U.S.C. 1681 *et seq.*

■ 44. In § 38.112, revise paragraph (b)(1)(viii) and remove paragraph (b)(3). The revision reads as follows:

§ 38.112 Initial and final decision procedures.

* * * * *

(b) * * *

(1) * * *

(viii) *Decision and Order after review by Administrative Review Board.* In any case reviewed by the Administrative Review Board under this paragraph, a decision must be issued within 180 days of the notification of such review. If the Administrative Review Board fails to issue a decision and order within the 180–day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order.

* * * * *

■ 45. In § 38.113, revise paragraph (c) to read as follows:

§ 38.113 Post-termination proceedings.

* * * * *

(c) A decision issued by the Administrative Review Board has become final, the Administrative Law Judge's decision and order has become the Final Agency Decision, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Agency Decision, under § 38.112(b); and

* * * * *

■ 46. In § 38.115, revise paragraph (c)(5) to read as follows:

§ 38.115 Post-termination proceedings.

* * * * *

(c) * * *

(5) The Administrative Review Board must issue a decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

■ 47. The authority citation for part 96 continues to read as follows:

Authority: 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, as amended.

■ 48. In § 96.63, revise paragraph (b)(5) to read as follows:

§ 96.63 Federal financial assistance.

* * * * *

(b) * * *

(5) *Review by the Administrative Review Board.* In any case accepted for review by the Administrative Review Board, a decision shall be issued within 180 days of such acceptance. If a decision is not so issued, the decision of the Administrative Law Judge shall become the final decision of the Secretary.

Office of Labor-Management Standards

PART 417—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

■ 49. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01–2020.

PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

■ 50. The authority citation for part 471 is revised to read as follows:

Authority: 40 U.S.C. 101 *et seq.;* Executive Order 13496, 74 FR 6107, February 4, 2009; Secretary's Order No. 7–2009, 74 FR 58834, November 13, 2009; Secretary's Order No. 01–2020.

■ 51. In § 471.13, revise paragraph (b)(4) to read as follows:

§ 471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?

* * * * *

(b) * * *

(4) After the expiration of time for filing exceptions, the Administrative Review Board may issue an administrative order, or may otherwise appropriately dispose of the matter. In an expedited proceeding, unless the Administrative Review Board issues an administrative order within 30 days after the expiration of time for filing exceptions, the Administrative Law

Judge's recommended decision will become the final administrative order. If the Administrative Review Board determines that the contractor has violated the Executive Order or the regulations in this part, the administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in § 471.14, impose appropriate sanctions and penalties, or any combination thereof.

Wage and Hour Division

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 52. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 53. Revise § 501.45 to read as follows:

§ 501.45 Decision of the Administrative Review Board.

The ARB's decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ.

PART 580 CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 54. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 55. Revise § 580.16 to read as follows:

§ 580.16 Decision of the Administrative Review Board.

The Board's decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

Occupational Safety and Health Administration

PART 1978—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA), AS AMENDED

■ 56. The authority citation for part 1978 is revised to read as follows:

Authority: 49 U.S.C. 31101 and 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020.

■ 57. In § 1978.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1978.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order, which will be subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020, will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to $250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order will be subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

* * * * *

■ 58. In § 1978.112, revise paragraph (a) to read as follows:

§ 1978.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation.

* * * * *

PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

■ 59. The authority citation for part 1979 continues to read as follows:

Authority: 49 U.S.C. 42121; Secretary's Order No. 01–2020.

■ 60. In § 1979.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''). The decision of the Administrative Law Judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board.

The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(c) The decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the party charged has violated the law, the ARB shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the party charged has not violated the law, the ARB shall issue an order denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 61. In § 1979.112, revise paragraph (a) to read as follows:

§ 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

* * * * *

PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 806 OF THE SARBANES-OXLEY ACT OF 2002, AS AMENDED

■ 62. The authority citation for part 1980 is revised to read as follows:

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203 (July 21, 2010); Secretary's Order No. 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 63. In § 1980.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing all relief necessary to make the complainant whole, including reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 64. In § 1980.112, revise paragraph (a) to read as follows:

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1981—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

■ 65. The authority citation for part 1981 continues to read as follows:

Authority: 49 U.S.C. 60129; Secretary's Order No. 01–2020.

■ 66. In § 1981.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1981.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the Administrative Law Judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''). The decision of the Administrative Law Judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(c) The decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the party charged has violated the law, the ARB shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the party charged has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 67. In § 1981.112, revise paragraph (a) to read as follows:

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

* * * * *

PART 1982—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE NATIONAL TRANSIT SYSTEMS SECURITY ACT AND THE FEDERAL RAILROAD SAFETY ACT

■ 68. The authority citation for part 1982 is revised to read as follows:

Authority: 6 U.S.C. 1142 and 49 U.S.C. 20109; Secretary's Order 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 69. In § 1982.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1982.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint under NTSSA was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also

will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will include, where appropriate, affirmative action to abate the violation; reinstatement with the same seniority status that the employee would have had but for the retaliation; any back pay with interest; and payment of compensatory damages, including compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit documentation to the Social Security Administration or the Railroad Retirement Board, as appropriate, allocating any back pay award to the appropriate months or calendar quarters. The order may also require the respondent to pay punitive damages up to $250,000. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint under NTSSA was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 70. In § 1982.112, revise paragraph (a) to read as follows:

§ 1982.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

■ 71. The authority citation for part 1983 is revised to read as follows:

Authority: 15 U.S.C. 2087; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020.

■ 72. In § 1983.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1983.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 73. In § 1983.112, revise paragraph (a) to read as follows:

§ 1983.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT

■ 74. The authority citation for part 1984 is revised to read as follows:

Authority: 29 U.S.C. 218C; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 75. In § 1984.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1984.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought

in bad faith who seeks an award of attorney fees, must file a written petition for review with the Administrative Review Board (ARB). The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to the complainant's former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 76. In § 1984.112, revise paragraph (a) to read as follows:

§ 1984.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1985—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE CONSUMER FINANCIAL PROTECTION ACT OF 2010

■ 77. The authority citation for part 1985 is revised to read as follows:

Authority: 12 U.S.C. 5567; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 78. In § 1985.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1985.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought

in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 79. In § 1985.112, revise paragraph (a) to read as follows:

§ 1985.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SEAMAN'S PROTECTION ACT (SPA), AS AMENDED

■ 80. The authority citation for part 1986 is revised to read as follows:

Authority: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 81. In § 1986.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1986.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to $250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 82. In § 1986.112, revise paragraph (a) to read as follows:

§ 1986.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the court of appeals of the United States for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1987—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 402 OF THE FDA FOOD SAFETY MODERNIZATION ACT

■ 83. The authority citation for part 1987 is revised to read as follows:

Authority: 21 U.S.C. 399d; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 84. In § 1987.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1987.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 85. In § 1987.112, revise paragraph (a) to read as follows:

§ 1987.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1988—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 31307 OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP–21)

■ 86. The authority citation for part 1988 is revised to read as follows:

Authority: 49 U.S.C. 30171; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 87. In § 1988.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1988.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 88. In § 1988.112, revise paragraph (a) to read as follows:

§ 1988.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

Title 41: Public Contracts and Property Management

Office of Federal Contract Compliance Programs

PART 50–203—RULES OF PRACTICE

■ 89. The authority citation for part 50–203 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38, unless otherwise noted.

■ 90. In § 50–203.21, revise paragraph (d) to read as follows:

§ 50–203.21 Decisions.

* * * * *

(d) Thereafter, the Administrative Review Board may issue a decision ruling upon each exception filed and including any appropriate wage determination. Any such decision shall be published in the **Federal Register**

after it becomes the final action of the Department.

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

■ 91. The authority citation for part 60–30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

■ 92. Revise § 60–30.29 to read as follows:

§ 60–30.29 Record.

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a decision, which shall be the Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

■ 93. Revise § 60–30.30 to read as follows:

§ 60–30.30 Administrative Order.

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a decision which shall be served on all parties. If the Administrative Review Board, United States Department of Labor, concludes that the defendant has violated the Executive Order, the equal opportunity clause, or the regulations, an Administrative Order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate cancellation, termination, and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

■ 94. Revise § 60–30.37 to read as follows:

§ 60–30.37 Final Administrative Order.

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue an Administrative Order which shall be served on all parties. Unless the Administrative Review Board, United States Department of Labor, issues an Administrative Order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60–30.30 shall be applicable to this section.

[FR Doc. 2020–04018 Filed 3–5–20; 8:45 am]

BILLING CODE 4510–HL–P

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 10955]

RIN 1400–AE00

Public Access to Information

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) proposes to revise its regulations of May 6, 2016, governing the availability to the public of information that is under the control of the Department. There have been changes in the law governing disclosure of such information, including the Freedom of Information Act Improvement Act of 2016. This proposed rule reflects changes in the FOIA and consequent changes in the Department's procedures since the last revision of the Department's regulations on public access to information.

DATES: The Department of State will accept comments on this proposed rule until May 5, 2020.

ADDRESSES: You may submit comments by any of the following methods, and you must include the Regulatory Information Number (RIN) in the subject line of your message.

- *Mail (paper, disk, or CD–ROM submissions):* Director, Office of Information Programs and Services, Room B–266, U.S. Department of State, 2201 C Street NW, Washington, DC 20520.
- *Fax:* (202) 485–1669.
- Persons with access to the internet may view this rule and submit comments by going to *www.regulations.gov* and searching for docket number DOS–2019–0042.

Inspection of public comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business or financial information that is included in a comment. The Department of State will post all comments received before the close of the comment period at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of the Legal Adviser, *kottmyeram@state.gov,* 202–647–2318.

SUPPLEMENTARY INFORMATION: This proposed rule implements the Freedom of Information Act (FOIA) Improvement Act of 2016, Public Law 114–185, and updates the Department's FOIA regulations at 22 CFR part 171. The following is a summary of the substantive changes.

The proposed rule, in § 171.4, provides updated procedures and addresses for submitting FOIA requests to the Department, including procedures for requesting information about the requester and requests for visa information.

Subpart B of the proposed rule (§ 171.10 through § 171.17) contains the rules governing the processing of a FOIA request. Proposed § 171.11 covers the Department's initial processing of a request; it clarifies the information that is to be provided as part of a request, the Department's process for responding to requests, and consultation and referral with respect to requests. Proposed § 171.12 covers the timing of responses to a request, including multi-track processing, expedited processing, and ''unusual circumstances'' (as defined in the FOIA) that might affect the Department's ability to respond. Proposed § 171.13 covers responses to requests, including the procedures upon denial of a request. The proposed updates add a provision for consultation with the Department of Justice's Office of Information Policy with respect to invocation of a FOIA exclusion. Proposed § 171.14 modifies the Department's process with respect to reviews of business information, including procedures for the business owner of the information to object to the release of the information.

Proposed § 171.15 revises the timeline for submission of appeals to 90 days and provides for information to be given to requesters about dispute resolution services at various stages of the processing of a request, in accordance with the FOIA Improvement Act of 2016. Proposed § 171.16 provides updates on the fees to be charged for FOIA requests, including how fees are calculated. This proposed section provides an updated explanation of the term, ''representative of the news media.''

Subpart C contains the rule's Privacy Act provisions. There are minor changes throughout this subpart.

In Subpart D, the proposed rule adds information about processing of requests for confidential financial disclosure reports.

Finally, the proposed rule makes numerous minor changes throughout, to conform more closely to the Department of Justice's Template for Agency FOIA Regulations.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule under the provisions of 5 U.S.C. 553, with a 60-day public comment period.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12988—Civil Justice Reform

The Department has reviewed this regulation in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Orders 12866 and 13563—Improving Regulation and Regulatory Review

The Department has considered this rule in light of these Executive Orders and affirms that this regulation is consistent with the guidance therein. The benefits of this rulemaking for the public include, but are not limited to, providing an up-to-date procedure for requesting information from the Department that is consistent with the FOIA Improvement Act of 2016. The Department is aware of no more than a minimal cost to the public from this rulemaking.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771 because it is expected to result in no more than *de minimis* costs.

Paperwork Reduction Act

This rule does not impose or revise any reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons set forth in the preamble, revise 22 CFR part 171 to read as follows:

PART 171—PUBLIC ACCESS TO INFORMATION

Subpart A—General Policy and Procedures

Subpart B—Freedom of Information Act Provisions

Subpart C—Privacy Act Provisions

Subpart D—Access to Financial Disclosure Reports

Authority: 22 U.S.C. 2651a; 5 U.S.C. 552, 552a; 5 U.S.C. app. 107(a); E.O. 12600 (52 FR 23781); Pub. L. 114–185; Pub. L. 95–521, 92 Stat. 1824 (codified as amended at 5 U.S.C. app. 101–505); 5 CFR part 2634.

Subpart A—General Policy and Procedures

§ 171.1 General provisions.

(a) This part contains the rules that the Department of State and the Foreign Service Grievance Board (FSGB), an independent body, follow in processing requests for records under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, and the Privacy Act of 1974 (PA), as amended, 5 U.S.C. 552a. These rules should be read in conjunction with the text of the FOIA, the PA, and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines'').

(b) *Definitions.* (1) For purposes of subparts A and B of this part, *record* means information regardless of its physical form or characteristics—including information created, stored,

and retrievable by electronic means—that is created or obtained by the Department and under the control of the Department at the time of the request, including information maintained for the Department by an entity under government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request.

(2) For purposes of subparts A and B of this part, *control* means the Department's legal authority over a record, taking into account the ability of the Department to use and dispose of the record, the intent of the record's creator to retain or relinquish control over the record, the extent to which Department personnel have read or relied upon the record, and the degree to which the record has been integrated into the Department's record-keeping systems or files.

(3) For purposes of this part, *Department* means the United States Department of State, including its field offices, Foreign Service posts abroad, and its components. This part does not address FOIA requests to the U.S. Agency for International Development (USAID); such requests should be submitted as described at *www.usaid.gov/foia-requests.*

(4) For purposes of subparts A and B of this part, *component* means the offices that respond directly to requests concerning records under their jurisdiction: the Office of the Inspector General; the Bureau of Consular Affairs' Directorates for Visa Services, Passport Services, and Overseas Citizens Services; the Bureau of Diplomatic Security; the Bureau of Human Resources; the Office of Medical Services; and the Foreign Service Grievance Board.

§ 171.2 Types of records maintained.

Most of the records maintained by the Department pertain to the formulation and execution of U.S. foreign policy. The Department also maintains certain records that pertain to individuals, such as applications for U.S. passports, applications for U.S. visas, records on consular assistance given abroad by U.S. Foreign Service posts to U.S. citizens and legal permanent residents, and records on Department employees. Further information on the types of records maintained by the Department may be obtained by reviewing the Department's records disposition schedules, which are available on the Department's FOIA website at *www.foia.state.gov.*

§ 171.3 Records available on the Department's website.

(a) Information that is required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) is regularly updated by the Department and found on its public website: *www.state.gov. See also* 22 CFR part 5. Records that are required by the FOIA to be made available for public inspection in an electronic format under 5 U.S.C. 552(a)(2) also are available on the Department's public website. Included on the Department's FOIA home page, *www.foia.state.gov,* are links to other sites where Department information may be available and to the Department's records disposition schedules. Also available on the FOIA website are certain records released by the Department pursuant to requests under the FOIA and compilations of records reviewed and released in certain special projects. Links to the Department's Privacy Act Systems of Records Notices are available at *www.state.gov/privacy.* In addition, see 22 CFR part 173 regarding materials disseminated abroad by the Department.

(b) The Department's Office of Inspector General (OIG) is responsible for determining which of its records are required to be made publicly available on its website at *www.stateoig.gov.* OIG will ensure that its website of posted records and indices is reviewed and updated on an ongoing basis.

§ 171.4 Requests for information—types and how made.

(a) *General Information.* (1) Requests for records made in accordance with this part must be made in writing. FOIA requests may be made to the Office of Information Programs and Services (A/GIS/IPS) by email to *foiarequest@state.gov,* through the Department's FOIA website (*www.foia.state.gov*), by fax to (202) 261–8579, or by mail to the address below. PA requests must be made in writing and signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. See § 171.22(a). PA requests may be made to A/GIS/IPS by email to *foiarequest@state.gov,* by fax to (202) 261–8579, or by mail. FOIA and PA requests made by mail should be addressed to: Office of Information Programs and Services (A/GIS/IPS), Room B–266, U.S. Department of State, 2201 C Street NW, Washington, DC 20520.

(2) Requests for passport records covered under PA System of Records Notice 26 (available at *www.state.gov/system-of-records-notices-privacy-office/*) must be made in writing, and may be submitted directly to the Law Enforcement Liaison Division of the Passport Services directorate (PPT) of the Bureau of Consular Affairs by mailing the request to U.S. Department of State, Office of Law Enforcement Liaison, FOIA Officer, 44132 Mercure Circle, P.O. Box 1227, Sterling, VA 20166–1227. Requests for passport records and information that do not need to be certified may also be emailed to *PPT-Public-FOIARequests@state.gov.*

(3) Requests for records of the OIG must be made in writing, and may be submitted via email to *foia@stateoig.gov,* by fax to 703–284–1866, or by mail addressed to FOIA Officer, Officer of General Counsel, Office of Inspector General, U.S. Department of State, 1700 N. Moore Street, Suite 800, Arlington, VA 22209. Submission by email is preferred. Guidance and contact information is available on the OIG's website at *www.stateoig.gov/foiarequest.*

(4) The Office of Information Programs and Services, the Law Enforcement Liaison Division of the Passport Services directorate, and the OIG are the only Department components authorized to accept FOIA and PA requests submitted to the Department.

(5) The requester should provide the specific citation to the authority under which he or she is requesting information (*e.g.,* the FOIA, the PA, or Mandatory Declassification Review (MDR) under the current Executive Order on classification). This will facilitate the processing of the request. When individual U.S. citizens and lawful permanent residents request access to records about themselves, the Department processes responsive records maintained in Privacy Act systems of records under both the FOIA and the PA to provide requesters with the greatest degree of access to the records. Information in such records will be withheld only if it is exempt from access under both laws; if the information is exempt under only one of the laws, it will be released. Responsive records that are not maintained in a Privacy Act system of records are processed only under the FOIA.

(6) A requester who requests records about himself or herself, including passport records, must comply with the verification of identity requirements as set forth in § 171.22 (the Privacy Act Provisions) in order for the request to be processed under the PA.

(7) Where a request for records pertains to a third party or to a requester's own records outside of a request under the Privacy Act, a requester may receive greater access by submitting a notarized authorization signed by the person whose records are

requested, or by submitting a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by the person whose records are requested, authorizing disclosure of the records to the requester, or by submitting proof that the third party is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Department may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure or is deceased.

(8) *Requests for visa information.* The Immigration and Nationality Act, as amended, section 222(f) (8 U.S.C. 1202(f)), provides that the records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States must be considered confidential and shall be used only for certain enumerated purposes, including the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. As a result, information subject to release in response to a request for visa records about an individual may be limited. Requests for visa records should include the following information for the applicant and, if applicable, the petitioner: Full name, as well as any aliases used; current address; email; and date and place of birth (including city, state, and country). Additional information describing the records sought will assist the Department in properly identifying the responsive records and in processing the request. Attorneys or other legal representatives requesting visa information on behalf of a visa applicant should submit a statement with the request signed by the applicant (and the petitioner if the records sought pertain to a petition) authorizing release of the requested visa information to the representative. Alternatively, requestors may submit a DS–4240 to certify their identity and to provide authorization by the applicant (and the petitioner if the records sought pertain to a petition) to release the requested information to the legal representative. Forms created by other Federal agencies will not be accepted.

(b) *Description of records sought.* Although no particular format is required, a request must reasonably describe the Department record(s) that the requester seeks. Requesters must describe the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist the Department in identifying the requested record(s), such as the date, title or name, author, recipient, subject matter, case number, file designation reference number, or timeframe. If after receiving a request the Department determines that the request does not reasonably describe the records sought, the Department will inform the requester that the request is insufficient and may ask for additional information. Requests should also specify the records sought; failure to do so may delay the agency's response. Any records provided in response to a request will be provided in the form or format requested if a releasable form of the records is readily reproducible in that form or format. Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist the Department in communicating with them and providing released records.

(c) While the Department makes every effort to provide the greatest possible access to all requested records regardless of the statute(s) under which the information is requested, the following guidance is provided for the benefit of requesters:

(1) *The Freedom of Information Act* applies to requests for records concerning the general activities of government and of the Department in particular (see subpart B of this part).

(2) *The Privacy Act* applies to requests from U.S. citizens or legal permanent resident aliens for records about them that are maintained by the Department in a system of records retrievable by the individual's name or personal identifier (see subpart C of this part).

§ 171.5 Archival records.

The Department ordinarily transfers records designated as historically significant to the National Archives when they are 25 years old. Accordingly, requests for some Department records 25 years old or older should be submitted to the National Archives by mail addressed to Special Access and FOIA Staff, National Archives at College Park, 8601 Adelphi Road, Room 5500, College Park, MD 20740–6001; by fax to (301) 837–1864; or by email to *specialaccess_foia@nara.gov.* The Department's website, *www.foia.state.gov,* has additional information regarding archival records.

Subpart B—Freedom of Information Act Provisions

§ 171.10 Purpose and scope.

This subpart contains the rules the Department follows under the Freedom of Information Act (FOIA) as amended, 5 U.S.C. 552. The rules should be read together with the FOIA, which provides additional information about access to records and contains the specific exemptions that are applicable for withholding information; the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines); and information located at *www.foia.state.gov.* The Department processes requests for records maintained in a Privacy Act (PA) system of records under the FOIA as well. As a result, requests that seek such records are also subject to this subpart.

§ 171.11 Processing requests.

(a) In general. (1) The Office of Information Programs and Services (A/GIS/IPS) is responsible for initial action on all FOIA requests for Department records, with two exceptions: Requests seeking records under the purview of the Office of Inspector General (OIG), which receives and processes requests for OIG records (see § 171.4(a)(3)); and requests seeking records under the purview of the Law Enforcement Liaison Division of the Passport Services directorate of the Bureau of Consular Affairs (CA), which receives and processes requests for certain consular records (see § 171.4(a)(2)).

(2) For requests for which A/GIS/IPS is responsible for initial action, A/GIS/IPS will issue all initial decisions on whether a request is valid (or has subsequently been perfected), and whether to grant or deny requests for a fee waiver or for expedited processing.

(3) After A/GIS/IPS takes initial action, all requests for records coming under the jurisdiction of the following components are processed by those components, although A/GIS/IPS may provide review and coordination support to these components in some situations: The Bureau of Consular Affairs' Directorates for Visa Services, Passport Services, and Overseas Citizens Services; the Bureau of Diplomatic Security; the Bureau of Human Resources; and the Office of Medical Services. Additionally, the Foreign Service Grievance Board (FSGB), as an independent body, processes all FOIA requests seeking access to its records and responds directly to requesters.

(b) *Receipt of request.* The Department is in receipt of a request when it reaches A/GIS/IPS, OIG, or PPT, depending on which office is the proper recipient. At that time, the Department must send an acknowledgement letter to the requester that identifies the date of receipt of the request in the proper office (A/GIS/IPS, OIG, or PPT), and the

case tracking number. When one of these offices determines that a request was misdirected within the Department, that office must promptly route the request to the proper office(s) within the Department.

(c) *Cut-off date and exclusions.* In determining which records are responsive to a request, the Department ordinarily will include only records in its possession as of the date of initiation of the search for responsive records, unless the requester has specified an earlier cut-off date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.

(d) Consultation, referral, and coordination. When reviewing records located in response to a request, the component processing the request will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the component must proceed in one of the following ways:

(1) *Consultation.* When records originated with the Department, but contain within them information of interest to another agency or other Federal Government office, the component processing the request should typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the component processing the request believes that a different Department component or other Federal Government agency is better able to determine whether to disclose the record, the component processing the request typically should refer the responsibility for responding to the request regarding that record to that component or agency, as long as the referral is to an entity subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the component processing the request and the originating agency jointly agree that the former is in the better position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the component processing the request refers any part of the responsibility for responding to a request to another entity, the component must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the entity to which the record was referred, including that entity's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harm. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the whether the record may be disclosed. The release determination for the record that is the subject of the coordination will be conveyed to the requester by the component that originally received the request.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Department will be handled according to the date that the perfected FOIA request was received by the first agency.

(f) Agreements regarding consultations and referrals. The Department may make agreements with other agencies to eliminate, reduce, or streamline the need for consultations or referrals for particular types of records.

§ 171.12 Timing of responses to requests.

(a) *In general.* The Department ordinarily will respond to requests in the order received. In instances involving misdirected requests that are re-routed pursuant to § 171.11(b), the response time will commence on the date that the request is received by the proper office that is designated to receive requests (A/GIS/IPS, OIG or PPT), but in any event not later than 10 working days after the request is first received by any of these three offices.

(b) *Multi-track processing.* The Department has a specific track for requests that are granted expedited processing, in accordance with the standards that are set forth in paragraph (d) of this section. An intake office (A/GIS/IPS, OIG, or PPT) may also designate additional processing tracks that, for example, distinguish between simple and more complex requests based on the estimated amount of work and/or time needed to process the request. Among the factors that may also be considered are the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. The Department must advise requesters of the track in which their request falls and, when appropriate, should offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the Department extends the time limit on that basis, the Department must, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved. Where the extension exceeds 10 working days, the Department must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or a modified request. The Department must make available its designated FOIA contact and its FOIA Public Liaison for this purpose. In the written notice to the requester, the Department must also alert the requester to the availability of the Office of Government Information Services to provide dispute resolution services.

(d) *Expedited processing.* (1) The Department must process requests and appeals on an expedited basis whenever the Department determines that:

(i) Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) With respect to a request made by a person primarily engaged in disseminating information, there exists an urgency to inform the public concerning actual or alleged Federal Government activity; or

(iii) Failure to release the information would impair substantial due process rights or harm substantial humanitarian interests.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. Requests for expedited processing must be submitted to the office responsible

for receiving the FOIA request (A/GIS/IPS, OIG, or PPT). When making a request for expedited processing of an administrative appeal, the request must be submitted to A/GIS/IPS, or OIG in the case of appeals of OIG decisions (see § 171.15). A Department FOIA office that receives a misdirected request for expedited processing must forward it promptly to the correct office responsible for receiving requests (A/GIS/IPS, OIG, or PPT) for its determination. The time period for making the determination on the request for expedited processing commences on the date that the correct office receives the request, provided that the Department will be considered to have received the request for expedited processing no more than 10 working days after the request for expedited processing is received by A/GIS/IPS, OIG, or PPT.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (d)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the Department may waive the formal certification requirement.

(4) A notice of the determination whether to grant expedited processing must be provided to the requester within 10 calendar days of the date of the receipt of the request for expedited processing in the appropriate office (whether A/GIS/IPS, OIG, or PPT). If expedited processing is granted, the request must be given priority, placed in the processing track for expedited requests, and processed as soon as practicable. If a request for expedited processing is denied, the Department must act on any appeal of that decision expeditiously.

§ 171.13 Responses to requests.

(a) *In general.* The Department will, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or a web portal.

(b) *Acknowledgment of requests.* The Department must acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The Department must include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests. The Department may in its discretion divide a multi-part request into multiple requests in order to facilitate processing.

(c) *Estimated dates of completion and interim responses.* Upon request, the Department will provide an estimated date by which the Department expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the agency may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the Department makes a determination to grant a request in full or in part, it must notify the requester in writing. The Department also must inform the requester of any fees charged under § 171.16 and must disclose the requested records to the requester promptly upon payment of any applicable fees. The Department must inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* If the Department makes an adverse determination denying a request in any respect, it must notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt from disclosure, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Content of denial.* The denial must be signed by the head of the component processing the request, or designee, and must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 171.15, and a description of the requirements set forth therein.

(5) A statement notifying the requester of the assistance available from the Department's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services of the National Archives and Records Administration.

(g) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part must be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

(h) *Use of record exclusions.* (1) In the event that the Department identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), A/GIS/IPS or OIG must confer with the Department of Justice, Office of Information Policy to obtain approval to apply the exclusion.

(2) Any time the Department invokes an exclusion, it must maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 171.14 Business information.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be exempt from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity from which the Department obtains business information, directly or indirectly. The term includes corporations, partnerships, and sole proprietorships; state, local, and tribal governments; foreign governments, NGOs and educational institutions. This

term does not include another Federal Government entity.

(b) *Designation of business information.* A submitter of business information must use good-faith efforts to designate by appropriate markings at the time of submission any portions of its submission that it considers exempt from disclosure under FOIA Exemption 4. These designations expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Notice to submitters.* (1) The Department must provide a submitter with prompt written notice whenever records containing its business information are requested under the FOIA if the agency determines that it may be required to disclose the records, provided:

(i) The information has been designated in good faith by the submitter as information considered exempt from disclosure under Exemption 4; or

(ii) The Department has reason to believe that the requested information may be exempt from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the business information requested or include a copy of the requested records or record portions containing the information. In cases involving a voluminous number of submitters, the Department may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(d) *When notice is not required.* The notice requirements of this section do not apply if:

(1) The Department determines that the information is exempt from disclosure under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such a case, the Department must give the submitter written notice of any final decision to disclose the information a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* The Department must allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section and must specify that time period in the notice. If a submitter has any objections to disclosure, it should provide the Department a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. The Department is not required to consider any information received after any disclosure decision. Information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* The Department will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Department decides to disclose information over the objection of a submitter, it must give the submitter written notice, which must include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the Department intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Department must promptly notify the submitter.

(h) *Notice to requester.* The Department must notify the requester whenever it provides a submitter with notice and an opportunity to object to disclosure; whenever it notifies a submitter of its intent to disclose requested information; and whenever a submitter files a lawsuit seeking to prevent the disclosure of the requested information.

§ 171.15 Administrative appeals.

(a) *Requirements for making an appeal.* (1) Requesters may appeal any adverse determinations made on their FOIA request by the Department. Examples of adverse determinations are provided in § 171.13(d). The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the adverse determination. The appeal must clearly identify the component's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(2) To appeal any adverse determinations made by A/GIS/IPS or a component other than OIG, requesters must submit an administrative appeal to the A/GIS/IPS FOIA Appeals Office using any of the following methods: By mail to the Appeals Officer, Office of Information Programs and Services (A/GIS/IPS), Room B–266, U.S. Department of State, 2201 C Street NW, Washington, DC 20520; by fax to (202) 261–8579; or by email to *foiarequest@state.gov.*

(3) To appeal any adverse determinations made by OIG, requesters must submit an administrative appeal to OIG via email to *foia@stateoig.gov,* by fax to 703–284–1866, or by mail addressed to the FOIA Officer, Officer of General Counsel, Office of Inspector General, U.S. Department of State, 1700 N Moore Street, Suite 800, Arlington, VA 22209. Contact information for OIG is available on OIG's FOIA website at *www.stateoig.gov/foiaappeals.* For those cases in which both A/GIS/IPS and OIG provided written denials to the requester, the requester may administratively appeal to both A/GIS/IPS and OIG and each office will handle its respective portion of the appeal.

(4) To appeal any adverse determinations made by the FSGB, requesters must submit an administrative appeal to A/GIS/IPS using the methods listed above in paragraph (2). A/GIS/IPS will assign a tracking number to the appeal and forward it to the FSGB, which is an independent body, for adjudication.

(b) *Adjudication of appeals.* (1) The A/GIS/IPS Director or designee will act on behalf of the Assistant Secretary for Administration on all appeals of A/GIS/IPS FOIA determinations under this section. Likewise, the General Counsel of OIG or his/her designee will act on behalf of the Inspector General on all appeals of OIG FOIA determinations under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(c) *Decisions on appeals.* The Department must provide its decision on an appeal in writing. A decision that upholds the Department's determination in whole or in part must include a brief statement of the reason for the affirmance, including any FOIA exemptions applied. The decision must inform the requester that the decision represents the final decision of the Department; must advise the requester of the statutory right to file a lawsuit; and must inform the requester of the dispute resolution services offered by the Office of Government Information Services of the National Archives and Records Administration (OGIS) as a non-exclusive alternative to litigation. If a decision is remanded or modified on appeal, the requester will be notified in writing. The appropriate component will then further process the request in accordance with that appeal determination and respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If a component agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking review by a court of the Department's adverse determination, a requester must first submit a timely administrative appeal.

§ 171.16 Fees to be charged.

(a) *In general.* (1) The Department will charge fees for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters:

(i) Commercial use requesters,

(ii) Non-commercial scientific or educational institutions or news media requesters, and

(iii) All other requesters. Different fees are assessed depending on the category.

(2) Requesters may seek a fee waiver. The Department considers fee waivers in accordance with the requirements set forth below. To resolve any issues that arise under this section, the Department may contact a requester for additional information. The Department must use the most efficient and least costly methods to comply with requests for records made under the FOIA. The Department shall attempt to notify the requester if fees are estimated to exceed $25.00, unless the requester has expressed a willingness to pay fees as high as those anticipated. Such notification shall include a breakdown of the fees for search, review, and duplication. The Department ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the Department.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Department's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Department will notify requesters of their placement in this category.

(2) *Direct costs* are those expenses the Department incurs in searching for, duplicating, and, in the case of commercial use requests, reviewing records in response to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. The term does not include overhead expenses such as the costs of space, and of heating or lighting of a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this category must show that the request is made in connection with the requester's role at the educational institution. The Department may seek verification from the requester that the request is in furtherance of scholarly research. The Department will advise requesters of their placement in this category.

(5) *Non-commercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. The Department will advise requesters of their placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. Freelance journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Department shall also consider a requester's past publication record in making this determination. The Department will advise requesters of their placement in this category.

(7) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a business information submitter under § 171.14 but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for, identifying, and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the Department will

charge the following fees unless a waiver or reduction of fees has been granted under paragraph (j) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, the Department should not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, non-commercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to restrictions of paragraph (j) of this section. The Department may properly charge for time spent searching even if responsive records are not located, or if records are determined to be entirely exempt from disclosure.

(ii) For each hour spent by personnel searching for requested records, the fees shall be as stated at the following website: *foia.state.gov/Request/Guide.aspx* (section VII, ''Fees'') and *www.stateoig.gov/foiafees* for OIG requested records.

(iii) For requests that require the retrieval of records stored by the Department at a Federal records center operated by the National Archives and Records Administration (NARA), the Department will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Review.* The Department will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Department's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees shall be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(3) *Duplication.* The Department will charge duplication fees to all requesters, subject to the restrictions of paragraph (d) of this section. The Department must honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the Department in the form or format requested. The Department charges the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. Duplication fees are as stated at the following website: *foia.state.gov/Request/Guide.aspx* (section VII, ''Fees'').

(d) *Restrictions on charging fees.* (1) The Department will not charge search fees for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media, unless the records are sought for a commercial use.

(2) If the Department fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(i) through (iii) of this section.

(i) If the Department has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit is excused for an additional 10 days.

(ii) If the Department has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the Department may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. The Department must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA, and the Department must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Department may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) Except for requesters seeking records for a commercial use, the Department must provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(4) When, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, the total fee calculated under paragraph (c) of this section is $25.00 or less, no fee will be charged.

(5) Apart from the stated provisions regarding waiver or reduction of fees, see paragraph (j) of this section, the Department may in its sole discretion decide to not assess fees or to reduce them if it is in the best interests of the government not to do so.

(e) *Notice of anticipated fees in excess of $25.00.* (1) When the Department determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the Department must notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Department will advise the requester accordingly. If the request is not for commercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) In cases in which the Department has notified the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay; or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Department is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Department estimates that the total fee will exceed that amount, the Department will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Department will inquire whether the requester wishes to revise

the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Department must make available its FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The Department may charge interest on any unpaid bill starting on the 31st day following the date the bill was sent to the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and shall accrue from the date of the billing until payment is received by the Department. The fact that a fee has been received by the Department within the thirty-day grace period, even if not processed, shall stay the accrual of interest. The Department must follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Department may aggregate those requests and charge accordingly. The Department may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (i)(3) of this section, the Department cannot require a requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to the requester) is not advance payment.

(2) When the Department estimates or determines that a total fee to be charged under this section will exceed $250, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Department may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component within 30 calendar days of the date of its billing, the Department may require the requester to pay the full amount due, plus any applicable interest on that prior request, and to make an advance payment of the full amount of any anticipated fee before the Department begins to process a new request or continues to process a pending request or any appeal from that requester. Where the Department has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity. Additionally, if a requester has failed to pay a fee properly charged by another U.S. Government agency in a FOIA case, the Department may require proof that such fee has been paid before processing a new or pending request from that requester.

(4) In cases in which the Department requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Department's fee determination, the request will be closed.

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

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

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

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

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

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

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

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

(B) If there is an identified commercial interest, the Department must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirement of paragraphs (j)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Department ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (j)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester.

Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

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

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

§ 171.17 Preservation of records

The Department must preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code and applicable records disposition schedules, including the General Records Schedule 4.2 of the National Archives and Records Administration. The Department must not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

Subpart C—Privacy Act Provisions

§ 171.20 Purpose and scope.

This subpart contains the rules that the Department follows when implementing certain provisions of the Privacy Act of 1974 (PA), as amended, 5 U.S.C. 552a. These rules should be read together with the statute. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Department. If any records retrieved pursuant to an access request under the PA are found to be exempt from access under that Act, they will be processed for possible disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. No fees shall be charged when an individual requests access to or amendment of his or her own PA records.

§ 171.21 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Individual* means a citizen or a legal permanent resident alien (LPR) of the United States.

(b) *Maintain* includes maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Department and that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or photograph.

(d) *System of records* means a group of any records under the control of the Department from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

§ 171.22 Request for access to records.

(a) *In general.* Requests for access to records under the PA must be made in writing and sent to the Office of Information Programs and Services, the Office of Passport Services within the Bureau of Consular Affairs, or the Office of Inspector General at the addresses given in § 171.4. The Director of the Office of Information Programs and Services (A/GIS/IPS) is responsible for acting on all PA requests for Department records except for requests received directly by the Office of Inspector General, which processes its own requests for information, and the Office of Passport Services within the Bureau of Consular Affairs, which receives directly and processes its own PA requests for information as described in PA System of Record Notice STATE–26. All processing of PA requests coming under the jurisdiction of the Directorates for Visa Services and Overseas Citizens Services in the Bureau of Consular Affairs, the Bureau of Diplomatic Security, the Bureau of Human Resources, the Office of Medical Services, and the Foreign Service Grievance Board (FSGB) are handled by those bureaus or offices.

(b) *Description of records sought.* Requests for access should describe the requested record(s) in sufficient detail to permit identification of the record(s). At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used, current complete mailing address, and date and place of birth (city, state and country). Helpful information includes the approximate time period of the record and the circumstances that give the individual reason to believe that the Department maintains a record under the individual's name or personal identifier, and, if known, the system of records in which the record is maintained. In certain instances, it may be necessary for the Department to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(c) *Verification of personal identity.* The Department will require reasonable identification of individuals requesting records about themselves under the PA's access provisions to ensure that records are only accessed by the proper persons. Requesters must state their full name, current address, citizenship or legal permanent resident alien status, and date and place of birth (city, state, and country). The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included. Requesters seeking access to copies of the Passport Services' passport records must meet the requirements in paragraph (d) of this section.

(d) *Special requirements for passport records.* Given the sensitive nature of passport records and their use, requesters seeking access to copies of passport records from Passport Services under the PA must submit a letter that is either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746, which includes the full name at birth and any subsequent name changes of the individual whose records are being requested (if submitting the request on behalf of a minor, provide the representative's full name as well); the date and place of birth of the individual whose records are being requested; the requester's current mailing address; and, if available, daytime telephone number and email address; the date or estimated date the passport(s) was issued; the passport number of the person whose records are being sought, if known; and any other information that will help to locate the records. The requester must also include a clear copy of both sides of the requester's valid government-issued photo identification, *e.g.,* a driver's license.

(e) *Authorized third party access.* The Department shall process all properly authorized third party requests, as

described in this section, under the PA. In the absence of proper authorization from the individual to whom the records pertain, the Department will process third party requests under the FOIA. The Department's form, DS–4240, may be used to certify identity and provide third party authorization. Forms created by other Federal agencies will not be accepted.

(1) *Parents and guardians of minor children.* Upon presentation of acceptable documentation of the parental or guardian relationship, a parent or guardian of a U.S. citizen or LPR minor (an unmarried person under the age of 18) may, on behalf of the minor, request records under the PA pertaining to the minor. In any case, U.S. citizen or LPR minors may request such records on their own behalf.

(i) *Verification of parentage or guardianship of minor children.* When making a request as the parent or guardian of a minor child, for access to records about that individual, a requester must establish:

(A) The identity of the individual who is the subject of the records, by stating the name, current address, date and place of birth;

(B) The requester's own identity, as required in paragraph (c) of this section;

(C) That the requester is the parent of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing parentage, or by providing a court order establishing guardianship; and

(D) That the requester is acting on behalf of that individual in making the request.

(2) *Guardians of incompetent adults.* A guardian of an individual who has been declared by a court to be incompetent may act for and on behalf of the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(i) *Verification of guardianship of incompetent adult.* When making a request as the guardian of someone determined by a court to be incompetent, for access to records about that individual, a requester must establish:

(A) The identity of the individual who is the subject of the records, by stating the name, current address, date and place of birth;

(B) The requester's own identity, as required in paragraph (c) of this section;

(C) That the requester is the guardian of that individual, which the requester may prove by providing a copy of a court order establishing guardianship; and

(D) That the requester is acting on behalf of that individual in making the request.

(2) *Authorized representatives or designees.* When an individual wishes to authorize the Department to permit a third party access to his or her records, the individual to whom the records pertain must submit, in addition to the identity verification information described in paragraph (c) (or paragraph (d) of this section if the request is for passport records), a signed statement from the individual to whom the records pertain, either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746, giving the Department authorization to release records about the individual to the third party. The designated third party must submit identity verification information described in paragraph (c) of this section. Third party requesters seeking access to copies of the Passport Office's records must submit a clear copy of both sides of a valid government-issued photo identification (*e.g.,* a driver's license) in addition to the other information described above.

(f) *Referrals and consultations.* If the Department determines that records retrieved as responsive to the request were created by another agency, it ordinarily will refer the records to the originating agency for direct response to the requester. If the Department determines that Department records retrieved as responsive to the request are of interest to another agency, it may consult with the other agency before responding to the request. The Department may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

(g) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access to any information compiled in reasonable anticipation of a civil action or proceeding.

(h) *Time limits.* The Department will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

§ 171.23 Request to amend or correct records.

(a) An individual has the right to request that the Department amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to A/GIS/IPS or OIG at the address given in § 171.4, with ATTENTION: PRIVACY ACT AMENDMENT REQUEST written on the envelope. A/GIS/IPS or OIG will coordinate the review of the request with the appropriate offices under its purview. The Department will require verification of personal identity as provided in § 171.22(c) before it will initiate action to amend a record. Amendment requests should contain, at a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records shall be acknowledged within 10 working days.

(d) In reviewing a record in response to a request to amend, the Department shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Department agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing of its decision;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Department denies an individual's request to amend a record, it shall advise the individual in writing of its decision and the reason for the refusal, and the procedures for the individual to request further review. See § 171.25.

§ 171.24 Request for an accounting of record disclosures.

(a) *How made.* Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, or where accountings of disclosures do not need to be provided to a requesting individual pursuant to 5 U.S.C. 552a(c)(3), an individual has a right to request an accounting of any disclosure that the Department has made to another person, organization, or agency of any record about such individual, provided that the disclosed records are maintained in a system of records. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each

particular record in question and may be made by writing directly to A/GIS/IPS at the address given in § 171.4.

(b) *Where accountings not required.* The Department is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Department who have a need for the record in the performance of their duties; and

(2) Disclosures required under the FOIA.

§ 171.25 Appeals from denials of PA amendment requests.

(a) If the Department denies a request for amendment of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial within 90 working days of the date of the Department's denial letter.

(b) For decisions made by A/GIS/IPS, requesters should submit their appeal to the A/GIS/IPS FOIA Appeals Office. The contact information for A/GIS/IPS is contained in the FOIA Reference Guide, which is available at *www.state.gov.* Appeals can be submitted by mail or email to *foiarequest@state.gov.* To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Privacy Act Appeal.''

(c) For decisions made by OIG, requesters should submit their appeal to the OIG. The contact information for OIG is available at *www.stateoig.gov/foiaappeals.* To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Privacy Act Appeal.''

(d) Appellants should submit an administrative appeal of any denial, in whole or in part, of a request for access to FSGB records under the PA to A/GIS/IPS at the above address. A/GIS/IPS will assign a tracking number to the appeal and forward it to the FSGB, which is an independent body, for adjudication.

(e) A/GIS/IPS or OIG will decide appeals from denials of PA amendment requests within 30 working days from the date when the appeal is received, unless an extension of that period for good cause shown is needed.

(f) Decisions will be made in writing, and appellants will receive notification of the decision. A reversal will result in reprocessing of the request in accordance with that decision. An affirmance will include a brief statement of the reason for the affirmance and will inform the appellant that the decision represents the final decision of the Department and of the right to seek judicial review of the decision, when applicable.

(g) If the decision is that a record shall be amended in accordance with the appellant's request, A/GIS/IPS or OIG shall direct the office under its purview that is responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance (if an accounting of previous disclosures has been made), and so advise the individual in writing.

(h) If the decision is that the amendment request is denied, in addition to the notification required by paragraph (f) of this section, A/GIS/IPS or OIG shall advise the appellant:

(1) Of the right to file a concise Statement of Disagreement stating the reasons for disagreement with the decision of the Department;

(2) Of the procedures for filing the Statement of Disagreement;

(3) That any Statement of Disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(i) If the appellant files a Statement of Disagreement under paragraph (h) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently access the record. When the disputed record is subsequently disclosed, the Department will note the dispute and provide a copy of the Statement of Disagreement. The Department may also include a brief summary of the reasons for not amending the record. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under this part.

§ 171.26 Exemptions.

Systems of records maintained by the Department are authorized to be exempt from certain provisions of the PA under both general and specific exemptions set forth in the Act. In utilizing these exemptions, the Department is exempting only those portions of systems that are necessary for the proper functioning of the Department and that are consistent with the PA. Where compliance would not interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, the applicable exemption may be waived, either partially or totally, by the Department or the OIG, in the sole discretion of the Department or the OIG, as appropriate. Records exempt under 5 U.S.C. 552a(j) or (k) by the originator of the record remain exempt if subsequently incorporated into any Department system of records, provided the reason for the exemption remains valid and necessary.

(a) *General exemptions.* If exempt records are the subject of an access request, the Department will advise the requester of their existence and of the name and address of the source agency, unless that information is itself exempt from disclosure.

(1) Individuals may not have access to records maintained by the Department that are maintained or originated by the Central Intelligence Agency under 5 U.S.C. 552a(j)(1).

(2) In accordance with 5 U.S.C. 552a(j)(2), individuals may not have access to records maintained or originated by an agency or component thereof that performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. The reason for invoking these exemptions is to ensure effective criminal law enforcement processes. Records maintained by the Department in the following systems of records are exempt from all of the provisions of the PA except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), and (e)(11), and (i) of this section, to the extent to which they meet the criteria of section (j)(2) of 5 U.S.C. 552a. The names of the systems correspond to those published

in the **Federal Register** by the Department.

Office of Inspector General Investigation Management System. STATE–53.

Information Access Program Records. STATE–35.

Risk Analysis and Management. STATE–78.

Security Records. STATE–36.

(b) *Specific exemptions.* Portions of the following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), and (4), (G), (H), and (I), and (f). The names of the systems correspond to those published in the **Federal Register** by the Department.

(1) *Exempt under 5 U.S.C. 552a(k)(1).* Records contained within the following systems of records are exempt under this section to the extent that they are subject to the provisions of 5 U.S.C. 552(b)(1).

(i) Board of Appellate Review Records. STATE–02.

(ii) Congressional Correspondence. STATE–43.

(iii) Congressional Travel Records. STATE–44.

(iii) Coordinator for the Combating of Terrorism Records. STATE–06.

(iv) External Research Records. STATE–10.

(v) Extradition Records. STATE–11.

(vi) Family Advocacy Case Records. STATE–75.

(vii) Foreign Assistance Inspection Records. STATE–48.

(viii) Human Resources Records. STATE–31.

(ix) Information Access Programs Records. STATE–35.

(x) Intelligence and Research Records. STATE–15.

(xi) International Organizations Records. STATE–17.

(xii) Law of the Sea Records. STATE–19.

(xiii) Legal Case Management Records. STATE–21.

(xiv) Munitions Control Records. STATE–42.

(xv) Overseas Citizens Services Records. STATE–05.

(xvi) Passport Records. STATE–26.

(xvii) Personality Cross Reference Index to the Secretariat Automated Data Index. STATE–28.

(xviii) Personality Index to the Central Foreign Policy Records. STATE–29.

(xix) Personnel Payroll Records. STATE–30.

(xx) Office of Inspector General Investigation Management System. STATE–53.

(xxi) Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes. STATE–54.

(xxii) Risk Analysis and Management Records. STATE–78.

Rover Records. STATE–41.

(xxiii) Records of Domestic Accounts Receivable. STATE–23.

(xxiv) Records of the Office of White House Liaison. STATE–34.

(xxv) Refugee Records. STATE–59.

(xxvi) Security Records. STATE–36.

(xxvii) Visa Records. STATE–39.

(2) *Exempt under 5 U.S.C. 552a(k)(2).* Records contained within the following systems of records are exempt under this section to the extent that they consist of investigatory material compiled for law enforcement purposes, subject to the limitations set forth in 5 U.S.C. 552a(k)(2).

(i) Board of Appellate Review Records. STATE–02.

(ii) Coordinator for the Combating of Terrorism Records. STATE–06.

(iii) Extradition Records. STATE–11.

(iv) Family Advocacy Case Records. STATE–75

(v) Foreign Assistance Inspection Records. STATE–48.

(vi) Garnishment of Wages Records. STATE–61.

(vii) Information Access Program Records. STATE–35.

(viii) Intelligence and Research Records. STATE–15.

(ix) Munitions Control Records. STATE–42.

(x) Overseas Citizens Services Records. STATE–05.

(xi) Passport Records. STATE–26.

(xii) Personality Cross Reference Index to the Secretariat Automated Data Index. STATE–28.

(xiii) Personality Index to the Central Foreign Policy Records. STATE–29.

(xiv) Office of Foreign Missions Records, STATE–81.

(xv) Office of Inspector General Investigation Management System. STATE–53.

(xvi) Risk Analysis and Management Records. STATE–78.

(xvii) Security Records. STATE–36.

(xviii) Visa Records. STATE–39.

(3) *Exempt under 5 U.S.C. 552a(k)(3).* Records contained within the following systems of records are exempt under this section to the extent that they are maintained in connection with providing protective services pursuant to 18 U.S.C. 3056.

(i) Extradition Records. STATE–11.

(ii) Information Access Programs Records. STATE–35.

(iii) Intelligence and Research Records. STATE–15.

(iv) Overseas Citizens Services Records. STATE–05.

(v) Passport Records. STATE–26.

(vi) Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE–28.

(vii) Personality Index to the Central Foreign Policy Records. STATE–29.

Security Records. STATE–36.

(viii) Visa Records. STATE–39.

(4) *Exempt under 5 U.S.C. 552a(k)(4).* Records contained within the following systems of records are exempt under this section to the extent that they are required by statute to be maintained and are used solely as statistical records.

(i) Foreign Service Institute Records. STATE–14.

(ii) Human Resources Records. STATE–31.

(iii) Information Access Programs Records. STATE–35.

(iv) Overseas Citizens Services Records, STATE–05

(v) Personnel Payroll Records. STATE–30.

(vi) Security Records. STATE–36.

(5) *Exempt under 5 U.S.C. 552a(k)(5).* Records contained within the following systems of records are exempt under this section to the extent that they consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of a confidential informant.

(i) Records Maintained by the Office of Civil Rights. STATE–09.

(ii) Foreign Assistance Inspection Records. STATE–48.

(iii) Foreign Service Grievance Board Records. STATE–13.

(iv) Human Resources Records. STATE–31.

(v) Information Access Programs Records. STATE–35.

(vi) Legal Adviser Attorney Employment Application Records. STATE–20.

(vii) Overseas Citizens Services Records. STATE–25.

(viii) Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE–28.

(ix) Office of Inspector General Investigation Management System. STATE–53.

(x) Records of the Office of White House Liaison. STATE–34.

(xi) Risk Analysis and Management Records. STATE–78.

(xii) Rover Records. STATE–41.

(xiii) Security Records. STATE–36.

(xiv) Senior Personnel Appointments Records. STATE–47.

(6) *Exempt under 5 U.S.C. 552a(k)(6).* Records contained within the following systems of records are exempt under this section to the extent that they consist of testing or examination material used solely to determine

individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(i) Foreign Service Institute Records. STATE–14.

(ii) Human Resources Records. STATE–31.

(iii) Information Access Programs Records. STATE–35.

(iv) Records Maintained by the Office of Civil Rights. STATE–09

(v) Security Records. STATE–36.

(7) *Exempt under 5 U.S.C. 552a(k)(7).* Records contained within the following systems of records are exempt under this section to the extent that they consist of evaluation material used to determine potential for promotion in the armed services, but only to the extent that such disclosure would reveal the identity of a confidential informant.

(i) Overseas Citizens Services Records. STATE–25.

(ii) Human Resources Records. STATE–31.

(iii) Information Access Programs Records. STATE–35.

(iv) Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE–28.

(v) Personality Index to the Central Foreign Policy Records. STATE–29.

Subpart D—Access to Financial Disclosure Reports

§ 171.30 Purpose and scope.

This subpart sets forth the process by which persons may request access to public financial disclosure reports filed with the Department in accordance with sections 101 and 103(l) of the Ethics in Government Act of 1978, 5 U.S.C. app. 101 and 103(l), as amended. The retention, public availability, and improper use of these reports are governed by 5 U.S.C. app. 105 and 5 CFR 2634.603. It also sets forth the restrictions on access to confidential financial disclosure reports filed under 5 CFR 2634, Subpart I, in accordance with sections 107(a) of the Ethics in Government Act of 1978, 5 U.S.C. app. 107(a) and 5 CFR 2634.604.

§ 171.31 Requests for Public Financial Disclosure Reports—OGE Form 278

Requests for access to public financial disclosure reports filed with the Department should be made by submitting the information required by 5 CFR 2634.603(c) or a completed Office of Government Ethics request form, OGE Form 201, to *OGE201Request@state.gov* or the Office of the Assistant Legal Adviser for Ethics and Financial Disclosure, U.S. Department of State, 2201 C Street NW, Washington, DC 20520. The OGE Form 201 may be obtained by visiting *www.oge.gov* or writing to the address above.

§ 171.32 Denial of Public Access to Confidential Financial Disclosure Reports—OGE Form 450

No member of the public shall have access to confidential financial disclosure reports filed pursuant to 5 CFR 2634, Subpart I, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a.

Carrie Cabelka,

Assistant Secretary, Bureau of Administration, Department of State.

[FR Doc. 2020–03844 Filed 3–5–20; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100814–19]

RIN 1545–BP23

Meals and Entertainment Expenses Under Section 274; Change of Hearing Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date of public hearing on proposed rulemaking.

SUMMARY: This document changes the date of a public hearing on proposed regulations that provide guidance under section 274 of the Internal Revenue Code (Code) regarding certain statutory amendments made to section 274 by 2017 legislation.

DATES: The public hearing originally scheduled for Tuesday, April 7, 2020, at 10 a.m. is rescheduled for Wednesday, April 29, 2020, at 10 a.m. Outlines of topics to be discussed at the public hearing must be received by April 13, 2020. Written or electronic comments must be received by April 13, 2020.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send hard copy submissions to CC:PA: LPD:PR (REG–100814–19), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100814–19).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Patrick Clinton of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–7005; concerning the submission of comments, the hearing, or to be placed on the building access list to attend the hearing, call Regina Johnson, (202) 317–6901 (not toll-free numbers), or email *fdms.database@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking appeared on the **Federal Register** on Wednesday, February 26, 2020 (85 FR 11020), announced that a public hearing on proposed regulations regarding certain statutory amendments made to section 274 by 2017 legislation, would be held on Tuesday, April 7, 2020, beginning at 10 a.m. in the auditorium of the Internal Revenue Service Building at 1111 Constitution Avenue NW, Washington, DC.

The date of the public hearing has been changed. The hearing is now scheduled for Wednesday, April 29, 2020, beginning at 10 a.m. in the auditorium of the Internal Revenue Service at 1111 Constitution Avenue NW, Washington, DC. Outlines of topics to be discussed at the public hearing must be received by April 13, 2020.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2020–04561 Filed 3–5–20; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 20 and 68

[WT Docket No. 20–3; FCC 20–6; FRS 16479]

Standards for Hearing Aid-Compatible Handsets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (''Commission'') proposes to adopt a new hearing aid compatibility technical standard and make related implementation revisions.

DATES: Interested parties may file comments on or before April 6, 2020, and reply comments on or April 20, 2020.

ADDRESSES: You may submit comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). *All filings related to this document shall refer to WT Docket No. 20–3.*

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service First-Class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information on this proceeding, contact Eli Johnson, *Eli.Johnson@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–1395. For information on the Paperwork Reduction Act proposed information collection requirements, contact Cathy Williams, *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM), in WT Docket No. 20–3; FCC 20–6, adopted January 30, 2020, and released on January 30, 2020. The document is available for download at *https://www.fcc.gov/edocs.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

I. NPRM

1. In this Notice of Proposed Rulemaking, the Commission proposes to incorporate by reference a new 2019 ANSI Standard (ANSI C63.19–2019, American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids, August 19, 2019 (2019 ANSI standard)) into its rules and to make it the exclusive testing standard for determining hearing aid compatibility after a two-year transition. The Commission's rules presently incorporate by reference the 2007 version of this standard (ANSI C63.19–2007, American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids, June 8, 2007 (2007 ANSI standard)) and the 2011 version of this standard (ANSI C63.19–2011, American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids, May 27, 2011 (2011 ANSI standard)). In addition, to incorporating by reference the 2019 ANSI standard, the Commission proposes to extend a volume control deadline until the start of the exclusive use of the 2019 ANSI Standard. Finally, the Commission proposes to remove unnecessary or superseded rule provisions and seeks comment on ways to simplify and update the hearing aid compatibility rules.

A. Codification of the 2019 ANSI Standard

2. Consistent with past practice, the Commission proposes to incorporate by reference the 2019 ANSI Standard into its rules as the exclusive technical standard for evaluating the hearing aid compatibility of wireless handsets. The Commission has long recognized that its hearing aid compatibility rules should evolve as revisions to ANSI standards are developed over time. To this end, the Commission has encouraged the ANSI Committee to periodically work with relevant stakeholders to review hearing aid compatibility issues and determine whether improvements to the standard are warranted. Accordingly, the Commission proposes to amend its rules to use the 2019 ANSI standard as the exclusive standard for determining hearing aid compatibility after the expiration of a two-year transition period. After the expiration of the transition period, new handsets models would have to be certified under this standard as hearing aid-compatible in order for manufacturers and service providers to use these new handsets to meet their handset deployment requirements.

3. The Commission anticipates that using the 2019 ANSI standard to determine whether a handset is hearing aid-compatible for purposes of its rules will serve the public interest by establishing standards for new devices and operations over additional frequency bands. The 2019 ANSI standard includes volume control metrics for the first time, and covers newer technologies and devices operating in the frequency range of 614 MHz to 6 GHz, as compared to the 2011 ANSI standard's frequency range of 698 MHz to 6 GHz. New testing methodologies in the 2019 ANSI standard should also improve the measurement of potential hearing aid

interference. The new standard no longer uses the M/T category system, achieves harmonization with hearing aid standards that apply to other types of equipment, and changes several testing procedures meant to improve the consumer experience and reduce testing burdens.

4. If the Commission adopts the 2019 ANSI standard, it proposes to treat handsets operating over multiple frequency bands or air interfaces in the same manner as under its current rules. That is, a handset operating only in the ranges specified in the 2019 ANSI standard would be required to satisfy that standard for all frequency bands and air interfaces over which it operates. But if a handset also operates in frequency ranges not addressed by the 2019 ANSI standard, it would be considered hearing aid-compatible as long as it satisfies the 2019 ANSI Standard for those frequencies covered by the standard.

5. The Commission seeks comment on its proposal to adopt the 2019 ANSI standard. Do commenters agree that the new standard is consistent with the requirement that handsets ''produce sound levels suitable for persons with hearing loss (including persons with and without hearing aids),'' would improve the measurement of potential hearing aid interference, and would reduce the testing burden? Would adoption of the standard impose costs on manufacturers or service providers that are reasonable in light of its benefits?

6. The Commission recognizes that the 2019 ANSI standard does not cover frequencies above 6 GHz, as the higher millimeter wave frequencies were not commonly used in mobile handsets at the time the standard was being developed. The Commission therefore takes this opportunity to fulfill its statutory obligation to assess whether to continue to exempt handsets operating in frequencies above 6 GHz from the statutory hearing aid compatibility requirements. Section 710 of the Communications Act of 1934, as amended, exempts ''telephones used with public mobile services'' from the hearing aid compatibility requirements but directs the Commission to assess periodically the ''appropriateness of continuing in effect'' those exemptions. The Commission has partially revoked the statutory exemption for wireless handsets operating below 6 GHz, but has not had occasion to assess the exemption recently for handsets operating above 6 GHz. Accordingly, the Commission seeks comment generally on whether to continue to exempt handsets operating with frequencies above 6 GHz from the hearing aid compatibility requirements. What is the effect, if any, on hearing aid users from mobile handset operations in the mmW frequencies? What is the impact on individuals with hearing loss of excluding frequencies above 6 GHz from the compatibility requirements? As a practical matter, do higher frequencies pose the same interference concerns as the lower frequencies for hearing aids? Is compliance with the hearing aid compatibility standards technologically feasible for devices operating over 6 GHz? What would be the additional cost of testing in higher frequencies used by 5G? Would these additional costs limit innovation for handsets operating in the higher frequencies?

7. As indicated above, the 2019 ANSI standard revises how hearing aid compatibility is determined between wireless handsets and hearing aids and, for the first time, requires handsets to meet a volume control requirement in order to be considered hearing aid-compatible under that standard. The new standard specifies testing procedures for new technologies and devices operating in the frequency range of 614 MHz to 6 GHz and replaces the present numerical M/T rating system with a simple set of requirements and thresholds. As a result of these changes, the new standard will improve the experience of hearing aid users, including those who use cochlear implants, while at the same time reducing testing burdens. The standard is available for inspection at the Federal Communications Commission (FCC), 445 12th St. SW, Reference Information Center, Room CY–A257, Washington, DC 20554, (202) 418–0270. The standard is available for purchase from IEEE Operations Center, 445 Hoes Lane, Piscataway, NJ 08854–4141, by calling (732) 981–0060, or going to *https://standards.ieee.org/.*

B. Transition Period

8. In its filing, the ANSI Committee urges the Commission to adopt an ''appropriate'' transition period for implementing the new standard, but it does not recommend a particular length of time. The Commission agrees that manufacturers and service providers will likely require some transition period in order to design, manufacture, and market equipment that satisfies the 2019 ANSI Standard for hearing aid compatibility, and the Commission seeks comment on how much time is reasonably needed. The Commission proposes to phase out the 2011 ANSI standard over a transition period of two (2) years from the date the order adopting the 2019 ANSI standard is published in the **Federal Register**. The Commission used a two-year transition period before making the 2007 ANSI standard the exclusive testing standard for hearing aid compatibility and a two-year transition period before requiring the 2011 ANSI standard be used for meeting hearing aid compatibility requirements for newly covered frequency bands and air interfaces that were not covered by the 2007 ANSI standard. The Commission proposes a similar two-year transition period to appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss.

9. In assessing its proposed two-year transition period, the Commission seeks comment on the steps manufacturers must take to implement the 2019 ANSI standard and their implications for the length of the transition period. What is the scope and timeline of the design changes necessary to incorporate the 2019 ANSI standard into future handsets? Commenters should consider manufacturers' product fabrication cycles and the practicality of testing multi-band or multi-mode handsets in the near-term under the 2019 ANSI standard. Are there multi-band or multi-mode handsets planned for near-term introduction that meet the hearing aid compatibility criteria for their operations covered under the 2011 ANSI standard but do not meet those criteria for newly covered operations or revised testing procedures under the 2019 ANSI standard? What, if any, obstacles do manufacturers anticipate facing? Given the clear public interest in moving quickly to make advanced technology available to those with hearing loss, the Commission urges any commenters proposing a transition of longer than two years to provide specific information about why more time is needed.

10. The Commission further seeks comment on the effect its proposed transition period likely will have on the Commission's ability to decide by 2024 whether to require 100% of covered handsets to be hearing aid-compatible. Does a two-year transition period encourage manufacturers to increase the number of hearing aid-compatible handsets they produce or help them eventually achieve 100% hearing aid-compatibility? Or would the design changes required by the 2019 ANSI standard negatively affect the ability of device manufacturers to meet any requirement the Commission may determine to impose that all covered handsets be hearing aid-compatible by a certain date in the future? Are there any

issues related to the pending 100% proceeding that the Commission should consider with respect to making the 2019 ANSI standard the exclusive testing standard going forward? Commenters should fully explain any relationship between the adoption of the 2019 ANSI standard as the exclusive testing standard and the potential requirement for 100% of handsets to be hearing aid-compatible.

11. Although the Commission proposes to allow a two-year transition period before requiring exclusive use of the 2019 ANSI Standard, including its volume control requirements, it notes that manufacturers currently have a deadline in less than a year-and-a-half to ensure that wireless handsets are ''equipped with volume control that produces sound levels suitable for persons with hearing loss (including persons with and without hearing aids).'' The Commission proposes to extend this volume control deadline so that it coincides with the start of the exclusive use of the 2019 ANSI standard. The Commission seeks comment on this proposal. Would retaining disparate deadlines for volume control and exclusive use of the 2019 ANSI standard effectively require manufacturers to develop new handsets to meet the volume control deadline and then develop a new batch of handsets to satisfy the 2019 standard? Commenters should be specific about the costs and benefits of their proposed approach.

12. Consistent with past transitions to new standards, the Commission proposes permitting new handset models to be tested for certification using *either* the 2011 or 2019 ANSI standards during the transition period. Consistent with the 1988 Hearing Aid Compatibility Act and the current rules, the Commission proposes that all existing hearing aid compatibility certifications issued prior to and within the transition period, including certifications under the 2011 ANSI standard as well as any earlier versions of the standard, would remain valid. As a result, no existing handset models would need to be retested or recertified as hearing aid-compatible. The Commission seeks comment on this approach.

13. The Commission notes that the Commission's existing handset certification procedures do not permit a handset model to be tested and certified partly under one version of the ANSI standard and partly under another. The Commission has taken this approach because each ANSI standard has its own complete set of testing procedures and mixing these procedures will result in a meaningless outcome. Consistent with this long-established certification practice, the Commission proposes that manufacturers continue to be required to test a new handset model exclusively under either the 2011 ANSI standard or the 2019 ANSI standard during the transition period. After the end of the transition period, the Commission proposes that new handset models be required to satisfy fully the 2019 ANSI standard, including its volume control requirements, for all of the frequency bands covered by the standard to be considered hearing aid-compatible. The Commission seeks comment on this proposal.

C. Meeting Deployment Benchmarks

14. Subject to a de minimis exception, handset manufacturers and service providers must offer minimum numbers of hearing aid-compatible handset models for each covered air interface over which its handsets operate. Depending on the type and size of an entity and the point in time, manufacturers and providers will need to ensure that either 66% or 85% of their handset models are hearing aid-compatible. Under the 2011 ANSI standard, this means that a handset must be rated M3 or higher and T3 or higher for any given air interface. With respect to the 2019 ANSI standard, for the handset to be hearing aid-compatible over a covered air interface, the handset must meet the requirements for both acoustic and inductive coupling modes for that air interface, including the volume control requirements.

15. If the Commission adopts the 2019 ANSI standard going forward, it proposes to allow manufacturers and service providers to meet the requirement to offer minimum numbers of hearing aid-compatible handsets by counting the models certified under the 2019 ANSI standard and handset models already certified under earlier versions of the standard (*i.e.,* the 2007 and 2011 versions of the standard) as long as those models are still being offered for sale. As more and more handset models become certified under the 2019 ANSI standard, the Commission expects that handset models certified under older versions of the ANSI standard will cease being offered for sale and will be replaced with new models certified under the 2019 ANSI standard. Manufacturers and national wireless providers are already required to ensure that 66% of the handsets they offer are hearing aid-compatible, and the Commission expects handsets meeting the 2019 ANSI standard to be common within a few years after the end of the transition period. The Commission also notes that, while manufacturers would not be required to certify their new handset models under the 2019 ANSI standard during the transition period in order to meet their minimum deployment benchmarks, they may find using the 2019 standard advantageous from a marketing perspective. The Commission seeks comment on this proposal. What are the costs and benefits to device manufacturers, service providers, and consumers with hearing loss of allowing handsets certified under previous ANSI standards to count toward the minimum number of hearing aid-compatible handsets that must be offered? Are there reasons to impose new requirements on manufacturers and service providers to offer minimum numbers of handsets certified to comply with the 2019 ANSI standard?

D. Labeling Requirements

16. The Commission proposes to update and modernize its hearing aid compatibility labeling requirements in order to eliminate outdated provisions and to streamline and clarify these requirements. The 1988 Hearing Aid Compatibility Act provides that the Commission ''shall establish . . . requirements for the labeling of packaging materials . . . to provide adequate information to consumers on the compatibility between telephones and hearing aids.'' This Congressional directive requires us to ensure that consumers have sufficient information to make an informed decision when selecting hearing aid-compatible handsets. Given this directive, the Commission proposes to simplify its current hearing aid compatibility labeling requirements so that consumers will have the easily understandable information they need in order to understand and evaluate the hearing aid compatibility of a particular handset. In making this proposal, the Commission is mindful that its labeling requirements must not only cover new handset models certified under the 2019 ANSI standard but also cover handset models that are still being offered for sale and that have been certified as hearing aid-compatible under older versions of the ANSI standard.

17. The Commission's current labeling requirements are composed of four parts. The first requires manufacturers and service providers to ensure that a label on the exterior packaging of a wireless handset indicates the M- and T-rating of the handset model under the 2011 ANSI Standard. Under the 2019 ANSI Standard, however, this information would no longer be relevant because the new standard does not use a rating

system. The second part requires manufacturers and service providers to display information on the handset's volume control capabilities. The third part establishes labeling requirements related to handsets that are considered hearing aid-compatible with respect to some, but not all of their frequency bands and air interfaces. The fourth part imposes disclosure requirements relating to handsets that allow users to reduce the maximum power for GSM operation in the 1900 MHz band. This power down exception was eliminated when the Commission adopted the 2011 ANSI standard as the exclusive testing standard.

18. With the objectives of modernizing and streamlining its rules, the Commission proposes to reorganize its existing hearing aid compatibility labeling requirements by requiring the following:

(1) For all handset models certified to be hearing aid-compatible, manufacturers and service providers shall disclose to consumers through clear and effective means (*e.g.,* inclusion of packaging materials, user manuals, call-out cards or other physical media):

(i) That the handset is hearing aid-compatible (including placing this information on the handset's packaging label);

(ii) The air interfaces on the handset that are not hearing aid-compatible, if applicable, or have been determined to be hearing aid-compatible under special testing circumstances;

(iii) The ANSI standard that was used to determine the hearing aid compatibility of the handset model's air interfaces; and

(iv) If using the 2011 ANSI standard or earlier, the lowest hearing aid compatibility rating assigned to any of the air interfaces.

(2) Any handset model certified to be hearing aid-compatible but with one or more air interfaces that are not hearing aid-compatible must include the following language:

This phone has been tested and certified for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

(3) For those handset models that have been certified as having met the 2019 ANSI standard's volume control requirement, manufacturers and service providers must clearly display information indicating the handset's amplification capabilities, including numerical metrics or ratings for handset volume control, on the packaging material of the handset and must also provide an explanation of those capabilities in the handset's user manual or as an insert in the packaging material for the handset. The volume control metrics or ratings displayed shall be the lowest metrics or ratings assigned to the handset for any air interface or frequency band.

19. The Commission proposes to modify its current volume control labeling requirement to delete the pending volume control compliance date and the cross reference currently contained in the rule, and to make implementation of the rule easier for manufacturers and service providers to follow. Given that its current labeling requirement was adopted prior to the volume control technical standard being released as part of the 2019 ANSI Standard, the Commission believes that these changes will provide clarity and aid compliance. The Commission seeks comment on whether its revised volume control labeling requirement will provide consumers with sufficient information to make an informed decision about a handset's volume control capabilities. If more information is required, the Commission seeks comment on what additional information is needed, why, and where that information should be displayed (*e.g.,* label, package insert, or user manual).

20. More generally the Commission seeks comment on whether its proposed revised labeling and disclosure requirements are straightforward and conspicuous enough for consumers to understand the hearing aid compatibility of a particular handset model. Does its proposal take into consideration the information that a consumer needs to know to make an informed decision both with respect to handset models certified under the 2019 ANSI standard and those that are still being offered for sale that have been certified under older versions of the standard? Is there any additional information that consumers should be informed of when considering hearing aid-compatible handsets? Consistent with the existing labeling rule, the Commission's proposal requires manufacturers and service providers to disclose on a handset's packaging label if the handset is hearing aid-compatible and additional information on the handset's packaging label if the handset meets the volume control requirement. Further, consistent with the existing labeling requirement, the Commission's proposal requires manufacturers and service providers to disclose other hearing aid compatibility information through clear and effective means such as packaging labels, user manuals and instructions, call-out cards or other appropriate media. Are these methods of disclosure sufficient to meet consumer needs? What, if any, additional information should be required and where should this information be displayed? The Commission also seeks comment on whether it should continue to require service providers to make handsets available for in-store testing by consumers and whether a transition period is needed before its proposed new labeling requirements become effective.

E. Other Rule Changes

21. *Section 20.19.* The Commission seeks comment on whether to revise certain other provisions in section 20.19 to streamline and update its hearing aid compatibility requirements.

21. With the rapid pace of handset development and the number of new handsets that come to market each year, the Commission proposes to delete the ''refresh'' and ''differing levels of functionality'' requirements contained in the Commission's hearing aid compatibility rules. These requirements require manufacturers and service providers to ''refresh'' and offer a range of hearing aid-compatible handset models that include a mix of new and existing models. The Commission seeks comment about whether these requirements remain necessary as more and more handsets are required to be hearing aid-compatible. The Commission's current handset deployment benchmarks require 66% of offered handset models to be hearing aid-compatible and these benchmarks increase to 85% in the near future. Given that these benchmarks require a significant majority of handsets to be hearing aid-compatible, are the ''refresh'' and ''differing levels of functionality'' requirements still necessary to ensure consumers have a wide variety of hearing aid-compatible handsets from which to choose? Have the Commission's changes to the handset deployment benchmarks rendered these requirements unnecessary? Commenters should address the costs and benefits to manufacturers, service providers, and consumers with hearing loss if the Commission eliminates these requirements. The Commission further proposes to make a corresponding change to section 20.19(h) and delete the requirement that service providers make available on their websites information about the ''differing levels of functionality'' of each handset they

offer. The Commission seeks comment on its proposal.

23. The Commission proposes to revise the date that service providers must file certifications of compliance with the Commission's hearing aid compatibility provisions and the date that manufacturers must file compliance reports. Presently, service provider certifications are due January 15 each year and manufacturer reports are due July 15 each year. The Commission proposes to move these dates to January 31 and July 31, respectively. Under this approach, the filing window for service providers would open the first business day in January and for manufacturers the first business day in July. This change would ensure that service provider certifications and manufacturer reports are ''up-to-date as of the last day of the calendar month preceding the due date of each report and certification.'' The Commission seeks comment on this change.

24. Finally, throughout section 20.19, the Commission proposes to delete references to implementation dates and benchmarks that have already passed. Eliminating these references will simplify the rules and make them easier to read and understand. The Commission also propose deleting all references to hearing aid compatibility requirements and deployment benchmarks that applied to handsets certified under the 2007 ANSI standard, except for labeling and disclosure requirements related to these handsets. Because all certifications under the 2007 ANSI standard remain valid, current language in the rule describing the requirements and benchmarks that apply to these handsets appears unnecessary. To the extent handsets certified under the 2007 ANSI standard are still being offered for sale, however, these handsets must be labeled in a manner consistent with the Commission's labeling and disclosure requirements. The Commission also seek comment on any other ministerial changes to section 20.19 that it should consider as it updates Commission rules.

25. *Section 68.300.* The Commission proposes a technical correction of section 68.300 of the Commission's rules, which requires labeling of hearing aid-compatible telephones. When the Commission amended part 68 of the rules in 2000 to remove various provisions pertaining to registration of terminal equipment connected to the public switched telephone network (PSTN), it appears that a definition of the term ''permanently affixed,'' which is relevant to the labeling requirement, was inadvertently deleted. The Commission proposes to restore an updated version of the definition.

26. Under section 68.300(b) of the rules, if a telephone that is approved for connection to the PSTN is hearing aid-compatible, the letters ''HAC'' must be permanently affixed to the telephone. Prior to the 2000 amendments, this provision was designated as paragraph (c) of section 68.300, and it referenced a definition of ''permanently affixed'' contained in what was then paragraph (b). In 2000, the Commission deleted the existing paragraph (b)—including the definition of ''permanently affixed''—and renumbered paragraph (c) as paragraph (b). As a result, section 68.300(b) of the rules now refers to a definition that is no longer present in the rule.

27. Subsequently, in 2017, the Commission adopted hearing aid compatibility rules for telephonic equipment used with advanced communications services (ACS telephonic CPE). These rules include an updated definition of ''permanently affixed,'' applicable to the labeling of such equipment as hearing aid-compatible. To ensure that hearing aid compatibility labeling requirements are consistent for both PSTN telephones and advanced telephonic CPE, the Commission proposes to amend section 68.300(b) to include the same definition currently provided in section 68.502(a), as follows:

> ''Permanently affixed'' means that the label is etched, engraved, stamped, silkscreened, indelibly printed, or otherwise permanently marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other material fastened to the equipment by welding, riveting, or a permanent adhesive. The label must be designed to last the expected lifetime of the equipment in the environment in which the equipment may be operated and must not be readily detachable.

28. Further, the Commission proposes to delete from the paragraph the stated requirement date of April 1, 1997, given that the starting date has passed. Because there are only minor differences between the new and old definitions of ''permanently affixed,'' the Commission does not anticipate that these proposed changes will have any significant effect on the current practices of hearing aid compatibility manufacturers or equipment providers. Therefore, the Commission proposes to make this amendment effective in the normal course, 30 days after **Federal Register** publication of the amended rule. The Commission seeks comment on these proposed technical corrections and effective date.

II. Procedural Matters

Initial Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*NPRM*). The IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the *NPRM.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Ex Parte Presentations

30. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 et. seq. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex*

parte presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Paperwork Reduction Act

31. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements in this document, subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

III. Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 610, this Notice of Proposed Rulemaking *is hereby adopted.*

It is further ordered that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before April 6, 2020, and reply comments on or before April 20, 2020.

It is further ordered that WT Docket Nos. 07–250 and 10–254 *are hereby terminated.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2, 20 and 68

Incorporation by reference, Individuals with disabilities, Telecommunications, Telephones.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend title 47 parts 2, 20, and 68 of the Code of Federal Regulations as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL REULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.1033 by revising paragraph (d) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(d) Applications for certification of equipment operating under part 20 of this chapter, that a manufacturer is seeking to certify as hearing aid-compatible, as set forth in § 20.19 of this chapter, shall include a statement indicating compliance with the test requirements of § 20.19 of this chapter. The manufacturer of the equipment shall be responsible for maintaining the test results.

* * * * *

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 3. The authority citation for part 20 is revised to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 155, 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 4. Amend § 20.19 by revising paragraphs (a) through (l) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Definitions.* For purposes of this section:

2007 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 800 MHz and 3 GHz as set forth in the standards document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2007 (2007 ANSI standard).

2011 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 698 MHz and 6 GHz as set forth in the standards document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2011 (2011 ANSI standard).

2019 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 614 MHz and 6 GHz as set forth in the standards document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2019 (2019 ANSI standard).

ANSI standard refers to the 2007, 2011, and 2019 ANSI standards as a group.

Any version of the ANSI standard previous to the 2019 ANSI standard refers to the 2007 and 2011 ANSI standards.

Digital mobile service refers to a terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, to the extent that such service is provided over frequencies specified in the 2011 ANSI standard or the 2019 ANSI standard.

Handset refers to a device used in delivery of digital mobile service in the United States that contains a built-in speaker and is typically held to the ear in any of its ordinary uses.

Manufacturer refers to a manufacturer of handsets that are used in delivery of digital mobile service, as defined in this section, in the United States.

Model refers to a wireless handset device that a manufacturer has designated as a distinct device model, consistent with its own marketing practices. However, if a manufacturer assigns different model device designations solely to distinguish units sold to different carriers, or to signify other distinctions that do not relate to either form, features, or capabilities, such designations shall not count as distinct models for purposes of this section.

Service provider refers to a provider of digital mobile service, as defined in this section, in the United States.

Tier I carrier refers to a CMRS provider that offers such service nationwide.

(b) *Hearing aid compatibility; technical standards.*—(1) *Handset compatibility on or after [DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE].* In order to satisfy a manufacturer or service provider's

obligations under paragraphs (c) and (d) of this section, a handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility on or after [the transition date] must meet the 2019 ANSI standard.

(2) *Handset compatibility before [DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE].* In order to satisfy a manufacturer or service provider's obligations under paragraphs (c) and (d) of this section, a handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility before [the transition date] must meet either:

(i) At a minimum, the M3 and T3 ratings associated with the 2011 ANSI standard; or

(ii) The 2019 ANSI standard.

(3) *Handsets operating over multiple frequency bands or air interfaces.* (i) Beginning on *[DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE],* a handset that uses only the frequencies specified in the 2019 ANSI standard is hearing aid-compatible if it meets the 2019 ANSI standard for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the 2019 ANSI standard pursuant to § 2.1033(d) of this chapter. A handset that incorporates operations outside the frequencies specified in the 2019 ANSI standard is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph (b).

(ii) Before *[DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE]* a handset that uses only the frequencies specified in the 2011 ANSI standard is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the 2011 ANSI standard for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the 2011 ANSI standard pursuant to § 2.1033(d) of this chapter. Before *[DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE],* a handset that incorporates operations outside the frequencies specified in the 2011 ANSI standard is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph (b).

(4) All factual questions of whether a handset meets the technical standard(s) of this paragraph shall be referred for resolution to the Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

(5) A handset certified under any version of the ANSI standard previous to the 2019 ANSI standard remains hearing aid-compatible for purposes of this section.

(c) *Phase-in of hearing aid-compatibility requirements.* The following applies to each manufacturer and service provider that offers handsets used to deliver the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section.

(1) *Manufacturers—Number of hearing aid-compatible handset models offered.* For each digital air interface for which it offers handsets in the United States or imported for use in the United States, each manufacturer must offer hearing aid compatible handsets as follows:

(i) Beginning October 3, 2018, at least sixty-six (66) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible under paragraph (b) of this section.

(ii) Beginning October 4, 2021, at least eighty-five (85) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible under paragraph (b) of this section.

(2) *Tier I carriers.* For each digital air interface for which it offers handsets to customers, each Tier I carrier must:

(i) Beginning April 3, 2019, ensure that at least sixty-six (66) percent of the handset models it offers are hearing aid-compatible under paragraph (b) of this section, calculated based on the total number of unique handset models the carrier offers nationwide.

(ii) Beginning April 4, 2022, ensure that at least eighty-five (85) percent of the handset models it offers are hearing aid-compatible under paragraph (b) of this section, calculated based on the total number of unique handset models the carrier offers nationwide.

(3) *Service providers other than Tier I carriers.* For each digital air interface for which it offers handsets to customers, each service provider other than a Tier I carrier must:

(i) Beginning April 3, 2020, ensure that at least sixty-six (66) percent of the handset models it offers are hearing aid-compatible under paragraph (b) of this section, calculated based on the total number of unique handset models the carrier offers.

(ii) Beginning April 3, 2023, ensure that at least eighty-five (85) percent of the handset models it offers are hearing aid-compatible under paragraph (b) of this section, calculated based on the total number of unique handset models the carrier offers.

(4) *In-store testing.* All service providers must make available for consumers to test, in each retail store owned or operated by the service provider, all of its handset models that are hearing aid-compatible under paragraph (b) of this section.

(d) [Reserved]

(e) *De minimis exception.* (1)(i) Manufacturers or service providers that offer two or fewer handsets in an air interface in the United States are exempt from the requirements of this section in connection with that air interface, except with regard to the reporting and certification requirements in paragraph (i) of this section. Service providers that obtain handsets only from manufacturers that offer two or fewer handset models in an air interface in the United States are likewise exempt from the requirements of this section other than paragraph (i) of this section in connection with that air interface.

(ii) Notwithstanding paragraph (e)(1)(i) of this section, manufacturers that have had more than 750 employees for at least two years and service providers that have had more than 1500 employees for at least two years, and that have been offering handsets over an air interface for at least two years, that offer one or two handsets in that air interface in the United States must offer at least one handset model that is hearing aid-compatible under paragraph (b) of this section in that air interface. Service providers that obtain handsets only from manufacturers that offer one or two handset models in an air interface in the United States, and that have had more than 750 employees for at least two years and have offered handsets over that air interface for at least two years, are required to offer at least one handset model in that air interface that is hearing aid-compatible under paragraph (b) of this section. For purposes of this paragraph, employees of a parent, subsidiary, or affiliate company under common ownership or control with a manufacturer or service provider are considered employees of the manufacturer or service provider. Manufacturers and service providers covered by this paragraph must also comply with all other requirements of this section.

(2) Manufacturers or service providers that offer three handset models in an air interface must offer at least one handset model that is hearing aid-compatible under paragraph (b) of this section in that air interface. Service providers that obtain handsets only from manufacturers that offer three handset models in an air interface in the United

States are required to offer at least one handset model in that air interface that is hearing aid-compatible under paragraph (b) of this section.

(3) Manufacturers that offer four or five handset models in an air interface must offer at least two handset models that are hearing aid-compatible under paragraph (b) of this section in that air interface. Tier I carriers who offer four handset models in an air interface must offer at least two handsets that are hearing aid-compatible under paragraph (b) of this section in that air interface and Tier I carriers who offer five handset models in an air interface must offer at least three handsets that are hearing aid-compatible under paragraph (b) of this section in that air interface. Service providers, other than Tier I carriers, who offer four handset models in an air interface must offer at least two handset models that are hearing aid-compatible under paragraph (b) of this section in that air interface and service providers, other than Tier I carriers, who offer five handset models in an air interface must offer at least three handsets that are hearing aid-compatible under paragraph (b) of this section in that air interface.

(f) *Labeling and disclosure requirements for hearing aid-compatible handsets.* (1) For all handset models certified to be hearing aid-compatible, manufacturers and service providers shall disclose to consumers through clear and effective means (*e.g.,* inclusion of packaging materials, user manuals, call-out cards or other physical media):

(i) That the handset is hearing aid-compatible (including placing this information on the handset's packaging label);

(ii) The air interfaces on the handset that are not hearing aid-compatible, if applicable, or have been determined to be hearing aid-compatible under special testing circumstances;

(iii) The ANSI standard that was used to determine the hearing aid compatibility of the handset model's air interfaces; and

(iv) If using the 2007 ANSI standard or the 2011 ANSI standard, the lowest hearing aid compatibility rating assigned to any of the air interfaces.

(2) Any handset model certified to be hearing aid-compatible but with one or more air interfaces that are not hearing aid-compatible must include the following language:

This phone has been tested and certified for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

(3) For those handset models that have been certified as having met the 2019 ANSI standard's volume control requirement, manufacturers and service providers must clearly display information indicating the handset's amplification capabilities, including numerical metrics or ratings for handset volume control, on the packaging material of the handset and an explanation of those capabilities in the handset's user manual or as an insert in the packaging material for the handset. The volume control metrics or ratings displayed shall be the lowest metrics or ratings assigned to the handset for any air interface or frequency band.

(g) *Model designation requirements.* Where a manufacturer has made physical changes to a handset that result in a change in the hearing aid compatibility rating under the 2011 ANSI standard, the altered handset must be given a model designation distinct from that of the handset prior to its alteration.

(h) *Website and record retention requirements.* (1) Each manufacturer and service provider that operates a publicly-accessible website must make available on its website a list of all hearing aid-compatible models currently offered, the ANSI standard used to evaluate hearing aid compatibility, the ratings of those models under the relevant ANSI standard, if applicable, and an explanation of the rating system. Each service provider must also include on its website: A list of all non-hearing aid-compatible models currently offered, as well as a link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service providers' obligations. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model currently offered.

(2) Service providers must maintain on their website either:

(i) A link to a third-party website as designated by the Commission or Wireless Telecommunications Bureau with information regarding hearing aid-compatible and non-hearing aid-compatible handset models; or

(ii) A clearly marked list of hearing aid-compatible handset models that are no longer offered if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later along with the information listed in paragraph (h)(1) of this section for each hearing aid-compatible handset.

(3) If the Wireless Telecommunications Bureau determines that the third-party website has been eliminated or is not updated in a timely manner, it may select another website or require service providers to comply with paragraph (h)(2)(ii) of this section.

(4) The information on the website must be updated within 30 days of any relevant changes, and any website pages containing information so updated must indicate the day on which the update occurred.

(5) Service providers must maintain internal records including the ratings, if applicable, of all hearing aid-compatible and non-hearing aid-compatible models no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later); for models no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year), the calendar months and years each hearing aid-compatible and non-hearing aid-compatible model was first and last offered; and the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later).

(i) *Reporting requirements.*—(1) *Reporting and certification dates.* Manufacturers shall submit Form 655 reports on efforts toward compliance with the requirements of this section on an annual basis by July 31 of each year. Service providers shall submit Form 855 certifications on their compliance with the requirements of this section by January 31 of each year. Information in each report and certification must be up-to-date as of the last day of the calendar month preceding the due date of each report and certification.

(2) *Content of manufacturer reports.* Reports filed by manufacturers must include:

(i) Handset models tested, since the most recent report, for compliance with the applicable hearing aid compatibility technical ratings, if applicable;

(ii) Compliant handset models offered to service providers since the most

recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(iii) For each compliant model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings for each frequency band and air interface under the ANSI standard (if applicable), the ANSI standard version used, and the months in which the model was available to service providers since the most recent report;

(iv) Non-compliant models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(v) For each non-compliant model, the air interface(s) over which it operates and the months in which the model was available to service providers since the most recent report;

(vi) Total numbers of compliant and non-compliant models offered to service providers for each air interface as of the time of the report;

(vii) Any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices were marketed under separate model name/numbers but constitute a single model for purposes of the hearing aid compatibility rules, identifying each device by marketing model name/number and FCC ID number;

(viii) Status of product labeling;

(ix) Outreach efforts; and

(x) If the manufacturer maintains a public website, the website address of the page(s) containing the information regarding hearing aid-compatible handset models required by paragraph (h) of this section.

(3) *Content of service provider certifications.* Certifications filed by service providers must include:

(i) The name of the signing executive and contact information;

(ii) The company(ies) covered by the certification;

(iii) The FCC Registration Number (FRN);

(iv) If the service provider is subject to paragraph (h) of this section, the website address of the page(s) containing the required information regarding handset models;

(v) The percentage of handsets offered that are hearing aid-compatible (providers will derive this percentage by determining the number of hearing aid-compatible handsets offered across all air interfaces during the year divided by the total number of handsets offered during the year); and

(vi) The following language:

I am a knowledgeable executive [of company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements at a wireless service provider covered by those requirements.

I certify that the provider was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR 1.16 that the above certification is consistent with 47 CFR 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

(vii) If the company selected that it was not in full compliance, an explanation of which wireless hearing aid compatibility requirements it was not in compliance with, when the non-compliance began and (if applicable) ended with respect to each requirement.

(4) *Format.* The Wireless Telecommunications Bureau is delegated authority to approve or prescribe forms, formats, and methods for submission of the reports and certifications in addition to or instead of those required by this section. Any format that the Bureau may approve or prescribe shall be made available on the Bureau's website.

(j) *Enforcement.* Enforcement of this section is hereby delegated to those states that adopt this section and provide for enforcement. The procedures followed by a state to enforce this section shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted or incorporated this section, or failed to act within six (6) months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints. A written notification to the complainant that the state believes action is unwarranted is not a failure to act. The procedures set forth in part 68, subpart E of this chapter are to be followed.

(k) *Delegation of rulemaking authority.* (1) The Chief of the Wireless Telecommunications Bureau and the Chief of the Office of Engineering and Technology are delegated authority, by notice-and-comment rulemaking, to issue an order amending this section to the extent necessary to adopt technical standards for additional frequency bands and/or air interfaces upon the establishment of such standards by ANSI Accredited Standards Committee C63®, provided that the standards do not impose with respect to such frequency bands or air interfaces materially greater obligations than those imposed on other services subject to this section. Any new obligations on manufacturers and Tier I carriers pursuant to paragraphs (c) through (i) of this section as a result of such standards shall become effective no less than one year after release of the order adopting such standards and any new obligations on other service providers shall become effective no less than 15 months after the release of such order, except that any new obligations on manufacturers and service providers subject to paragraph (e)(1)(ii) of this section shall become effective no less than two years after the release of such order.

(2) The Chief of the Wireless Telecommunications Bureau and the Chief of the Office of Engineering and Technology are delegated authority, by notice-and-comment rulemaking if required by statute or otherwise in the public interest, to issue an order amending this section to the extent necessary to approve any version of the technical standards for radio frequency interference, inductive coupling, or volume control adopted subsequently to the 2007 ANSI standard for use in determining whether a wireless handset meets the appropriate rating over frequency bands and air interfaces for which technical standards have previously been adopted either by the Commission or pursuant to paragraph (k)(1) of this section. This delegation is limited to the approval of changes to the technical standards that do not raise major compliance issues. Further, by such approvals, the Chiefs may only permit, and not require, the use of such subsequent versions of the technical standards to establish hearing aid compatibility.

(l) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Communications Commission (FCC), 445 12th St. SW, Reference Information Center, Room CY–A257, Washington, DC 20554, (202) 418–0270, and is available from the source indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *http://*

www.archives.gov/federal-register/cfr/ibr-locations.html.

(1) IEEE Standards Association (IEEE–SA), 445 Hoes Lane, Piscataway, NJ 08854–4141, (732) 981–0060, email to *stds-info@ieee.org,* and *http://standards.ieee.org/.*

(i) ANSI C63.19–2007, American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids, June 8, 2007 (2007 ANSI standard).

(ii) ANSI C63.19–2011, American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids, May 27, 2011 (2011 ANSI standard).

(iii) ANSI C63.19–2019, American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids, August 19, 2019 (2019 ANSI standard).

(2) [Reserved]

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 5. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 610.

SUBPART D—Conditions for Terminal Equipment Approval

■ 6. The authority citation for part 68, Subpart D is revised to read as follows:

Authority: 47 U.S.C. 154, 155, 303, 610.

■ 7. Amend § 68.300 by revising paragraph (b) to read as follows:

§ 68.300 Labeling requirements.

* * * * *

(b) All registered telephones, including cordless telephones, as defined in § 15.3(j) of this chapter, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible, as defined in § 68.316, shall have the letters ''HAC'' permanently affixed thereto. ''Permanently affixed'' means that the label is etched, engraved, stamped, silkscreened, indelibly printed, or otherwise permanently marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other material fastened to the equipment by welding, riveting, or a permanent adhesive. The label must be designed to last the expected lifetime of the equipment in the environment in which the equipment may be operated and must not be readily detachable. Telephones used with public mobile services or private radio services, and secure telephones, as defined by § 68.3, are exempt from this requirement.

[FR Doc. 2020–03149 Filed 3–5–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 85, No. 45
Friday, March 6, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 3, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC, 20503. 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.

Comments regarding these information collections are best assured of having their full effect if received by April 6, 2020. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agriculture Statistics Service

Title: Cotton Ginning Survey.

OMB Control Number: 0535–0220.

Summary of Collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue state and national estimates of crop and livestock production, disposition and prices as well as specialty agricultural and environmental statistics. The Cotton Ginning Survey provides statistics concerning cotton ginning for specific dates and geographic regions and aids in forecasting cotton production. The Cotton Ginning surveys obtain data mandated under U.S.C. Title 13, Section 42(a). General authority for these data collection activities is granted under U.S. Code Title 7, section 2204.

Need and Use of the Information: The majority of data are collected by telephone, mail, and fax. All active gins for a given crop season in all 17 cotton producing states are included in the survey. The ginning data collected provides (1) all segments of the cotton industry—buyers, brokers, crushers, shippers, textile firms, and researches with exact quantities of cotton available at specific geographic locations within the U.S. on a regular basis; (2) precise statistics, especially when at least 50 percent of the forecasted cotton production has been ginned in a state; and (3) final season ginning data is used to establish final production. If the information were collected less frequent, the cotton industry would be without county level quantities ginned that could seriously affect transportation costs and marketing strategies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 575.

Frequency of Responses: Reporting: Monthly, Annually.

Total Burden Hours: 1,218.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–04631 Filed 3–5–20; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

Notice of Request for Approval of a New Information Collection

AGENCY: Office of Partnerships and Public Engagement (OPPE), Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Office of Partnerships and Public Engagement to request review and approval for a new information collection for the Community of Faith and Opportunity initiative.

DATES: Comments on this notice must be received by no later than May 2, 2020, to be assured of consideration.

ADDRESSES: The U.S. Department of Agriculture invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or 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 U.S. Department of Agriculture, Office of Partnerships and Public Engagement, Docket Clerk, 1400 Independence Ave. SW, Mailstop 0601, Room 517A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Ave. SW, Room 517A, Washington, DC 20250–3700. You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, DC 20503.

Instructions: All items submitted by mail or electronic mail must include the Agency name (Office of Partnerships and Public Engagement). Comments received in response to this notice will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

For access to background documents or comments received, go to the Office of Partnerships and Public Engagement at 1400 Independence Ave. SW, Room 517–A, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Alex Cordova, Office of Partnerships and Public Engagement, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250 Telephone Number 202–802–0476 and Fax number 202–720–7704.

SUPPLEMENTARY INFORMATION:

Title: Community of Faith and Opportunity initiative.

OMB Number: New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: Communities of Faith and Opportunity brings together local and community leadership to establish local prosperity councils. These councils are a bottom up, locally driven, partnership structure that assists in strengthening local capacity so that communities can develop investable projects to address their respective challenges and needs. Local prosperity councils provide additional information on their challenges, members of their council, as well as on going efforts on project implementation, to inform recommendations provided by USDA personnel. These recommendations are put together by USDA subject matter experts at headquarters and distributed to communities and USDA state office staff for implementation in the field. This combination of customer service, program delivery, and capacity building and technical assistance will ensure that a sustainable, bottom up, locally driven process is achieved that will move communities towards prosperity.

The Communities of Faith and Opportunity initiative seeks to better understand the challenges facing rural and underserved communities across the country, while also assisting them in building the local capacity needed to address the community challenges and needs. In order to accomplish this, communities are invited to participate in outreach summits, capacity building workshops, and if interested, to submit additional information to become a Community of Faith and Opportunity. The form captures information that will assist the USDA in providing robust, timely responses, customer service and program recommendations ensuring local needs are taken into account and setting up a community for long term success. The ''Communities of Faith and Opportunity—Next Steps'' form can be found at the following link: *https://msudafvm.co1.qualtrics.com/jfe/form/SV_3CPN4ZzqzEGCHoF*.

The information being collected requires the respondents to:

(1) Identify themselves, names, physical address, telephone number, email address.

(2) If applying as an entity, respondents are required to provide their company legal operating name, names and contact information of person(s) that will be the lead or key contact.

(3) Identify name and email addresses of local partners and collaborators to create a Local Prosperity Council.

(4) Determine 3–5 local challenges or projects that you would like to see addressed by USDA

(5) Describe local assets by identifying and describing community resources that are being leveraged to accomplish community goals.

(6) Describe on going implementation efforts in the community; including specific activities that community stakeholders have undertaken to address the challenges independently.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .75 hours per response.

Type of Respondents: Respondents on this form will potentially include—individuals, businesses, Not-for Profit organizations, Higher Education Institutions, Healthcare institutions State, Local, and Tribal governments; Community-based Organizations, etc.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: .75.

Comments are invited on: (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 including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the U.S. Department of Agriculture, Attn: Alex Cordova, 1400 Independence Ave. SW, Washington, DC 20250, mail stop 0601. All comments received will be available for public inspection during regular business hours at the same address.

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

Riley Pagett,

Chief of Staff.

[FR Doc. 2020–04581 Filed 3–5–20; 8:45 am]

BILLING CODE P

ARCTIC RESEARCH COMMISSION

Notice of 113th Commission Meeting

A notice by the U.S. Arctic Research Commission on 03/24/2020.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 113th meeting in Orono, Maine, on March 24, 2020. The business sessions, open to the public, will convene at 08:30 a.m. at the Buchanan Alumni House, McIntire Room, 4 Munson Road, Orono, ME 04473.

The Agenda items include:

(1) Call to order and approval of the agenda
(2) Approval of the minutes from the 112th meeting
(3) Commissioners and staff reports
(4) Discussion of Arctic research activities

The meeting will focus on reports and updates relating to programs and research projects affecting Alaska and the greater Arctic.

The Arctic Research and Policy Act of 1984 (Title I Pub. L. 98–373) and the Presidential Executive Order on Arctic Research (Executive Order 12501) dated January 28, 1985, established the United States Arctic Research Commission.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs 14 days in advance of the meeting.

Contact person for further information: Kathy Farrow,

Communications Specialist, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Kathy Farrow,

Communications Specialist.

[FR Doc. 2020–04590 Filed 3–5–20; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology Technical Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology Technical Advisory Committee (ETTAC) will meet on May 19, 2020, at 1:00 p.m. to 4:00 p.m., Law Library, Room 1894, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on the identification of emerging and foundational technologies with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad.

Agenda

Closed Session

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

Open Session

2. Welcome and introductions.
3. Remarks from Bureau of Industry and Security (BIS) management.
4. Emerging technology and research and development issues.
5. Public comments.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than May 12, 2020.

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

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

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

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–04605 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain frozen warmwater shrimp (shrimp) from India is being, or is likely to be, sold in the United States at less than normal value.

DATES: Applicable March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Benjamin Luberda, 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) 482–3860 or (202) 482–2185, respectively.

Background

Commerce is conducting an administrative review of the antidumping duty order on shrimp from India. The review covers 183 producers and/or exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination: Razban Seafoods Ltd. (Razban) and Z A Sea Foods Pvt. Ltd. (ZA Sea Foods). The period of review (POR) is February 1, 2018 through January 31, 2019.

On October 8, 2019, Commerce extended the preliminary results of this review by 120 days, until February 28, 2020.[1] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[2]

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[3] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Preliminary Determination of No Shipments

On August 19, 2019, Razban filed a letter stating that it made no shipments of subject merchandise to the United States during the POR. We noted that the U.S. Customs and Border Protection (CBP) data placed on the record of this review contained entries from Razban which were classified as subject merchandise. Razban submitted comments regarding the CBP data, in which it explained that these entries contained errors. To support its statements, Razban submitted factual information related to its business operations. After reviewing the additional information provided by Razban, we preliminarily determine that Razban had no shipments during the POR.

Consistent with our practice, we are not preliminarily rescinding the review with respect to Razban. Rather, we will complete the review with respect to this company and issue appropriate instructions to CBP based on the final results of this review.

[1] *See* Memorandum, ''Certain Frozen Warmwater Shrimp from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated October 8, 2019.

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] For a complete description of the Scope of the Order, *see* Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached at the appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2018 through January 31, 2019, as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Z A Sea Foods Pvt. Ltd	3.57

Review-Specific Rate Applicable to the Following Companies: [4]

Exporter/producer	Weighted-average dumping margin (percent)
Abad Fisheries	3.57
Albys Agro Private Limited	3.57
Allana Frozen Foods Pvt. Ltd	3.57
Allanasons Ltd	3.57
Amarsagar Seafoods Private Limited	3.57
AMI Enterprises	3.57
Amulya Seafoods	3.57
Anatha Seafoods Private Limited	3.57
Angelique International Ltd	3.57
Ayshwarya Seafood Private Limited	3.57
B R Traders	3.57
Baby Marine Eastern Exports	3.57
Baby Marine Exports	3.57
Baby Marine International	3.57
Baby Marine Sarass	3.57
Baby Marine Ventures	3.57
Balasore Marine Exports Private Limited	3.57
Bell Exim Private Limited (Bells Foods (Marine Division))	3.57
Bhatsons Aquatic Products	3.57
Bhavani Seafoods	3.57
Bijaya Marine Products	3.57
Blue Fin Frozen Foods Pvt. Ltd	3.57
Blue Water Foods & Exports P. Ltd	3.57
B-One Business House Pvt. Ltd	3.57
Britto Seafood Exports Pvt Ltd	3.57
Canaan Marine Products	3.57
Capithan Exporting Co	3.57
Cargomar Private Limited	3.57
Chakri Fisheries Private Limited	3.57
Chemmeens (Regd)	3.57
Cherukattu Industries (Marine Div)	3.57
Cochin Frozen Food Exports Pvt. Ltd	3.57
Continental Fisheries India Private Limited	3.57
Coreline Exports	3.57
Corlim Marine Exports Pvt. Ltd	3.57
Crystal Sea Foods Private Limited	3.57
D2 D Logistics Private Limited	3.57
Damco India Private	3.57
Delsea Exports Pvt. Ltd	3.57
Devi Sea Foods Limited [5]	3.57
Entel Food Products Private Limited	3.57
Esmario Export Enterprises	3.57
Everblue Sea Foods Private Limited	3.57
Exporter Coreline Exports	3.57
Febin Marine Foods	3.57
Five Star Marine Exports Private Limited	3.57
Forstar Frozen Foods Pvt. Ltd	3.57
Fouress Food Products Private Limited	3.57
Frontline Exports Pvt. Ltd	3.57
G A Randerian Ltd	3.57
Gadre Marine Exports	3.57

[4] Because we only had one respondent with a calculated rate, this rate is used for the review-specific rate.

[5] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, we initiated this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

Exporter/producer	Weighted-average dumping margin (percent)
Galaxy Maritech Exports P. Ltd	3.57
Geo Aquatic Products (P) Ltd	3.57
Goodwill Enterprises	3.57
Grandtrust Overseas (P) Ltd	3.57
Green House Agro Products	3.57
GVR Exports Pvt. Ltd	3.57
Hari Marine Private Limited	3.57
Haripriya Marine Export Pvt. Ltd	3.57
Harmony Spices Pvt. Ltd	3.57
HIC ABF Special Foods Pvt. Ltd	3.57
Hindustan Lever, Ltd	3.57
Hiravata Ice & Cold Storage	3.57
Hiravati Exports Pvt. Ltd	3.57
Hiravati International Pvt. Ltd (located at APM-Mafco Yard, Sector-18, Vashi, Navi, Mumbai-400 705, India)	3.57
Hiravati International Pvt. Ltd (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	3.57
Hiravati Marine Products Private Limited	3.57
HN Indigos Private Limited	3.57
Hyson Logistics and Marine Exports Private Limited	3.57
Indian Aquatic Products	3.57
Indo Aquatics	3.57
Indo Fisheries	3.57
Indo French Shellfish Company Private Limited	3.57
Innovative Foods Limited	3.57
International Freezefish Exports	3.57
Interseas	3.57
Jinny Marine Traders	3.57
Jiya Packagings	3.57
Kalyanee Marine	3.57
Kanch Ghar	3.57
Karunya Marine Exports Private Limited	3.57
Kaushalya Aqua Marine Product Exports Pvt. Ltd	3.57
Kay Exports	3.57
Kings Marine Products	3.57
Koluthara Exports Ltd	3.57
Landauer Ltd	3.57
Libran Cold Storages (P) Ltd	3.57
Magnum Export	3.57
Malabar Arabian Fisheries	3.57
Malnad Exports Pvt. Ltd	3.57
Mangala Sea Products	3.57
Marine Harvest India	3.57
Meenaxi Fisheries Pvt. Ltd	3.57
Megaa Moda Pvt. Ltd	3.57
Milsha Agro Exports Private Limited	3.57
Mourya Aquex Pvt. Ltd	3.57
MTR Foods	3.57
N.C. John & Sons (P) Ltd	3.57
Naik Frozen Foods	3.57
Naik Oceanic Exports Pvt. Ltd/Rafiq Naik Exports Pvt. Ltd[6]	3.57
Naik Seafoods Ltd	3.57
Nekkanti Mega Food Park Private Limited	3.57
Nine Up Frozen Foods	3.57
Nutrient Marine Foods Limited	3.57
Oceanic Edibles International Limited	3.57
Paragon Sea Foods Pvt. Ltd	3.57
Paramount Seafoods	3.57
Parayil Food Products Pvt., Ltd	3.57
Pesca Marine Products Pvt., Ltd	3.57
Pijikay International Exports P Ltd	3.57
Pisces Seafoods International	3.57
Pravesh Seafood Private Limited	3.57
Premier Exports International	3.57
Premier Marine Foods	3.57
Premier Seafoods Exim (P) Ltd	3.57
R F Exports	3.57
R V R Marine Products Limited	3.57
Raa Systems Pvt. Ltd	3.57
Raju Exports	3.57
Raunaq Ice & Cold Storage	3.57
Raysons Aquatics Pvt. Ltd	3.57
RBT Exports	3.57
RDR Exports	3.57
RF Exports Private Limited	3.57
Riviera Exports Pvt. Ltd	3.57
Rohi Marine Private Ltd	3.57
Royal Imports and Exports	3.57
RSA Marines	3.57
S & S Seafoods	3.57
S Chanchala Combines	3.57
Safa Enterprises	3.57

Exporter/producer	Weighted-average dumping margin (percent)
Sagar Foods	3.57
Sagar Samrat Seafoods	3.57
Sagravihar Fisheries Pvt. Ltd	3.57
Salvam Exports (P) Ltd	3.57
Samaki Exports Private Limited	3.57
Sanchita Marine Products P Limited	3.57
Santhi Fisheries & Exports Ltd	3.57
Sarveshwari Exp.	3.57
Sea Foods Private Limited	3.57
Sea Gold Overseas Pvt. Ltd	3.57
Selvam Exports Private Limited	3.57
Sharma Industries	3.57
Shimpo Exports Private Limited	3.57
Shimpo Seafoods Private Limited	3.57
Shiva Frozen Food Exp. Pvt. Ltd	3.57
Shroff Processed Food & Cold Storage P Ltd	3.57
Silver Seafood	3.57
Sita Marine Exports	3.57
Sowmya Agri Marine Exports	3.57
Sri Sakkthi Cold Storage	3.57
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	3.57
Srikanth International[7]	3.57
SSF Ltd	3.57
Star Agro Marine Exports Private Limited	3.57
Star Organic Foods Incorporated	3.57
Star Organic Foods Private Limited	3.57
Stellar Marine Foods Private Limited	3.57
Sterling Foods	3.57
Sun Agro Exim	3.57
Sun-Bio Technology Ltd	3.57
Supran Exim Private Limited	3.57
Suvarna Rekha Exports Private Limited	3.57
Suvarna Rekha Marine P Ltd	3.57
TBR Exports Pvt Ltd	3.57
Teekay Marine P. Ltd	3.57
The Waterbase Limited	3.57
Triveni Fisheries P. Ltd	3.57
U & Company Marine Exports	3.57
Ulka Sea Foods Private Limited	3.57
Uniroyal Marine Exports Ltd	3.57
Unitriveni Overseas	3.57
V.S Exim Pvt Ltd	3.57
Vasai Frozen Food Co	3.57
Veejay Impex	3.57
Veronica Marine Exports Private Limited	3.57
Victoria Marine & Agro Exports Ltd	3.57
Vinner Marine	3.57
Vitality Aquaculture Pvt. Ltd	3.57
VRC Marine Foods LLP	3.57
Zeal Aqua Limited	3.57

Verification

The petitioner[8] requested verification and cited good cause for verification.[9] Accordingly, as provided in section 782(i)(3) of the Act, we intend to verify information relied upon for the final results.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[10] Interested parties may submit case briefs to Commerce no later than seven days after the date of the final verification report issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to

[6] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32835 (July 16, 2018). Absent information to the contrary, we continue to treat these companies as a single entity for purposes of this administrative review.

[7] On August 27, 2010, Srikanth International was found to be the successor-in-interest to NGR Aqua International. *See Certain Warmwater Shrimp from India: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 52718 (August 27, 2010). Therefore, we did not initiate a separate administrative review with respect to NGR Aqua International.

[8] The Ad Hoc Shrimp Trade Action Committee (the petitioner).

[9] *See* Petitioner's Letter, ''Certain Frozen Warmwater Shrimp from India: Comments on Z.A. Sea Foods Private Limited's Section A Response and Request for Verification,'' dated September 26, 2019. Although section 351.307(b)(v)(A) of the Act instructs parties to request verification within 100 days of the date of publication of the notice of initiation of the review, in this case, ZA Sea Foods and Razban were not selected as respondents until the 98th day after publication of the notice of initiation. Consequently, the petitioner requests that Commerce ''exercise its discretion to consider this request.''

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[14] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[15]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication date of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16]

Pursuant to 19 CFR 351.212(b)(1), because ZA Sea Foods reported the entered value for all of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the cash deposit rate calculated for ZA Sea Foods. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[17]

Further, if we continue to find in the final results that Razban had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under its antidumping duty case number (*i.e.,* at that exporter's rate) at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation.[18] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–04625 Filed 3–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–583–852]

Non-Oriented Electrical Steel From Taiwan: Final Results of the Expedited Five-Year Sunset Review of the Countervailing Duty Order

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

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of this countervailing duty (CVD) order would likely lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Benjamin Smith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2181.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2019, Commerce published the notice of initiation of the first sunset review of the *Order,*[1] in accordance with section 751(c) of the Tariff Act of 1930, as amended.[2] On November 15, 2019, Commerce received a notice of intent to participate from AK Steel Corporation (AK Steel) (hereinafter

[14] *See* 19 CFR 351.310(c).

[15] *Id.*

[16] *See* 19 CFR 351.212(b)(1).

[17] *See* section 751(a)(2)(C) of the Act.

[18] *See Notice of Amended Final Determination of Sale at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005).

[1] *See Notice of Countervailing Duty Order: Non-Oriented Electrical Steel from Taiwan,* 79 FR 61602 (October 14, 2014) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 58687 (November 1, 2019).

referred to as the Domestic Producer), in which the Domestic Producer claimed interested party status under section 771(9)(C) of the Act as a manufacturer of the domestic like product.[3] On November 27, 2019, the Domestic Producer submitted a substantive response within the 30-day deadline specified under 19 CFR 351.218(d)(3)(i).[4] On November 21, 2019, Commerce notified the United States International Trade Commission (ITC) of its receipt of the Domestic Producer's substantive response.[5] We received no substantive response from any other domestic or interested party in this proceeding, nor was a hearing requested. On December 13, 2019, Commerce notified the ITC that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The merchandise subject to the *Order* is Non-Oriented Electrical Steel (NOES) which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The merchandise subject to the order is currently classifiable under items 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. For a full description of the scope of the order, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rates likely to prevail if this order were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. A list of topics discussed in the Issues and Decision Memorandum is included as an Appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

Producer/exporter	Net countervailable subsidy (percent)
Leicong Industrial Company, Ltd. (Leicong)	17.12
All Others	8.61

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 violation which is subject to sanction.

Notification to Interested Parties

This five-year (sunset) review and notice are in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: March 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–04626 Filed 3–5–20; 8:45 am]

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[3] *See* Domestic Producer's Letter, ''Five-Year ('Sunset') Review Of Countervailing Duty Order On Non-Oriented Electrical Steel from Taiwan: Domestic Interested Party Notice Of Intent To Participate,'' dated November 15, 2019.

[4] *See* Domestic Producer's Letter, ''Five-Year ('Sunset') Review of Countervailing Duty Order on Non-Oriented Electrical Steel from Taiwan: Domestic Interested Party Substantive Response,'' dated November 27, 2019.

[5] *See* Commerce's Letter, ''20-Day Letter: Sunset Reviews Initiated on November 1, 2019,'' dated November 21, 2019.

[6] *See* Commerce's Letter, ''50-Day Letter: Sunset Reviews Initiated on November 1, 2019,'' dated December 13, 2019.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Review of the Countervailing Duty (CVD) Order on Non-Oriented Electrical Steel (NOES) from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2018

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

SUMMARY: The Department of Commerce (Commerce) determines that Hyundai Steel Co. (Hyundai Steel) and Dongkuk Steel Mill Co., Ltd. (DSM), exporters/producers of certain cut-to-length plate from the Republic of Korea (Korea), received *de minimis* net subsidy rates during the period of review (POR)

January 1, 2018 through December 31, 2018.

DATES: Applicable March 6, 2020.

FOR FURTHER INFORMATION CONTACT: John Conniff (for Hyundai Steel) or Jolanta Lawska (for DSM), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009 or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2019, Commerce published a notice of initiation of an administrative review [1] of the countervailing duty order on certain cut-to-length carbon quality steel plate from the Korea.[2] On October 28, 2019, Commerce extended the due date of the preliminary results of this administrative review until February 28, 2020.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included at the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the order is certain cut-to-length carbon-quality steel plate from Korea. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that ''{t}he individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by using the weighted-average countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

However, we preliminarily determine that DSM and Hyundai Steel received countervailable subsidies that are *de minimis.* Therefore, in these preliminary results, we are applying the *de minimis* net subsidy rate calculated for Hyundai Steel and DSM to BDP International and Sung Jin Steel Co., Ltd.

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for DSM and Hyundai Steel. For the period January 1, 2018 through December 31, 2018, we preliminarily determine that the following net subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate *ad valorem* (percent)
Dongkuk Steel Mill Co., Ltd	* 0.15
Hyundai Steel Company	* 0.49
BDP International	(*)
Sung Jin Steel Co., Ltd	(*)

* (De minimis).

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties for each of the companies listed above 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 administrative review, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed companies, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[6] Interested parties may submit written arguments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing the case briefs.[7] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs may respond only to issues raised in the case briefs. Parties who submit arguments are

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019) (*Initiation*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816, 2818 (February 8, 2019).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of CVD Review,'' dated October 28, 2019.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2018: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act, regarding financial contribution; section 771(5)(E) of the Act, regarding benefit; and section 771(5A) of the Act, regarding specificity.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

requested to submit with the argument: (1) Statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[9] Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[10] Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after issuance of these preliminary results.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: February 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the Order
V. Preliminary *Ad Valorem* Rate for Non-Selected Companies Under Review
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Recommendation

[FR Doc. 2020–04623 Filed 3–5–20; 8:45 am]

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[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–882]

Refined Brown Aluminum Oxide From the People's Republic of China: Continuation of Antidumping Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on refined brown aluminum oxide (RBAO) from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2003, Commerce published its antidumping duty (AD) order on RBAO from China in the **Federal Register**.[1] In September 2019, the ITC instituted,[2] and Commerce initiated,[3] the third sunset review of the AD order on RBAO from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* on RBAO from China would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins of dumping likely to prevail were the *Order* revoked.[4]

On February 25, 2020, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise covered by this order is ground, pulverized or refined brown artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of ⅜ inch or less. Excluded from the scope of the order is crude artificial corundum in which particles with a diameter greater than ⅜ inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than ⅜ inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheadings 2818.10.20.00 and 2818.10.20.90 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or a recurrence of dumping and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection (CBP) will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to

[1] *See Antidumping Duty Order: Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China,* 68 FR 65249 (November 19, 2003) (*Order*).

[2] *See Refined Brown Aluminum Oxide from China; Institution of Five-Year Review,* 84 FR 46047 (September 3, 2019).

[3] *See Initiation of Five-Year (Sunset) Review,* 84 FR 47485 (September 10, 2019).

[4] *See Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Final Results of the Expedited First Five-Year Sunset Review of the Antidumping Duty Order,* 84 FR 38001 (August 5, 2019), and accompanying Issues and Decision Memorandum.

[5] *See Refined Brown Aluminum Oxide from China* (Inv. No. 731–TA–1022 (Third Review)), 85 FR 10723 (February 25, 2020); *see also Refined Brown Aluminum Oxide from China* (Inv. No. 731–TA–1022 (Third Review), USITC Publication 5020, February 2020.

administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year (sunset) review and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: February 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–04624 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; NIST–366A Form

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 5, 2020.

ADDRESSES: Direct all written comments to Elizabeth Reinhart, Management Analyst, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20889–1710, (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steven Dewey at the NIST Center for Neutron Research (NCNR) Health Physics, Mail Stop 6100, 100 Bureau Drive, Gaithersburg, MD 20878, 301–975–5810, *Steven.Dewey@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is to seek clearance for the collection of routine information requested of individuals (including but not limited to federal employees, visitors, contractors, associates) who work with or around sources of ionizing radiation on the NIST campus.

The information is collected for the following purposes:

(1) NIST is required by 10 CFR 20.1502 to monitor individuals who may be exposed to ionizing radiation above specific levels. This form will be used to collect information associated with this monitoring and to determine the type of monitoring required.

(2) NIST is required by 10 CFR 20.2106 to maintain records of radiation exposure monitoring. This form will be used to ensure the exposure information collected is properly associated with the individual using unique identifiers. In addition, NIST must provide reports to the monitored individuals when requested and to the NRC annually. This form will be used to ensure the correct information is provided to the individual.

II. Method of Collection

The information will be collected in paper format and electronically as a pdf form.

III. Data

OMB Control Number: New Collection 0693–XXXX.

Form Number(s): NIST–366A.

Type of Review: Regular submission, information collection.

Affected Public: Individuals.

Estimated Number of Respondents: 800 per year.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 67 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

NIST invites comments on: (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 agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–04598 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Pacific Halibut Fisheries: Subsistence

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before May 5, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Gabrielle Aberle, National Marine Fisheries Service, P.O. Box

21668, Juneau, AK, 99802–1668. Telephone (907) 586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) is requesting extension of a currently approved information collection for the Alaska Subsistence Halibut Program.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act also authorizes the North Pacific Fishery Management Council to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the United States. Regulations governing the subsistence halibut fishery are at 50 CFR 300.2, 300.4, and Subpart E, and in the annual management measures published in the **Federal Register** pursuant to 50 CFR 300.62.

Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade. The subsistence halibut program is intended to allow eligible persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. This program provides NMFS the opportunity to learn more about the subsistence fishery and enhance estimates of subsistence removals for stock assessment purposes.

Before fishing under subsistence halibut regulations, fishermen must obtain a Subsistence Halibut Registration Certificate (SHARC). Special permits for community harvest, ceremonial, and educational purposes are available to qualified Alaska communities and Alaska Native Tribes. NMFS designed the permits to work in conjunction with other halibut harvest assessment measures.

This information collection contains the application for a SHARC; the application for a Community Harvest Permit, a Ceremonial Permit, or an Educational Permit; the harvest logs for community, ceremonial, and educational permits; an appeals process for denied permits; and gear marking requirements for subsistence fishery setline gear. Each of these instruments is designed to minimize the reporting burden on subsistence halibut fishermen while retrieving essential information.

Information collected by the permit applications includes permit holder information or applicant information, and depending on the permit type, may include information on the educational program or a description of the cultural or ceremonial occasion the permit will be used for. NMFS uses this information to determine the eligibility of applicants to receive or renew permits.

The permit coordinators submit the harvest logs for Community Harvest Permits, Ceremonial Permits, and Educational Permits. Harvest logs collect identification information and harvest information for the subsistence fishermen fishing under that permit.

An appeals process is provided for an applicant who receives an adverse initial administrative determination related to their permit application.

Subsistence setline gear buoys must be marked with identification information that consists of the subsistence fisherman's name and address and an ''S'' to indicate subsistence gear. The ability to link fishing gear to the vessel owner or operator is crucial to enforcement of regulations.

II. Method of Collection

Information is collected primarily via mail. Harvest logs and SHARC applications also may be submitted by fax, and SHARC renewals may be submitted online through eFISH on the NMFS Alaska Region website. The application forms and harvest logs are available as fillable pdfs on the NMFS Alaska Region website. The fishing gear identification information is marked on buoys and is not submitted to NMFS.

III. Data

OMB Control Number: 0648–0512.

Form Number(s): None.

Type of Review: Extension of a current information collection.

Affected Public: Individuals or households; State, Local, or Tribal government.

Estimated Number of Respondents: 7,337.

Estimated Time per Response: Permit applications, 10 minutes; Harvest logs, 30 minutes; Appeal for permit denial, 4 hours; Gear marking, 15 minutes.

Estimated Total Annual Burden Hours: 1,438.

Estimated Total Annual Cost to Public: $25,288.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–04597 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Greater Atlantic Region, Atlantic Sea Scallop Fishery Management Plan Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 5, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the

public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cynthia Ferrio, Greater Atlantic Regional Fisheries Office, 55 Great Republic Dr., Gloucester, MA 01930, (978) 281–9180, *Cynthia.ferrio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a current information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to NOAA's National Marine Fisheries Service (NMFS). NMFS manages the Atlantic sea scallop (scallop) fishery through a set of regulations that limit catch of scallops and fishing vessel activity. In addition, regulations limit catch of certain other species of fish in order to minimize bycatch and bycatch mortality (bycatch is the catch and discard of species that are not targeted in the scallop fishery). Finally, the regulations control vessel permitting and the exchange of effort and quota allocations between vessels.

In order to effectively manage these resources, track fishing effort and catch, and to allow vessel owners to exchange fishing trips and quota, NMFS must collect information through the reporting requirements included in this renewal. This renewal contains the following information collections: Vessel Monitoring System (VMS) requirements; Access area trip exchange application procedures; Individual Fishing Quota (IFQ) transfers; Cost recovery; and IFQ sector program.

Access Area Trip Exchange Application

The one-for-one access area trip exchange program provides flexibility to scallop vessels about where they may fish. Participants need to send an access area trip exchange application to NMFS with the following information: Vessel name and permit number, owner name and signature, specification of the areas involved in the exchange. Both vessels involved in the exchange are required to submit forms for cross verification. This measure is expected to provide flexibility to vessels regarding which areas to fish, thereby reducing the possibility of revenue loss to those vessels that are unable to access some distant areas due to vessel capacity constraints.

IFQ Transfers

IFQ permit holders can temporarily and/or permanently transfer individual fishing quota from one IFQ vessel to another. Quota transfers are requested through the submission of transfer applications. Required information includes vessel information, quota transfer information, and authorizing signatures from both parties. The IFQ transfer program is entirely optional, and provides greater flexibility for IFQ permit holders by enabling them to increase their vessel's IFQ or for individuals to lease or sell IFQ if they choose not to fish the allocation.

Cost Recovery

Section 304(d)(2) of the Magnuson-Stevens Act (MSA) requires an IFQ cost recovery plan to recover management and enforcement costs for IFQ fisheries. The FMP includes an IFQ cost recovery program, whereby NMFS will collect up to 3% of ex-vessel value of landed product to cover actual costs directly related to enforcement and management of the IFQ program. IFQ permit holders are required to submit a cost recovery payment annually via a pre-existing Federal payment system called *www.pay.gov,* which is also currently used by the Alaska Region and the Southeast Region. Information submitted via the internet would require the user to establish an online account, including personal and financial information. This requirement is necessary in order to comply with the provisions of the MSA and to collect payments from individuals that have been granted an allocation to a public resource.

IFQ Sector Program

The FMP contains provisions that authorize allocation of a portion of the overall IFQ fishery total allowable catch (TAC) to a self-selected group of IFQ permit holders (sector), provided the sector provides adequate information describing the formation of the sector and its intended plan of operations. Individuals or other entities (corporations, cooperatives, etc.) proposing a sector are required to submit a Sector Allocation Proposal and Operations Plan. Any person may submit a Sector Allocation Proposal for a group of limited access general category scallop vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.55. A group that wants to form a Sector and receive an allocation is required to submit a legally binding Operations Plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the sector and, if approved, would constitute a contract. This information is necessary to describe the proposed sector and the proposed rules under which the sector would operate. This information is used to determine whether this sector would maintain consistency with the goals and objectives of the FMP.

VMS Requirements

Vessel Monitoring System (VMS) requirements are now collected under the approved OMB Control No. 0648–0202 and are being removed from 0648–0491.

II. Method of Collection

Participants will submit paper applications by mail, facsimile, or email.

III. Data

OMB Number: 0648–0491.

Form Number: None.

Type of Review: Regular submission (revision and extension of a currently approved collection).

Affected Public: Businesses and other for-profit organizations are primarily affected.

Estimated Number of Respondents: 647.

Estimated Time per Response: Cost recovery, 2 hours; Sector proposals, 150 hours; Sector operations plans, 100 hours; IFQ transfer application 35 hours; Access area trip exchange, 45 hours.

Estimated Total Annual Burden Hours: 980.

Estimated Total Annual Cost to Public: $23,932.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–04596 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX031]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments; reopening of comment period.

SUMMARY: At the request of the public, NMFS is reopening the comment period for an Exempted Fishing Permit application. The Exempted Fishing Permit would allow commercial fishing vessels to use dredge fishing gear with a forward facing camera within the Great South Channel Habitat Management Area to characterize habitat substrate types where dredge fishing occurs, and conduct compensation fishing that would support research conducted by the Coonamessett Farm Foundation. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before March 23, 2020.

ADDRESSES: You may submit written comments by any of the following methods:

• *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFF Great South Channel HMA Clam EFP.''

• *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFF Great South Channel HMA EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225.

SUPPLEMENTARY INFORMATION: On January 27, 2020, we published a notice soliciting public comment on an Exempted Fishing Permit (EFP) application (85 FR 4638) and received requests from the public to extend the comment period. At the request of the public, we are reopening the comment period for 15 days. A full description of the requested exemptions and research plan are available in the original notice and are not repeated here.

In an effort to address some of the New England Fishery Management Council's research priorities for the Great South Channel Habitat Management Area (GSC HMA), Coonamessett Farm Foundation (CFF) developed a multi-phase research project that would attempt to:

1. Characterize substrate types where surfclam and mussel fishing occurs within the GSC HMA;

2. Track spatiotemporal habitat change and benthic macrofauna distribution in an active fishing ground; and

3. Determine spatiotemporal occurrence of Atlantic cod and other species within the HMA that are subjected or adjacent to commercial clam and mussel dredging activities.

CFF submitted a complete application for an EFP on November 8, 2019, to enable research in support of the objective 1, above. The exemptions would authorize participating vessels to fish with dredge gear in portions of the GSC HMA in order to characterize substrate types where surfclam and mussel fishing occurs, and to enable compensation fishing, which would fund research associated with objectives 2 and 3.

We received 27 comments on the original notification and discussed the EFP request at the January 2020 New England Fishery Management Council meeting. Based on that discussion and comments received, we are reopening the comment period for an additional 15 days.

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

Dated: March 3, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–04616 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA068]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK.

DATES: The meetings will be held March 30, 2020 through April 6, 2020. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Ave., Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 1007 West Third, Suite 400, Anchorage, AK 99501–2252; telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Council will begin its plenary session at 8 a.m. in the Aleutian Room on Wednesday, April 1, 2020 continuing through Monday, April 6, 2020. The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the King Salmon/Iliamna Room on Monday, March 30, 2020 and continue through Wednesday, April 1, 2020. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Dillingham/Katmai Room on Tuesday, March 31, 2020 and continue through Friday, April 3, 2020. The IFQ Committee will meet on Monday, March 30, 2020 from 10 a.m. to 5 p.m. (room TBD). The Cook Inlet Salmon Committee will meet on Monday, March 30, 2020 from 9:30 a.m. to 5 p.m. (room TBD). The Ecosystem Committee will meet on Tuesday, March 31, 2020 from 8 a.m. to 5 p.m. (room TBD).

Agenda

Monday, March 30, 2020 Through Monday, April 6, 2020

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) Executive Director's Report
(2) NMFS Management Report

(3) NOAA GC Report
(4) ADF&G Report
(5) USCG Report
(6) USFWS Report
(7) IPHC Report
(8) NIOSH Report
(9) St Matthew BKC Rebuilding Plan—Final Action
(10) Scallop SAFE Report—ABC/OFL specifications, Scallop Plan Team Report
(11) BSAI Pacific Cod Pot CP analysis—Initial Review
(12) Cook Inlet Salmon FMP Amendment—Preliminary Review, CISC Report
(13) Sculpin/Squid Product Types—Final Action
(14) EFH: (a) Non-fishing consultations; (b) 5-year review workplan
(15) Cooperative Reports (AFA, A80, CGOA Rockfish, BSAI Crab)
(16) Salmon Bycatch: (a) 2018 Chinook/Chum Genetics for BS and GOA, IPA Reports
(17) GOA Sablefish Pots 3-year Review—Report
(18) Sablefish alternative apportionments for stock assessment—Report
(19) IFQ Access—Expanded Discussion Paper
(20) IFQ Committee—Report
(21) Bering Sea Fishery Ecosystem Plan—Plan Team, Climate Change Taskforce Reports
(22) Research Priorities—Review
(23) Staff Tasking

The Advisory Panel will address Council agenda items (9) through (14) and items (16) through (23).

The SSC agenda will include the following issues:

(1) Scallop SAFE Report—ABC/OFL specifications, Scallop Plan Team Report
(2) BSAI Pacific Cod Pot CP analysis—Initial Review
(3) Cook Inlet Salmon FMP Amendment—Preliminary Review
(4) EFH 5-year review workplan
(5) Salmon Bycatch: (a) 2018 Chinook/Chum Genetics for BS and GOA
(6) GOA Sablefish Pots 3-year Review—Report
(7) Sablefish alternative apportionments for stock assessment
(8) Bering Sea Fishery Ecosystem Plan—Plan Team, Climate Change Taskforce Reports
(9) Research Priorities—Review
(10) Marine Mammal Conservation Status—Review

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The IFQ Committee will review a discussion paper on a potential access program for halibut and sablefish IFQ, provide feedback on a Three-Year Review of the Gulf of Alaska pot longline fishery for IFQ sablefish, receive a NMFS report on IFQ cost recovery fees, and receive an update on analyses of potential methodologies to modify the apportionment of sablefish ABC across management areas, and other business. The Cook Inlet Salmon Committee will finalize recommendations for the Council on the preliminary Cook Inlet Salmon FMP amendment, and discuss other business. The Ecosystem Committee will discuss northern fur seal co-management, an update on the Bering Sea Fishery Ecosystem Plan, 2019 Essential Fish Habitat consultations, Council involvement in non-fishing EFH consultations, and proposed approach for the 2022 EFH review and revision, and other business. The Agendas are subject to change, and the latest versions will be available at *https://meetings.npfmc.org/Meeting/Details/1363.*

Public Comment

Public comment letters will be accepted and should be submitted either electronically at: *https://meetings.npfmc.org/Meeting/Details/1363* or through the mail: North Pacific Fishery Management Council, 1007 West Third, Suite 400, Anchorage, AK 99501–2252. Deadline for comments is March 27, 2020, at 12 p.m.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

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

Dated: March 3, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–04645 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA067]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a 4-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will convene Monday, March 30 through Thursday, April 2, 2020; 8:30 a.m. until 4 p.m.

ADDRESSES:

Meeting address: The meeting will take place at The Lodge at Gulf State Park, 21196 East Beach Boulevard, Gulf Shores, AL 36542; telephone: (251) 540–4000.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, March 30, 2020; 8:30 a.m.–5:30 p.m.

The meeting will begin in a CLOSED SESSION of the FULL COUNCIL to select members to the Coastal Migratory Pelagics and Red Drum Advisory Panels; and, selection of the 2019 Law Enforcement Officer/Team of the Year.

The meeting will open to the general public mid-morning with the Gulf SEDAR Committee reviewing the Gulf of Mexico (GOM) SEDAR Schedule and discussing interim analyses on Timing and Use for Management. Ecosystem Committee will give a summary report from the Ecosystem Technical Committee meeting and an update on the Fishery Ecosystem Management Plan. Following lunch, Sustainable Fisheries Committee will have a presentation on Marine Mammal Depredation; review Public Hearing Draft Amendment *Reef Fish* 48/*Red Drum* 5: Status Determination Criteria and Optimum Yield for Reef Fish and Red Drum and Framework Action for Modification of Fishing Access in Eastern GOM Marine Protected Areas.

The Committee will also discuss any allocation issues.

National Marine Fisheries Service (NMFS) will hold a Question and Answer session immediately following the Sustainable Fisheries Committee.

Tuesday, March 31, 2020; 8:30 a.m.–5:30 p.m.

The Law Enforcement Committee will receive a summary report from the Law Enforcement Technical Committee (LETC) meeting and a presentation on the 2019 Report to Congress on Illegal, Unreported, and Unregulated (IUU) Fishing. The Reef Fish Committee will review Reef Fish and CMP Landings, Draft Amendments 36B and 36C modifications to commercial IFQ Programs and Presentations, Draft Amendment 53: *Red Grouper* Catch Limits and Sector Allocations, Draft Framework Action to Modify the GOM *Lane Snapper* Annual Catch Limit; and, review any remaining items from the March 2020 SSC Meeting summary.

Wednesday, April 1, 2020; 8:30 a.m.–5:30 p.m.

The Shrimp Management Committee will review the updated Brown, Pink, and White *Shrimp* Stock Assessments, Gulf Shrimp Fishery Effort and Landings, Preliminary 2019 Royal Red Shrimp Index, and Biological Review of the Texas Closure. The Committee will also discuss Shrimp FMP Objectives; and, any remining items from the Shrimp Advisory Panel meeting. Habitat Protection and Restoration Committee will receive a summary report from the August 2019 Council Coordinating Committee Habitat Subcommittee; and, an update on Essential Fish Habitat Amendment.

Full Council will convene late morning with a Call to Order, Announcements, and Introductions; Adoption of Agenda and Approval of Minutes. Council will review Exempted Fishing Permit (EFP) Applications and public comments (if any); and, receive presentations on Deepwater Horizon Open Ocean Fish Restoration, Alabama Law Enforcement Efforts and an update on Southeast For-Hire Integrated Electronic Reporting (SEFHIER). The Council will hold public comment testimony beginning at 2 p.m. until 5:30 p.m. for open testimony on other fishery issues or concerns. Anyone wishing to speak during public comment testimony should sign in at the registration station located at the entrance of the meeting room.

Thursday, April 2, 2020; 8:30 a.m.–4 p.m.

The Council will receive reports from the following management committees: Gulf SEDAR, Ecosystem, Sustainable Fisheries, Law Enforcement, Shrimp, Habitat Protection and Restoration, and Reef Fish. The Council will vote on Exempted Fishing Permit (EFP) applications, if any; and receive updates from the following supporting agencies: South Atlantic Fishery Management Council; NOAA Office of Law Enforcement (OLE), Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; Department of State.

Lastly, the Council will discuss Other Business items.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: March 3, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–04644 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA064]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public webinar meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Thursday, April 2, 2020, from 9 a.m. until 11 a.m.

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *https://global.gotomeeting.com/join/257260653.* Meeting audio can be accessed via telephone by dialing 1–888–585–9008 and entering room number 705–426–714.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will meet via webinar jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel. Both groups will discuss an ongoing fishery management plan amendment to consider modifications to the allocations of catch or landings between the commercial and recreational sectors for the summer flounder, scup, and black sea bass fisheries The purpose of this meeting is to review public comments received through the scoping period for this amendment and to provide feedback on the range of issues and management approaches that may be considered through the amendment. More information on the amendment is available at: *http://www.mafmc.org/actions/sfsbsb-allocation-amendment.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: March 3, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–04643 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; NG911 Annual Performance Report

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 5, 2020.

ADDRESSES: Direct all written comments to Yuki Miyamoto, Federal Program Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4078, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*). You may submit attachments to electronic comments in Microsoft Word, Excel, and Adobe PDF file formats. All comments submitted in response to this notice are a part of the public record and will be made available to the public, which may include posting them on the *Regulations.gov* website. Comments will generally be posted without change. Please do not include information of a confidential nature, such as sensitive personal information or proprietary information. All Personally Identifiable Information (for example, name and address) voluntarily submitted may be publicly accessible. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that comments that include a message stating the confidentiality of the communication will be treated as public comments and will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Yuki Miyamoto, Federal Program Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4078, Washington, DC 20230; via email at *ymiyamoto@ntia.gov;* or via telephone at (202) 482–5571.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2012, the Next Generation 911 (NG911) Advancement Act of 2012 (Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle E (codified at 47 U.S.C. 942)) enacted changes to this program. It reauthorized the National 911 Implementation Coordination Office (ICO), a joint effort between NTIA and the National Highway Traffic Safety Administration (NHTSA). It delineated the responsibilities of the ICO to include a joint program to establish and facilitate coordination and communication between federal, state, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of 911 services.

The NG911 Advancement Act provided funding for grants to be used for the implementation and operation of 911 services, E911 services, migration to an IP-enabled emergency network, and adoption and operation of NG911 services and applications; the implementation of IP-enabled emergency services and applications enabled by NG911 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services. In August of 2019, NTIA and NHTSA made $109,250,000 in grant awards to 36 agencies.

The information collected for the remaining period of performance for this grant program will include various reporting requirements. All grantees will submit performance and financial reports in accordance with 2 CFR part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance). It is important for the agencies to have this information so that they can effectively administer the grant program and account for the expenditure of funds.

II. Method of Collection

Under this proposed effort, all grantees are required to submit required documentation electronically via email.

III. Data

OMB Control Number: 0660–0041.

Form Number: None.

Type of Review: Revision and extension of a currently approved collection.

Affected Public: Reporting entities are the 36 grantees, making the total maximum number of respondents 36.

Estimated Number of Respondents: 36.

Estimated Time per Response: 60 hours.

Estimated Total Annual Burden Hours: 2,160 hours.

Estimated Total Annual Cost to Public: $99,878.40.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. All public comments will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–04602 Filed 3–5–20; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: *Comments must be received on or before:* April 5, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSNs—Product Names:
7490–00–NIB–0054—Scale, Shipping, Digital, 25 LB. Capacity, Black/Metallic
Mandatory Source of Supply: Asso. for the Blind and Visually Impaired-Goodwill Industries of Greater Rochester, Inc., Rochester, NY
Mandatory For: Total Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS ADMIN SVCS ACQUISITION BR(2

Service

Service Type: Mess Attendant Service
Mandatory for: US Air Force, F.E. Warren Air Force Base, WY
Mandatory Source of Supply: Skils'kin, Spokane, WA
Contracting Activity: DEPT OF THE AIR FORCE, Air Force Nonappropriated Funds Purchasing Office, San Antonio, TX

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSNs—Product Names:
8440–00–270–0537—(Clip Only)
8440–00–412–2314—(Clip Only)
8440–00–412–2342—(Clip Only)
8440–00–269–5311—(Webbing & Clip)
8440–00–577–4178—(Webbing & Clip)
8440–00–753–6365—(Webbing & Clip)
Mandatory Source of Supply: Travis Association for the Blind, Austin, TX
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN—Product Name:
7350–00–838–3919—Toothpicks
Mandatory Source of Supply: Volunteers of America, Dakotas, Sioux Falls, SD
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

Services

Service Type: Repair/Maintenance of Manual Typewriters
Mandatory for: Federal Court House Building, Syracuse, NY
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Elevator Operation
Mandatory for: U.S. Federal Building: 35 Ryerson Street, Brooklyn, NY
Mandatory Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–04608 Filed 3–5–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* April 5, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

On 1/31/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSNs—Product Names

MR 11091—Bag, Laminated, Large, Easter

Design 1
MR 11092—Bag, Laminated, Large, Easter Design 2
MR 11093—Bag, Tote, Reusable, Collapsible, Easter
MR 11094—Bag, Reusable, Laminated Gift Size, Easter Design 1
MR 11095—Bag, Reusable, Laminated Gift Size, Easter Design 2
Mandatory Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

On 1/31/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Janitorial/Custodial
Mandatory for: Veterans Affairs Medical Center: Hunter Holmes McGuire, Richmond, VA
Mandatory Source of Supply: Goodwill Services, Inc., Richmond, VA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Mailroom Operation
Mandatory for: Directorate of Human Resources, Fort Knox, KY
Mandatory Source of Supply: Employment Source, Inc., Fayetteville, NC
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT KNOX

Service Type: Janitorial/Grounds Maintenance
Mandatory for: Department of Agriculture: U.S. Horticultural Research Laboratory, Fort Pierce, FL
Mandatory Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL
Contracting Activity: AGRICULTURAL RESEARCH SERVICE, USDA ARS SAA 4384

Service Type: Janitorial/Elevator Operator
Mandatory for: Southeast Federal Center: Building 205, Washington, DC
Mandatory Source of Supply: Davis Memorial Goodwill Industries, Washington, DC
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building and Post Office: 425 Juliana Street, Parkersburg, WV
Mandatory Source of Supply: SW Resources, Inc., Parkersburg, WV
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS/R03 NORTH SERVICE CENTER

Service Type: Administrative Services
Mandatory for: GSA, New York: Federal Supply Service, 26 Federal Plaza, New York, NY
Mandatory Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA PBS R2 ACQUISITION MANAGEMENT DIVISION

Service Type: Library Services
Mandatory for: Building 405, Shaw AFB, SC
Contracting Activity: DEPT OF THE AIR FORCE, FA4803 20 CONS LGCA

Service Type: Janitorial/Custodial
Mandatory for: Peace Bridge Complex, Buffalo, NY
Mandatory Source of Supply: Suburban Adult Services, Inc., Elma, NY
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Virtual Warehouse Operation
Mandatory for: Department of Transportation: Ardmore East Business Center, Landover, MD
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: TRANSPORTATION, DEPARTMENT OF, DEPT OF TRANS

Service Type: Moving Services
Mandatory for: Department of the Interior, Washington, DC
Mandatory Source of Supply: Anchor Mental Health Association, Washington, DC
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Service Type: Laundry Service
Mandatory for: Naval Air Station, Patuxent River, MD
Mandatory Source of Supply: Rappahannock Goodwill Industries, Inc., Fredericksburg, VA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Grounds Maintenance
Mandatory for: San Juan Customhouse, #1 La Puntilla Street, San Juan, PR
Mandatory Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: BUREAU OF CUSTOMS AND BORDER PROTECTION, NATIONAL ACQUISITION CENTER

Service Type: Janitorial/Custodial
Mandatory for: VA Central Iowa Health Care System: Day Care Center, Des Moines, IA
Mandatory Source of Supply: Goodwill Solutions, Inc., Johnston, IA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–04609 Filed 3–5–20; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Energy and Environmental Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) announces that on March 24, 2020, from 9:30 a.m. to 3:30 p.m., the Energy and Environmental Markets Advisory Committee (EEMAC) will hold a public meeting in the Conference Center at the CFTC's headquarters in Washington, DC. At this meeting, the EEMAC will hear remarks on the Commission's Position Limits for Derivatives proposed rule as approved by the Commission on January 30, 2020 and a presentation from the Market Intelligence Branch in the CFTC's Division of Market Oversight.

DATES: The meeting will be held on March 24, 2020, from 9:30 a.m. to 3:30 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by March 31, 2020.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. You may submit public comments, identified by ''Energy and Environmental Markets Advisory Committee,'' by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this meeting notice and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged. Any statements submitted in connection with the committee meeting will be made available to the public, including by publication on the CFTC website, *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Abigail S. Knauff, EEMAC Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5123.

SUPPLEMENTARY INFORMATION: At this meeting, the EEMAC will hear remarks on the Commission's Position Limits for Derivatives proposed rule as approved on January 30, 2020. Specifically, the EEMAC will examine: (1) The proposed position limits for spot months, single month, and all-months-combined and (2) the proposed bona fide hedge exemptions from such position limits and related procedures. The EEMAC will also hear a presentation from the Market Intelligence Branch on recent developments within the energy derivatives marketplace.

The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–888–947–9959.

International Toll and Toll Free: Will be posted on the CFTC's website, *https://www.cftc.gov,* on the page for the meeting, under Related Links.

Pass Code/Pin Code: 2927172.

The meeting agenda may change to accommodate other EEMAC priorities. For agenda updates, please visit the EEMAC committee website at: *https://www.cftc.gov/About/CFTCCommittees/EnergyEnvironmentalMarketsAdvisory/emac_meetings.html.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website at: *https://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 7 U.S.C. 2(a)(15)(B)(i)).

Dated: March 3, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–04622 Filed 3–5–20; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 11, 2020; 1:30 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Matter: Staff will brief the Commission on the status of a compliance matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: March 4, 2020.

Alberta E. Mills,

Secretary.

[FR Doc. 2020–04779 Filed 3–4–20; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 11, 2020; 10 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: Briefing Matter: FY2020 Midyear Review.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: March 4, 2020.

Alberta E. Mills,

Secretary.

[FR Doc. 2020–04764 Filed 3–4–20; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Guidance Document Portal; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Notice; correction.

SUMMARY: The Corporation for National and Community Service published a Notice in the **Federal Register** of March 2, 2020, concerning notification of a Guidance Portal on the agency's public website, pursuant to Executive Order 13891 and OMB Memorandum M–20–02. The document gave the incorrect URL for the Guidance Portal.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, *aborgstrom@cns.gov* or 202–606–6930.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 2, 2020, in FR Doc. 2020–04226, in the third column at the bottom of page 12270, in the **ADDRESSES** line, correct the information to read:

ADDRESSES: *www.nationalservice.gov/guidance.*

Dated: March 2, 2020.

Amy Borgstrom,

Associate Director of Policy.

[FR Doc. 2020–04569 Filed 3–5–20; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the B–21 Main Operating Base 1 (Mob 1) Beddown at Dyess Air Force Base, Texas or Ellsworth Air Force Base, South Dakota

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of intent.

SUMMARY: The United States Air Force (Air Force) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) for the B–21 Main Operating Base 1 (MOB 1) Beddown at Dyess Air Force Base (AFB), Texas or Ellsworth AFB, South Dakota. The EIS will assess the potential environmental consequences of the proposal to beddown the Department of Defense's new bomber aircraft, the B–21 ''Raider,'' which will eventually replace existing B–1 and B–2 bomber aircraft.

DATES: The Air Force plans to hold six public scoping meetings: Tuesday, March 31, 2020: Holiday Inn at Rushmore Plaza, 505 North 5th Street, Rapid City, SD 5770; Wednesday, April 1, 2020: Sturgis Community Center, 1401 Lazelle Street, Sturgis, SD 57785; Thursday, April 2, 2020: Douglas Middle School, 691 Tower Road, Box Elder, SD 57719; Tuesday, April 7, 2020: Abilene Convention Center, 1100 North 6th Street, Abilene, TX 79601; Wednesday, April 8, 2020: Wylie High

School Performing Arts Center, 4502 Antilley Road, Abilene, TX 79606; and Thursday, April 9, 2020: Tye Community Center, 103 Scott Street, Tye, TX 79563.

ADDRESSES: Additional information on the B–21 MOB 1 Beddown EIS environmental impact analysis process can be found on the project website at *www.B21EIS.com.* The project website can also be used to submit comments. Inquiries and comments-by-mail regarding the Air Force proposal should be directed to Dyess AFB Public Affairs, ATTN: B–21 EIS, 7 Lancer Loop, Suite 136, Dyess AFB, TX 79607; (325) 696–4820; *7bwpa@us.af.mil;* or Ellsworth AFB Public Affairs, ATTN: Steve Merrill, 28th Bomb Wing Public Affairs, 1958 Scott Dr., Suite 4, Ellsworth AFB, SD 57706; (605) 385–5056; *28bw.public.affairs@us.af.mil.* Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, scoping comments must be submitted to the website or mailed to one of the addresses listed above by April 24, 2020.

SUPPLEMENTARY INFORMATION: The beddown of the B–21 will take place through a series of three Main Operating Bases (MOB), referred to as MOB 1, MOB 2, and MOB 3. The Air Force proposes to beddown MOB 1, which includes two B–21 Operational Squadrons, a B–21 Formal Training Unit (FTU), and a Weapons Generation Facility (WGF) in this EIS. MOB 2 and MOB 3 beddown locations would be evaluated in future NEPA analyses, after the location for MOB 1 is chosen. The B–21 will operate under the direction of the Air Force Global Strike Command. The B–21 will have both conventional and nuclear roles and will be capable of penetrating and surviving in advanced air defense environments. It is projected to enter service in the 2020s, and the Air Force intends to have at least 100 B–21 aircraft built.

The purpose of the Proposed Action is to implement the goals of the National Defense Strategy by modernizing the U.S. bomber fleet capabilities. The B–21 Raider is being developed to carry conventional payloads and to support the nuclear triad by providing a visible and flexible nuclear deterrent capability that will assure allies and partners through the United States' commitment to international treaties. The B–21 will provide the only stealth bomber capability and capacity needed to deter, and if necessary, defeat our adversaries in an era of renewed great power competition. MOB 1 will support training of crewmembers and personnel in the operation and maintenance of the B–21 aircraft in an appropriate geographic location that can provide sufficient airfield, facilities, infrastructure, and airspace to support the B–21 training and operations.

The EIS will analyze Dyess AFB and Ellsworth AFB as basing alternatives for MOB 1 for the Proposed Action, as well as a No Action Alternative. The basing alternatives were developed to minimize mission impact, maximize facility reuse, minimize cost, and reduce overhead, as well as leverage the strengths of each base to optimize the B–21 beddown strategy. The potential impacts of the alternatives and the No Action Alternative that the EIS may examine include impacts to land use, airspace, safety, noise, hazardous materials and solid waste, physical resources (including earth and water resources), air quality, transportation, cultural resources, biological resources, socioeconomics, and environmental justice. The Air Force is preparing this EIS in accordance with the National Environmental Policy Act (NEPA) of 1969; 40 Code of Federal Regulations (CFR), parts 1500–1508, the Council on Environmental Quality (CEQ) regulations implementing NEPA; and the Air Force's Environmental Impact Analysis Process (EIAP) as codified in 32 CFR part 989.

Scoping and Agency Coordination: The scoping process will be used to involve the public early in the planning and development of the EIS, to help identify issues to be addressed in the environmental analysis. To effectively define the full range of issues and concerns to be evaluated in the EIS, the Air Force is soliciting scoping comments from interested local, state, and federal agencies and interested members of the public.

The Air Force will hold six scoping meetings to inform the public and solicit comments and concerns about the proposal. Scoping meetings will be held in local communities surrounding Dyess and Ellsworth AFBs. Scheduled dates, locations, and addresses for each meeting will be published in the Rapid City Journal and Black Hills Pioneer newspapers in South Dakota, the Abilene Reporter News and The Wylie News newspapers in Texas, as well as the Native Sun News, Indian Country Today and the Original Briefs tribal newspapers, a minimum of fifteen (15) days prior to each meeting.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–04593 Filed 3–5–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Military Family Readiness Council; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, 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 DoD Military Family Readiness Council will take place.

DATES: Open to the public Tuesday, March 24, 2020, from 10 a.m. to 12 p.m.

ADDRESSES: Pentagon, 1155 Defense Pentagon PLC2 Pentagon Library & Conference Center, Room B6, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: William Story, (571) 372–5345 (Voice), (571) 372–0884 (Facsimile), OSD Pentagon OUSD P–R Mailbox Family Readiness Council, *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* (Email). Mailing address is: Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), Office of Family Readiness Policy, 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Website: *https://www.militaryonesource.mil/leaders-service-providers/military-family-readiness-council*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: This is the first meeting of the Council for Fiscal Year 2020 (FY2020). During this meeting the Director, Defense Health Agency, will present information to the Council, including changes in dependent health care systems and implications for military family

readiness, the first of two focus areas chosen by the Council for FY2020.

Agenda: Opening Remarks; Administrative Items; Review of Written Submissions; Ethics Briefing; Focus Area Presentation: The Transformation of the Military Health System: Readiness, Reform, and the Priorities of the Defense Health Agency; Questions and Answers; Council Discussion; Closing Remarks. Note: Exact order may vary.

Meeting Accessibility: Members of the public who are interested in attending this meeting must RSVP online to: *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil,* no later than Thursday, March 12, 2020. Meeting attendee RSVPs should indicate if an escort is needed to the meeting location (non-CAC Card holders need an escort) and if handicapped-accessible transportation is needed. All visitors without CAC cards who are attending the MFRC must pre-register prior to entering the Pentagon. RSVPs to the MFRC mailbox for those needing escort to the meeting will be contacted by email from the Pentagon Force Protection Agency (PFPA) with instructions for registration. Please follow the instructions carefully; otherwise, members of the public may be denied access to the Pentagon on the day of the meeting. Members of the public who are approved for Pentagon access should arrive at the Pentagon Visitors Center waiting area (Pentagon Metro Entrance) no later than 9:00 a.m. on the day of the meeting to allow time to pass through security check points and be escorted to the meeting location. Contact Eddy Mentzer, (571) 372–0857 (Voice), (571) 372–0884, (Facsimile) if you have any questions about your RSVP.

Written Statements: Persons interested in providing a written statement for review and consideration by Council members attending the March 24, 2020 meeting must do so by no later than close of business Thursday, March 12, 2020, through the Council mailbox (*osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil*). Written statements received after this date will be provided to Council members in preparation for the next MFRC meeting. The Designated Federal Officer will review all timely submissions and ensure submitted written statements are provided to Council members prior to the meeting that is subject to this notice. Written statements must not be longer than two type-written pages and should address the following details: Issue or concern, discussion, and a recommended course of action. Those who make submissions are requested to avoid including personally identifiable information such as names of adults and children, phone numbers, addresses, social security numbers, and other contact information within the body of the written statement.

Dated: March 3, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–04617 Filed 3–5–20; 8:45 am]

BILLING CODE 5001–06–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 Tuesday, March 17, 2020, from 8:00 a.m. to 5:00 p.m.; and Wednesday, March 18, 2020, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center at 4075 Wilson Blvd., Arlington, VA 22203.

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: *https://dsb.cto.mil/.* 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, the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on March 17 through 18, 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 members will meet to discuss classified future dimensions of conflict that might be exploited by our near-peer competitors and adversaries in response to the DSB's 2020 Summer Study on New Dimensions of Conflict tasking.

Agenda: The DSB meeting will begin on March 17, 2020 at 8:00 a.m. with opening remarks by Mr. Kevin Doxey, the Designated Federal Officer (DFO), and Dr. Craig Fields, DSB Chairman. The members of the study will meet to discuss classified future dimensions of conflict that might be exploited by our near-peer competitors and adversaries. Following break, the members will resume their meeting. The meeting will adjourn at 5:00 p.m. On March 18, 2020 the meeting will begin at 8:00 a.m. with a discussion of classified future dimensions of conflict that might be exploited by our near-peer competitors and adversaries. Following break, the members will resume their meeting. 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 above 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: March 3, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–04646 Filed 3–5–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0010]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Statewide Longitudinal Data System (SLDS) Survey 2020–2022

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 6, 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–0010. 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–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347 or email *NCES.Information.Collections@ed.gov.*

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: Statewide Longitudinal Data System (SLDS) Survey 2020–2022.

OMB Control Number: 1850–0933.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 112.

Total Estimated Number of Annual Burden Hours: 140.

Abstract: As authorized by the Educational Technical Assistance Act of 2002, Title II, the Statewide Longitudinal Data Systems (SLDS) Grant Program has awarded competitive, cooperative agreement grants to states since 2005. Through grants and a growing range of services and resources, the program has helped propel the successful design, development, implementation, and expansion of K12 and P–20W (early learning through the workforce) longitudinal data systems. These systems are intended to enhance the ability of States to efficiently and accurately manage, analyze, and use education data, including individual student records. The SLDSs should help states, districts, schools, educators, and other stakeholders to make data-informed decisions to improve student learning and outcomes; as well as to facilitate research to increase student achievement and close achievement gaps. The SLDS grants extend for three to five years for up to twenty million dollars per grantee, and grantees are obligated to submit annual reports and a final report on the development and implementation of their systems. All 50 states, five territories, and the District of Columbia are eligible to apply, and each state can apply multiple times to develop different aspects of their data system. Since November 2005, 97 grants have been awarded. In addition to the grants, the program offers many services and resources to assist education agencies with SLDS-related work. Best practices, lessons learned, and non-proprietary products/solutions developed by recipients of these grants and other states are disseminated to aid all state and local education agencies. The request to formalize the annual SLDS Interim Progress Report (IPR) as the SLDS Survey, intended to provide insight on state and U.S. territory SLDS capacity for automated linking of K–12, teacher, postsecondary, workforce, career and technical education (CTE), adult education, and early childhood data, and to conduct the annual SLDS Survey from 2017 through 2019 was approved in February 2017 with the latest change request approved in August 2019 (1850–0933 v.1–7). The SLDS Survey helps inform ongoing evaluation and targeted technical assistance efforts to enhance the quality of the SLDS Program's support to states. This request is to conduct the annual SLDS Survey from 2020 through 2022, and introduces a new online form for data collection.

Dated: March 2, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–04568 Filed 3–5–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native American-Serving Nontribal Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On February 5, 2020, we published in the **Federal Register** a notice inviting applications (NIA) for the Native American-Serving Nontribal Institutions (NASNTI) Program for fiscal year (FY) 2020. This notice corrects the deadline for transmittal of applications and the deadline for intergovernmental review. All other requirements and conditions in the notice remain the same.

DATES: The correction is applicable March 6, 2020.

Deadline for Transmittal of Applications: March 23, 2020.

Deadline for Intergovernmental Review: May 22, 2020.

FOR FURTHER INFORMATION CONTACT: Don Crews, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–14, Washington, DC 20202–4260. Telephone: (202) 453–7920. Email: *Don.Crews@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: On February 5, 2020, we published in the **Federal Register** a notice inviting applications for the NASNTI Program (85 FR 6537). This notice revises the deadline for transmittal of applications and the deadline for intergovernmental review to extend both those deadlines. All other corrections and conditions in the notice remain the same.

We are extending this competition to allow applicants more time to prepare and submit their applications after requests from multiple applicants. Therefore, we are extending the competition to allow applicants to submit or resubmit applications that meet all of the requirements in the NIA. Applicants that have already submitted applications are encouraged to review their applications and determine whether they have met all eligibility and application requirements.

As stated above, applicants may resubmit applications that may not have met all of the requirements in the NIA. Applicants that have already submitted timely applications that meet all of the requirements of the NIA do not have to resubmit their applications. If a new application is not submitted, the Department will use the application that has already been submitted.

Revision

In FR Doc. 2020–02215, in the **Federal Register** of February 5, 2020, we make the following corrections:

(a) On page 6537, in the first column, under ''**DATES**'' and after ''Deadline for Transmittal of Applications'', we remove the date ''March 6, 2020'' and replace it with the date ''March 23, 2020''.

(b) On page 6537, in the first column, under ''**DATES**'' and after ''Deadline for Intergovernmental Review'', we remove the date ''May 5, 2020'' and replace it with the date ''May 22, 2020''.

Accessible Format: Individuals with disabilities can obtain this notice and a copy of the application in an accessible format (*e.g.,* braille, large print, audio tape, or compact disc) on request to the 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.

Robert L. King,

Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2020–04651 Filed 3–5–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During January 2020

	FE Docket Nos.
BG LNG SERVICES, LLC	19–148–LNG
NEW WORLD GLOBAL, LLC	19–131–LNG
PUGET SOUND ENERGY, INC.	19–151–NG
HOUSTON PIPE LINE COMPANY LP.	19–152–NG
TIDAL ENERGY MARKETING INC.	19–155–NG
PLUM GAS SOLUTIONS INC	19–154–NG
SEAONE CORPUS CHRISTI, LLC.	19–147–CGL
SABINE PASS LIQUEFACTION, LLC.	19–133–LNG
THE BERKSHIRE GAS COMPANY.	20–02–NG
COAHUILA ENERGY	19–157–NG
GOLDEN PASS LNG TERMINAL LLC.	20–03–LNG
MERCURIA ENERGY AMERICA, LLC.	20–01–NG; 18–54–NG
FREEPORT LNG DEVELOPMENT, L.P.	19–153–LNG
UPSTREAM PETROLEUM INC.	19–158–NG
COPEQ TRADING CO	20–04–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during January 2020, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and to vacate prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2020.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on March 3, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4477	01/14/20	19–148–LNG	BG LNG Services, LLC	Order 4477 granting blanket authority to import LNG from various international sources by vessel.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

4481	01/14/20	19–131–LNG	New World Global, LLC	Order 4481 granting blanket authority to import/export LNG from Canada and to Mexico by truck.
4482	01/14/20	19–151–NG	Puget Sound Energy, Inc	Order 4482 granting blanket authority to import/export natural gas from/to Canada.
4483	01/14/20	19–152–NG	Houston Pipe Line Company LP.	Order 4483 granting blanket authority to import/export natural gas from/to Mexico.
4484	01/14/20	19–155–NG	Tidal Energy Marketing Inc	Order 4484 granting blanket authority to import/export natural gas from/to Canada.
4485	01/14/20	19–154–NG	Plum Gas Solutions Inc	Order 4485 granting blanket authority to import/export natural gas from/to Canada.
4486	01/13/20	19–147–CGL	SeaOne Corpus Christi, LLC	Order Granting Long-Term Authorization to Export Natural Gas Contained in or Mixed With Compressed Gas Liquid to Free Trade Agreement Nations in the Caribbean Basin and Gulf of Mexico.
4487	01/15/20	19–133–LNG	Sabine Pass Liquefaction, LLC.	Order 4487 granting blanket authority to export LNG to Free Trade Agreement Nations and Non-free Trade Agreement Nations.
4488	01/16/20	20–02–NG	The Berkshire Gas Company	Order 4488 granting blanket authority to import/export natural gas from/to Canada.
4493	01/30/20	19–157–NG	Coahuila Energy	Order 4493 granting blanket authority to export natural gas to Mexico.
4494	01/30/20	20–03–LNG	Golden Pass LNG Terminal LLC.	Order 4494 granting blanket authority to import LNG from various international sources by vessel.
4495; 4188–A	01/30/20	20–01–NG; 18–54–NG.	Mercuria Energy America, LLC.	Order 4495 granting blanket authority to import/export natural gas from/to Canada/Mexico, and vacating prior authorization (Order 4188–A).
4496	01/30/20	19–153–LNG	Freeport LNG Development, L.P.	Order 4496 granting blanket authority to import LNG from various international sources by vessel.
4497	01/30/20	19–158–NG	Upstream Petroleum Inc	Order 4497 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4498	01/30/20	20–04–NG	Copeq Trading Co	Order 4498 granting blanket authority to export natural gas to Mexico

[FR Doc. 2020–04615 Filed 3–5–20; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: DOE's Office of Fossil Energy (FE) invites public comments on the proposed collection of information pursuant to natural gas import and export applications, as required under the Paperwork Reduction Act of 1995. DOE requests a three-year extension, with changes, to the data collection that includes Form FE–746R, Import and Export of Natural Gas under OMB Control Number 1901–0294. Form FE–746R collects information from authorized importers and exporters of natural gas. The information FE proposes to collect from import and export authorization holders, including on FE–746R, enables DOE's Office of Fossil Energy (FE) to monitor such trade under the United States Mexico Canada Agreement (USMCA), as well as other trade activity falling outside the parameters of USMCA and supports various market and regulatory analyses done by FE.

DATES: DOE must receive all comments on this proposed information collection no later than May 5, 2020. If you anticipate difficulty in submitting your comments by the deadline, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Send your comments to Marc Talbert, FE–34, U.S. Department of Energy, Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375. Submission by email to *marc.talbert@hq.doe.gov* is recommended.

FOR FURTHER INFORMATION CONTACT: Marc Talbert, (202) 586–7991; email *marc.talbert@hq.doe.gov.* Access to the proposed information submissions is available at *https://www.energy.gov/fe/services/natural-gas-regulation.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1901–0294;

(2) *Information Collection Request Title:* Natural Gas Import and Export Data Submissions;

(3) *Type of Request:* Renewal with changes;

(4) *Purpose:* DOE's Office of Fossil Energy (FE) has the delegated authority to regulate natural gas imports and exports under section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. To carry out its delegated responsibility, FE requires individuals seeking to import or export natural gas to file an application providing basic information on the scope and nature of the import/export activity. Once an importer or exporter receives authorization from FE, they are required to submit monthly reports of their import and export transactions on Form FE–746R, as well as other information applicable to a smaller subset of authorization holders that obtain long-term import and export authorizations, or short-term authorizations with countries the United States does not have a free trade agreement. Long-term authorization holders must also supply additional information to assess the state of the U.S. import and export markets as well as the adequacy of energy resources to meet near and long term domestic demands. The information collected ensures compliance with the terms and conditions of the authorization. In addition, the data is used to monitor North American gas trade activity, which enables the Federal government to perform market and regulatory analyses, improve the capability of industry and the government to respond to any future energy-related supply problems, and keep the general public

informed on international natural gas trade.

(4a) *Proposed Changes to Information Collection:* FE seeks to include supplementary data reporting items under OMB Control Number 1901–0294. FE proposes to collect this additional information from long-term import and export authorization holders and short-term authorization holders that have authority to export natural gas to countries that the United States does not have a free trade agreement. The additional information FE seeks to collect from this subset of natural gas import and export authorization holders includes: Long-term contracts associated with the supply and sales of natural gas, compressed natural gas, liquefied natural gas, and associated products; changes in control of authorization holders registrations of agents who import and export natural gas; and for long-term LNG export authorization holders, semi-annual reports detailing information on the status of the proposed or operating LNG export facilities, the date the proposed LNG facilities are expected to commence first exports of LNG, and the status of any related long-term supply and sale/purchase agreements.

(5) *Annual Estimated Number of Respondents:* 396 respondents;

(6) *Annual Estimated Number of Total Responses:* 4,707;

(7) *Annual Estimated Number of Burden Hours:* 13,936 hours;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,116,831 (13,936 annual burden hours multiplied by $80.14 per hour); FE estimates that respondents will have no additional costs associated with the data proposed for collection other than burden hours.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information shall have practical utility; (b) FE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) FE can improve quality, utility, and clarity of the information it will collect; [1] and how (d) FE can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and Section 3 of the Natural Gas Act of 1938, codified at 15 U.S.C. 717b.

[1] *See* 83 FR 65111 (Dec. 18, 2018) (proposing clarifications to provide specificity, and thereby to reduce potential confusion and regulatory burdens, concerning DOE/FE's practice under its regulations at 10 CFR part 590).

Signed in Washington, DC, on February 28, 2020.

Shawn Bennett,

Deputy Assistant Secretary, Office of Oil and Natural Gas, Office of Fossil Energy.

[FR Doc. 2020–04566 Filed 3–5–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notice of open meeting: correction.

SUMMARY: On February 10, 2019, the Department of Energy published a notice of open meeting announcing a meeting on March 12, 2020, of the Secretary of Energy Advisory Board in Houston, Texas. This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Kurt Heckman, SEAB Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; Phone: (202) 586–1212; email: *seab@hq.doe.gov.*

Corrections

In the **Federal Register** of February 10, 2020, in FR Doc. 2020–02555, on page 7541, please make the following correction:

In that notice under **ADDRESSES**, third column, first paragraph, the meeting address has been changed. The original address was Rush Conference Center, Rice University, James A. Baker III Hall, 6100 Main Street, Houston, Texas 77005. The new address is James V. Forrestal Building, 1000 Independence Ave. SW, Washington, DC 20585.

Reason for Correction: The change in venue is due to travel concerns associated with the coronavirus outbreak that cause the cancellation of the CERAWeek event in Houston, TX.

Signed in Washington, DC, on March 2, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–04572 Filed 3–5–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1120–000]

Paper Birch Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Paper Birch Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 23, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–04621 Filed 3–5–20; 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 corporate filings:

Docket Numbers: EC20–42–000.

Applicants: Griffith Energy LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Griffith Energy LLC.

Filed Date: 2/28/20.

Accession Number: 20200228–5409.

Comments Due: 5 p.m. ET 3/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3050–005.

Applicants: FirstEnergy Corp.

Description: Request to Terminate Affiliate Waivers of FirstEnergy Service Company.

Filed Date: 2/28/20.

Accession Number: 20200228–5361.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1016–001.

Applicants: Cove Mountain Solar, LLC.

Description: Tariff Amendment: Amendment to Filing of Shared Facilities Common Ownership Agreement to be effective 4/9/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5155.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1017–001.

Applicants: Cove Mountain Solar 2, LLC.

Description: Tariff Amendment: Amendment to Filing of Shared Facilities Common Ownership Agreement to be effective 4/9/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5162.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1128–000.

Applicants: Black Hills Power, Inc.

Description: Compliance filing: Order No. 864 Compliance Filing to be effective 2/27/2020.

Filed Date: 2/28/20.

Accession Number: 20200228–5309.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1129–000.

Applicants: Sagebrush, a California partnership.

Description: Baseline eTariff Filing: General Co-Ownership Partnership Agreement to be effective 2/29/2020.

Filed Date: 2/28/20.

Accession Number: 20200228–5310.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1130–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Mar 2020 Membership Filing to be effective 2/1/2020.

Filed Date: 2/28/20.

Accession Number: 20200228–5316.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1131–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: TO Appendix Update of Retail Rate Schedules to be effective 5/1/2020.

Filed Date: 2/28/20.

Accession Number: 20200228–5320.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1132–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to PJM CTOA Attachment A for Silver Run Electric, LLC to be effective 12/31/9998.

Filed Date: 2/28/20.

Accession Number: 20200228–5321.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1133–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to PJM OATT Attachment L for Silver Run Electric, LLC to be effective 12/31/9998.

Filed Date: 2/28/20.

Accession Number: 20200228–5322.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1134–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Bylaws Revisions to Incorporate Clerical Changes and to Provide Clarity to be effective 4/30/2020.

Filed Date: 2/28/20.

Accession Number: 20200228–5323.

Comments Due: 5 p.m. ET 3/20/20.

Docket Numbers: ER20–1135–000.

Applicants: Idaho Power Company.

Description: Tariff Cancellation: Cancellation of SA 344 to be effective 4/30/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5002.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1136–000.

Applicants: Idaho Power Company.

Description: Tariff Cancellation: Cancellation of SA 345 and SA 346 to be effective 6/30/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5003.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1137–000.

Applicants: California Independent System Operator Corporation, Inc.

Description: § 205(d) Rate Filing: 2020–03–02 Transmission Control Agreement Amendment Adding Desert Link to be effective 4/30/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5014.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1138–000.

Applicants: Midcontinent Independent System Operator Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2020–03–02_SA 3028 Ameren IL—Prairie Power Project#23 Tuscola East to be effective 5/2/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5120.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1139–000.

Applicants: Midcontinent Independent System Operator Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2020–03–02_SA 3028 Ameren IL—Prairie Power Project#25 Bishop Tap to be effective 5/2/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5129.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1140–000.

Applicants: H.A. Wagner LLC.

Description: § 205(d) Rate Filing: Reactive Service Rate Schedule—Filing to be effective 6/1/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5144.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1141–000.

Applicants: Midcontinent Independent System Operator Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2020–03–02_SA 3028 Ameren IL—Prairie Power Project#24 Villa Grove to be effective 5/2/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5164.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1142–000.

Applicants: GridLiance Heartland LLC.

Description: § 205(d) Rate Filing: GLH OATT TSA Filing to be effective 3/1/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5171.

Comments Due: 5 p.m. ET 3/23/20.

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: March 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–04619 Filed 3–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–801–009.

Applicants: Constellation Power Source Generation, LLC.

Description: Compliance filing: Informational Filing Re Notch Cliff Unit 1–4_Westport Unit 5 Deactivaton to be effective N/A.

Filed Date: 3/2/20.

Accession Number: 20200302–5258.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER19–1216–003.

Applicants: Northwest Ohio Wind, LLC.

Description: Compliance filing: Approved Offer of Settlement Effective Date to be effective 5/8/2019.

Filed Date: 3/2/20.

Accession Number: 20200302–5311.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1144–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Letter Agreement San Jacinto Grid Project SA No. 1097 to be effective 2/20/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5238.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1145–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1148R27 American Electric Power NITSA and NOA to be effective 2/1/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5249.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1146–000.

Applicants: Exelon Generation Company, LLC.

Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filing For Deactivation Of Units to be effective 6/1/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5254.

Comments Due: 5 p.m. ET 3/23/20.

Docket Numbers: ER20–1148–000.

Applicants: American Transmission Systems, Incorporated, The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: FirstEnergy submits on behalf of ATSI et al. OIA, SA No. 2853 to be effective 5/1/2020.

Filed Date: 3/2/20.

Accession Number: 20200302–5291.

Comments Due: 5 p.m. ET 3/23/20.

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: March 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–04618 Filed 3–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–36–000.

Applicants: Centana Intrastate Pipeline, LLC.

Description: Tariff filing per 284.123(b)(2)+(g): Centana Intrastate Pipeline, LLC Tariff Filing to be effective 3/1/2020.

Filed Date: 2/25/2020.

Accession Number: 202002255083.

Comments Due: 5 p.m. ET 3/17/2020.

284.123(g) Protests Due: 5 p.m. ET 4/27/2020.

Docket Number: PR20–37–000.

Applicants: Acadian Gas Pipeline System.

Description: Tariff filing per 284.123(b),(e)+(g): SOC Update—Fuel to be effective 4/1/2020.

Filed Date: 2/25/2020.

Accession Number: 202002255145.

Comments Due: 5 p.m. ET 3/17/2020.

284.123(g) Protests Due: 5 p.m. ET 4/27/2020.

Docket Number: PR20–20–001.

Applicants: American Midstream (Alabama Intrastate), LLC.

Description: Tariff filing per 284.123(b),(e)+(g): American Midstream (Alabama Intrastate) Amended SOC Filing to be effective 12/30/2019.

Filed Date: 2/27/2020.

Accession Number: 202002275138.

Comments Due: 5 p.m. ET 3/19/2020.

284.123(g) Protests Due: 5 p.m. ET 3/19/2020.

Docket Numbers: RP20–557–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: North and South Seattle Lateral Annual Charge Update Filing 2020 to be effective 4/1/2020.

Filed Date: 2/26/20.

Accession Number: 20200226–5263.

Comments Due: 5 p.m. ET 3/9/20.

Docket Numbers: RP20–558–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—Amended MC Global 911524 to be effective 2/29/2020.

Filed Date: 2/26/20.

Accession Number: 20200226–5190.

Comments Due: 5 p.m. ET 3/9/20.

Docket Numbers: RP20–559–000.

Applicants: Egan Hub Storage, LLC.

Description: § 4(d) Rate Filing: FSS FOSA Modification Filing to be effective 3/27/2020.

Filed Date: 2/26/20.

Accession Number: 20200226–5197.

Comments Due: 5 p.m. ET 3/9/20.

Docket Numbers: RP20–560–000.

Applicants: Empire Pipeline, Inc.

Description: Compliance filing Refund Reports (Per Settlement in RP16–300 and RP18–940).

Filed Date: 2/26/20.

Accession Number: 20200226–5216.
Comments Due: 5 p.m. ET 3/9/20.

Docket Numbers: RP20–561–000.
Applicants: High Island Offshore System, L.L.C.
Description: 2020 Annual Fuel Tracker Filing of High Island Offshore System, L.L.C. under RP20–561.
Filed Date: 2/26/20.
Accession Number: 20200226–5219.
Comments Due: 5 p.m. ET 3/9/20.

Docket Numbers: RP20–562–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Semi-Annual Fuel and Losses Retention Adjustment—Summer 2020 Rate to be effective 4/1/2020.
Filed Date: 2/26/20.
Accession Number: 20200226–5238.
Comments Due: 5 p.m. ET 3/9/20.

Docket Numbers: RP19–423–003.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: Compliance filing Rate Case Settlement RP19–423 et al. supplement to be effective 6/1/2019.
Filed Date: 2/27/20.
Accession Number: 20200227–5158.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–563–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: AVC Storage Loss Retainage Factor Update—2020 to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5046.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–564–000.
Applicants: Discovery Gas Transmission LLC.
Description: § 4(d) Rate Filing: 2020 Tariff Revisions to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5055.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–565–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Mar 20) to be effective 3/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5081.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–566–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: RAM 2020 to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5082.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–567–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Update (SoCal Apr 20) to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5083.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–568–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel Tracker—2020 to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5101.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–569–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: Compliance filing Fuel and L&U Compliance FIling to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5109.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–570–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—February 27, 2020 Nonconforming Service Agreement to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5141.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–571–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—MC Global 911524 release to CIMA 8962537 to be effective 2/29/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5143.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–572–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Transco Annual Fuel Tracker 2020 to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5178.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–573–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—DTE Gas Release to Eco-Energy 960817 to be effective 3/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5181.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–574–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT FL&U and EPCT Periodic Rate Adjustment 2020 to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5191.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–575–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Annual Electric Power Tracker Filing effective April 1, 2020 to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5197.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–576–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Apr-Jun 2020) to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5200.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–577–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Filing (APS) to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5222.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–578–000.
Applicants: Egan Hub Storage, LLC.
Description: § 4(d) Rate Filing: Total—contract 310773 to be effective 4/1/2020.
Filed Date: 2/27/20.
Accession Number: 20200227–5227.
Comments Due: 5 p.m. ET 3/10/20.

Docket Numbers: RP20–579–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Mar 2020 to be effective 3/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5009.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–580–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Fuel Filing on 2–28–20 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5015.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–581–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 2–28–20 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5016.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–582–000.
Applicants: Southwest Gas Storage Company.
Description: § 4(d) Rate Filing: Fuel Filing on 2–28–20 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5021.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–583–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 2–28–20 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5024.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–584–000.
Applicants: BBT Midla, LLC.
Description: Compliance filing BBT (Midla) LLC Annual Unaccounted for Gas Rentention Percentage Filing.
Filed Date: 2/28/20.
Accession Number: 20200228–5028.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–585–000.
Applicants: Cheniere Corpus Christi Pipeline, LP.
Description: § 4(d) Rate Filing: Electric Power Costs Eff April 1, 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5041.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–586–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2020 Daggett Surcharge to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5078.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–587–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing Annual Report on Operational Transactions 2020 to be effective N/A.
Filed Date: 2/28/20.
Accession Number: 20200228–5095.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–588–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Compliance filing Annual Report on Operational Transactions 2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5096.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–589–000.
Applicants: Crossroads Pipeline Company.
Description: Compliance filing Annual Report on Operational Transactions 2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5097.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–590–000.
Applicants: Hardy Storage Company, LLC.
Description: Compliance filing Annual Report on Operational Transactions 2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5098.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–591–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing Annual Report on Operational Transactions 2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5099.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–592–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: 2020 Summer Fuel Filing to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5100.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–593–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: § 4(d) Rate Filing: Out-of-Time Periodic Rate Adjustment to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5103.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–594–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Qtrly LUF & Semi-Annual ML Fuel Update to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5104.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–595–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing on 2–28–2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5107.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–596–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: § 4(d) Rate Filing: FLU Filing to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5105.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–597–000.
Applicants: KPC Pipeline, LLC.
Description: § 4(d) Rate Filing: Fuel Reimbursement Adjustment to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5108.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–598–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Quarterly Fuel Adjustment Filing to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5110.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–599–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 2–28–20 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5114.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–600–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: § 4(d) Rate Filing: TRA—April 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5115.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–601–000.
Applicants: Sabine Pipe Line LLC.
Description: § 4(d) Rate Filing: Normal section 5 rates change 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5139.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–602–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2020 Annual Fuel & Electric Power Reimbursement Adjustment Filing to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5160.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–603–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: 2020 Initial ASA FIling to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5173.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–604–000.
Applicants: Dominion Energy Cove Point LNG, LP.
Description: § 4(d) Rate Filing: DECP—2020 Annual EPCA to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5182.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–605–000.
Applicants: Dominion Energy Cove Point LNG, LP.
Description: § 4(d) Rate Filing: DECP—2020 Annual Fuel Retainage to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5190.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–606–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–02–28 Negotiated Rate Agreements to be effective 3/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5191.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–607–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2020 Negotiated Service Agreement—ONEOK FT–1554 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5201.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–608–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: Penalty Updates to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5199.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–609–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Columbia Gas 860005 Releases eff .3–1–2020 to be effective 3/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5210.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–610–000.
Applicants: Leaf River Energy Center LLC.
Description: § 4(d) Rate Filing: Non-Conforming Service Agreement and Related Tariff Changes to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5212.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–611–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: LA Storage 2020 Annual Adjustment of Fuel Retainage Percentage to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5220.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–612–000.
Applicants: Crossroads Pipeline Company.
Description: § 4(d) Rate Filing: TRA 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5226.
Comments Due: 5 p.m. ET 3/11/20.

Docket Numbers: RP20–613–000.
Applicants: Midship Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming/Neg Rate Agreements

Foundation-Anchor Shippers to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5234.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–614–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Cash-Out Price Calculation to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5257.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–615–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: RAM 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5258.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–616–000.
Applicants: Central Kentucky Transmission Company.
Description: § 4(d) Rate Filing: RAM 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5270.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–617–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement—Spire Marketing to be effective 3/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5276.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–618–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: GT&C Section 15 Disposition of Cash-Out Costs and Revenues to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5297.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–619–000.
Applicants: Golden Pass Pipeline LLC.
Description: Compliance filing Golden Pass Pipeline LLC Annual Report of Operational Purchases and Sales.
Filed Date: 2/28/20.
Accession Number: 20200228–5298.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–620–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: EPCA 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5299.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–621–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: pro forma—Proposed Firm Flexible Storage Service FS–F to be effective 12/31/9998.
Filed Date: 2/28/20.
Accession Number: 20200228–5308.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–622–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCRA 2020 to be effective 4/1/2020.
Filed Date: 2/28/20.
Accession Number: 20200228–5319.
Comments Due: 5 p.m. ET 3/11/20.
Docket Numbers: RP20–626–000.
Applicants: UGI Mt. Bethel Pipeline Company, LLC.
Description: Annual Retainage Adjustment Filing of UGI Mt. Bethel Pipeline Company, LLC under RP20–626.
Filed Date: 2/28/20.
Accession Number: 20200228–5381.
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 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: March 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–04620 Filed 3–5–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9049–7]

Environmental Impact Statements; Notice of Availability

Weekly receipt of Environmental Impact Statements filed February 24, 2020, 10 a.m. EST, through March 2, 2020, 10 a.m. EST, pursuant to 40 CFR 1506.9.

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200058, Final, USFS, ID, Huckleberry Landscape Restoration Project, Review Period Ends: 04/14/2020, Contact: Ronda Bishop 208–253–0101.

EIS No. 20200059, Draft, BR, NV, Truckee Canal Extraordinary Maintenance, Comment Period Ends: 04/20/2020, Contact: Laurie Nicholas 775–884–8360.

EIS No. 20200060, Draft, FHWA, VA, Route 220 Martinsville Southern Connector, Comment Period Ends: 04/20/2020, Contact: Mack A Frost 804–775–3352.

EIS No. 20200061, Final Supplement, FAA, CA, Gnoss Field Airport, Proposed Extension of Runway 13/31, Novato, Marin County, California, Review Period Ends: 04/06/2020, Contact: Doug Pomeroy 650–827–7612.

EIS No. 20200062, Final, USACE, CA, Final Integrated General Reevaluation Report and Environmental Impact Statement San Francisco Bay to Stockton, California, Navigation Study, Review Period Ends: 04/06/2020, Contact: Paul DeMarco 904–232–1897.

Amended Notice

EIS No. 20200022, Final, BIA, CA, Final Environmental Impact Statement for the Campo Wind Project with Boulder Brush Facilities, Review Period Ends: 03/11/2020, Contact: Dan (Harold) Hall 916–978–6041, Revision to FR Notice Published 1/31/2020; Extending the Comment Period from 3/2/2020 to 3/11/2020.

Dated: March 2, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–04606 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10006–08–Region 4]

Public Water System Supervision Program Revision for the State of Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended approval.

SUMMARY: Notice is hereby given that the State of Alabama is revising its approved Public Water System Supervision Program. Alabama has adopted drinking water regulations for the Revised Total Coliform Rule. The Environmental Protection Agency (EPA) has determined that Alabama's

regulations are no less stringent than the federal rule and the revision otherwise meets applicable Safe Drinking Water Act requirements. Therefore, EPA intends to approve this revision to the State of Alabama's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by April 6, 2020, to the Regional Administrator at the EPA Region 4 street address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by April 6, 2020, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on April 6, 2020. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal holidays) at the following locations: The Drinking Water Branch, Alabama Department of Environmental Management, 1400 Coliseum Boulevard, Montgomery, Alabama 36110; and the Drinking Water Section, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Dale Froneberger, EPA Region 4, Drinking Water Section, by mail at the Atlanta street address given above, by telephone at (404) 562–9446, or by email at *froneberger.dale@epa.gov.*

SUPPLEMENTARY INFORMATION: The State of Alabama has submitted a request that EPA approve a revision to the State's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Revised Total Coliform Rule. For the request to be approved, EPA must find the state regulations codified at ADEM Admin. Code r. 335–7 to be no less stringent than the federal rule codified at 40 CFR part 141. EPA reviewed Alabama's application using the federal statutory provisions (Section 1413 of the Safe Drinking Water Act), federal regulations (at 40 CFR parts 141 and 142), state regulations, state policies and procedures for implementing the rule, regulatory crosswalk, and EPA regulatory guidance to determine whether the request for revision is approvable. EPA determined that the Alabama regulations are no less stringent than the corresponding federal rule and the revision otherwise meets applicable Safe Drinking Water Act requirements. Therefore, EPA intends to approve this revision. If EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this approval shall become final and effective on April 6, 2020.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: February 20, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–04652 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0291; FRL 10004–36–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; State Review Framework

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''State Review Framework (EPA ICR No. 2185.07, OMB Control No. 2020–0031) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. Public comments were previously requested via the **Federal Register** on September 17, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before April 6, 2020.

ADDRESSES: Submit your comments, Docket ID EPA–HQ–OECA–2010–0291, to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Christopher Knopes, Office of Enforcement and Compliance Assurance, Office of Compliance; Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–2337; email address: *knopes.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The State Review Framework is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and

compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results. This request will allow OECA to collect information from enforcement and compliance files reviewed during routine on-site visits of state or local agency offices that will assist in the evaluation of the State Review Framework implementation from FY 2020 to the end of FY 2023. It will allow also EPA to make inquiries to assess the State Review Framework process, including the consistency achieved among the EPA Regions and states, the resources required to conduct the reviews, and the overall effectiveness of the program.

Form Numbers: None.

Respondents/affected entities: States, localities, and territories.

Respondent's obligation to respond: Required as part of program authorization under the Clean Water, Clean Air, and Resource Conservation and Recovery Acts.

Estimated number of respondents: 54.

Frequency of response: Once every five years.

Total estimated burden: 2,354 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $139,104 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 411 hours per year in the total estimated respondent burden compared with the ICR currently approved by OMB. Estimated burden figures have been slightly decreased in response to information gathered through consultations. Respondents reported increases in efficiency brought about through continued experience with the program and steady reductions in the amount of non-digital materials involved in reviews.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–04468 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–1006–23–Region 9]

Santa Ana Hollister (Formerly M.K. Ballistics) Removal Site, Hollister, CA; Notice of Proposed CERCLA Settlement Agreement for Recovery of Past Response Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the Santa Ana Hollister (Formerly M.K. Ballistics) Removal Site in Hollister, California. The settlement is entered into pursuant to Section 122(h)(1) of CERCLA, and it requires the settling parties to reimburse EPA $121,500 in response costs that EPA incurred at the Site.

DATES: EPA will receive written comments relating to this proposed settlement until April 6, 2020.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Myles Saron, EPA Region IX, 75 Hawthorne Street, ORC–3, San Francisco, CA 94105, telephone number 415–972–3911. Comments should reference the Santa Ana Hollister (Formerly M.K. Ballistics) Removal Site, Hollister, California and should be addressed to Mr. Saron at the above address.

FOR FURTHER INFORMATION CONTACT: Myles Saron, Attorney Adviser (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3911; fax: (417) 947–3570; email: *saron.myles@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the Santa Ana Hollister (Formerly M.K. Ballistics) Removal Site in Hollister, California. The settlement is entered into pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), and it requires the settling parties to reimburse EPA $121,500 in response costs that EPA incurred at the Site. The settlement includes a covenant not to sue the settling parties pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). For thirty (30) days following the date of publication of this Notice in the **Federal Register**, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

Parties to the Proposed Settlement: Gil Zuniga, Margaret Zuniga Healy, Vincent M. Zuniga, Mary A. Zuniga, Steven M Zuniga, and Sheron Johnson.

Dated: February 20, 2020.

Enrique Manzanilla,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 2020–04662 Filed 3–5–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201290–001.

Agreement Name: Maersk/MSC/Zim USPNW Cooperative Working Agreement.

Parties: Maersk A/S; Mediterranean Shipping Company S.A.; and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment changes the name of the Maersk entity that is party to the Agreement and updates the contact information for Maersk.

Proposed Effective Date: 2/25/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/21334.

Agreement No.: 011075–080.

Agreement Name: Central America Discussion Agreement.

Parties: Crowley Latin America Services, LLC; Dole Ocean Cargo Express, LLC; Great White Fleet Corp. and Great White Fleet Liner Services Ltd. (acting as a single party); King Ocean Services Limited; and Seaboard Marine, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment reinstates language in Article 5.01 that was inadvertently omitted from a previous amendment.

Proposed Effective Date: 4/10/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1332.

Agreement No.: 201263–002.

Agreement Name: Maersk/MSC/Zim Cooperative Working Agreement.

Parties: Maersk A/S; Mediterranean Shipping Company S.A.; and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment changes the name of the Maersk entity that is party to the Agreement and the updates the contact information for Maersk.

Proposed Effective Date: 2/25/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/14256.

Agreement No.: 201292–001.

Agreement Name: Puerto Nuevo Terminals LLC Cooperative Working Agreement.

Parties: Luis A. Ayala Colon Sucrs.; Inc.; Puerto Rico Terminals; and Puerto Nuevo Terminals.

Filing Party: Matthew Thomas; Blank Rome LLP.

Synopsis: The amendment clarifies and revises the Agreement to more clearly define and narrow certain authorities set forth therein, and to remove authorities that the parties have not utilized, and do not intend to utilize. The amendment also adds PNT as a party to the Agreement.

Proposed Effective Date: 4/12/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/21354.

Dated: March 2, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–04580 Filed 3–5–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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

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 and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 7, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *American Pacific Bancorp, Inc., Bethesda, Maryland;* to become a bank holding company by acquiring Main Street Bancshares, Inc., Harrisburg, Illinois, and thereby indirectly acquire Grand Rivers Community Bank, Grand Chain, Illinois. In connection with this application, American Pacific Bancorp, Inc. to acquire Kotner Title & Abstract, LLC, Harrisburg, Illinois, and thereby engage in general insurance activities pursuant to section 4(c)(8) of the Act.

Board of Governors of the Federal Reserve System, March 3, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–04648 Filed 3–5–20; 8:45 am]

BILLING CODE 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 and Constitution Avenue NW, Washington, DC 20551–0001, not later than March 23, 2020.

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

1. *The Tommy McGuire and Mary McGuire Family Trust, Tom McGuire and Mary McGuire, as co-trustees, all of Depew, Oklahoma;* to acquire voting shares of Spirit BankCorp, Inc., Bristow, Oklahoma and thereby indirectly acquire voting shares of SpiritBank, Tulsa, Oklahoma, and to be approved as members acting in concert with the McGuire family control group. In addition, JL McGuire, Depew, Oklahoma, to be approved as a member acting in concert with the McGuire family control group.

Board of Governors of the Federal Reserve System, March 3, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–04642 Filed 3–5–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10275]

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 May 5, 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–10275 CAHPS Home Health Care Survey

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:* Extension without change of a currently approved collection; *Title of Information Collection:* CAHPS Home Health Care Survey; *Use:* The national implementation of the Home Health Care CAHPS Survey is designed to collect ongoing data from samples of home health care patients who receive skilled services from Medicare-certified home health agencies.

The survey is necessary because it fulfills the goal of transparency with the public about home health patient experiences. The survey is used by Medicare-certified home health agencies to improve their internal quality assurance in the care that they provide in home health. The HHCAHPS survey is also used in a Medicare payment program. Medicare-certified home health agencies (HHAs) must contract with CMS-approved survey vendors that conduct the HHCAHPS on behalf of the HHAs to meet their requirements in the Home Health Quality Reporting Program. *Form Number:* CMS–10257 (OMB control number: 0938–1066); *Frequency:* Yearly; *Affected Public:* Individuals and Households; *Number of Respondents:* 1,195,930; *Total Annual Responses:* 1,294,820; *Total Annual Hours:* 453,239. (For policy questions regarding this collection contact Lori Teichman at 410- 786–6684.)

Dated: *March 3, 2020.*

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–04612 Filed 3–5–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10718, CMS–304/–304a and CMS–368/–R–144]

Agency Information Collection Activities: Submission for OMB Review; 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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by April 6, 2020.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax

Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

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*.

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

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. 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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Model Medicare Advantage and Medicare Prescription Drug Plan Individual Enrollment Request Form; *Use:* This information collection is necessary for the Medicare beneficiary (or their legal representative), to enroll in an MA or PDP plan, even if switching plans within the same MA or PDP organization. To consider an election complete, the individual must:

- Complete an enrollment request;
- Provide required information to the MA or PDP organization within the required time frames;
- Submit the completed request to the MA or PDP organization during a valid enrollment period.
- MA and PDP organizations, applicants to MA and PDP organizations, and the CMS will use the information collected to comply with the eligibility and enrollment requirements for Medicare Part C and Part D plans.

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) enacted August 5, 1997, established Part C of the Medicare program, known as the Medicare + Choice program, (now referred to as Medicare Advantage (MA)). As required by 42 CFR 422.50(a)(5), an MA-eligible individual who meets the eligibility requirements for enrollment into an MA or MAPD plan may enroll during the enrollment periods specified in § 422.62, by completing an enrollment form with the MA organization or enrolling through other mechanisms that CMS determines are appropriate.

Section 101 of Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) enacted December 8, 2003, established Part D of the Medicare program, known as the Voluntary Prescription Drug Benefit Program. As required by 42 CFR 423.32(a) and (b), a Part D-eligible individual who wishes to enroll in a Medicare prescription drug plan (PDP) may enroll during the enrollment periods specified in § 423.38, by completing an enrollment form with the PDP, or enrolling through other mechanisms CMS determines are appropriate. *Form Number:* CMS–10718 (OMB control number: 0938–New); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 14,749,256; *Total Annual Responses:* 14,749,256; *Total Annual Hours:* 7,861,354. (For policy questions regarding this collection contact Deme Umo at (410) 786–8854.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice (ROSI) and Prior Quarter Adjustment Statement (PQAS); *Use:* Form CMS–304 (ROSI) is used by manufacturers to respond to the state's rebate invoice for current quarter utilization. Form CMS–304a (PQAS) is required only in those instances where a change to the original rebate data submittal is necessary. *Form Number:* CMS–304 and –304a (OMB control number: 0938–0676); *Frequency:* Quarterly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 1,255; *Total Annual Responses:* 5,020; *Total Annual Hours:* 227,416. (For policy questions regarding this collection contact Andrea Wellington at 410–786–3490.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate State Reporting Program Forms; *Use:* We develop the rebate amount per drug unit from information supplied by the drug manufacturers and distributes these data to the states. States then must report quarterly to the drug manufacturers and report to us the total number of units of each dosage form/strength of their covered outpatient drugs reimbursed during a quarter and the rebate amount to be refunded. This report is due within 60 days of the end of each calendar quarter. The information in the report is based on claims paid by the state Medicaid agency during a calendar quarter. Form CMS–R–144 (Quarterly Report Data) is required from states quarterly to report utilization for any drugs paid for during that quarter. Form CMS–368 (Administrative Data) is required only in those instances where a change to the original data submittal is necessary. *Form Number:* CMS–368 and –R–144 (OMB control number: 0938–0582); *Frequency:* Quarterly and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 234; *Total Annual Hours:* 12,101. (For policy questions regarding this collection contact Shannon Evans at 410–786–3083.)

Dated: March 3, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–04607 Filed 3–5–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0179]

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) Center for Drug Evaluation and Research (CDER) is announcing the continuation of the Regulatory Project Management Site Tours and Regulatory Interaction Program (the Site Tours Program). The purpose of this document is to invite pharmaceutical companies interested in

participating in this program to contact CDER.

DATES: Pharmaceutical companies may send proposed agendas to the Agency by May 5, 2020.

FOR FURTHER INFORMATION CONTACT: Dan Brum, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5480, Silver Spring, MD 20993–0002, 301–796–0578, *dan.brum@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing its training program to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide the following: (1) Firsthand exposure to industry's drug development processes and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. The Site Tours Program

In this program, which generally lasts a few days, small groups of CDER regulatory project managers, often including a senior level regulatory project manager, can observe operations of pharmaceutical manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to improve mutual understanding and to provide an avenue for open dialogue. During the Site Tours Program, regulatory project managers will also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, nonclinical and clinical evaluation, postmarketing activities, and regulatory submission operations. The overall benefit to regulatory project managers will be exposure to project management, team techniques, and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the Site Tours Program will be the responsibility of CDER; therefore, selection will be based on the availability of funds and resources for each fiscal year. Selection will also be based on firms having a favorable facility status as determined by FDA's Office of Regulatory Affairs District Offices in the firms' respective regions. Firms that want to learn more about this training opportunity or that are interested in offering a site tour should respond by sending a proposed agenda by email directly to Dan Brum (see **DATES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: March 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04604 Filed 3–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0907]

Medical Device User Fee Amendments for Fiscal Years 2023 Through 2027; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the reauthorization of the Medical Device User Fee Amendments for fiscal years (FYs) 2023 through 2027 (MDUFA V). The current legislative authority for the medical device user fee program expires on October 1, 2022, and new legislation will be required for FDA to continue collecting user fees for the medical device program in future fiscal years. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that before FDA begins negotiations with the regulated industry on MDUFA reauthorization, we publish a notice in the **Federal Register** requesting public input on the reauthorization, hold a public meeting at which the public may present its views on the reauthorization, provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes to MDUFA, and publish the comments on FDA's website. FDA invites public comment on the medical device user fee program and suggestions regarding the commitments FDA should propose for the next reauthorized program.

DATES: The public meeting will be held on April 7, 2020, from 9 a.m. to 5 p.m. EST. Submit either electronic or written comments on the medical device user fee program and suggestions regarding the commitments FDA should propose for the next reauthorized program by May 6, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/about-fda/white-oak-campus-information/public-meetings-fda-white-oak-campus.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 6, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time on May 6, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No.FDA–2020–N–0907 for ''Medical Device User Fee Amendments for Fiscal Years 2023 Through 2027.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Ellen Olson, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 1664, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4322, *ellen.olson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing its intention to hold a public meeting on the reauthorization of the Medical Device User Fee Amendments of 2017 (MDUFA IV), which currently authorizes FDA to collect user fees during FYs 2018–2022 and use them for the process for the review of device applications. Without new legislation, referred to as reauthorization, FDA will not be able to collect user fees after FY 2022 to fund the medical device review process.

Prior to reauthorization, FDA must consult with the regulated industry and make recommendations to Congress regarding the goals for the process for the review of device applications (see 21 U.S.C. 379j–1(b)(1)(F)). Before beginning negotiations with the regulated industry on user fee reauthorization, section 738A(b)(2) of the FD&C Act (21 U.S.C. 379j–1(b)(2)) requires that FDA do the following: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization, including specific suggestions for changes to the goals set under MDUFA IV; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes to MDUFA; and (4) publish the comments on FDA's website. This notice, the public meeting, the 30-day comment period after the meeting, and the posting of the comments on FDA's website will satisfy these requirements.

The purpose of the meeting is to hear stakeholder views on medical device user fee reauthorization as we consider FDA's recommendation to Congress for the next medical device user fee program. Information about the MDUFA program can be found at *https://www.fda.gov/industry/fda-user-fee-programs/medical-device-user-fee-amendments-mdufa.* Information about MDUFA IV can be found at *https://www.fda.gov/industry/medical-device-user-fee-amendments-mdufa/medical-device-user-fee-amendments-2017-mdufa-iv* and the MDUFA IV Performance Goals and Procedures can be found at *https://www.fda.gov/media/102699/download.* FDA is interested in responses to the following general questions and welcomes any other pertinent information stakeholders would like to share:

1. What programs/commitments under MDUFA IV are currently working well?

2. What programs/commitments can be improved for MDUFA V?

3. What new programs/commitments should be considered as part of MDUFA V?

4. Thinking more broadly than the MDUFA program alone, what should the medical device ecosystem, and our medical device program in particular, look like at the end of MDUFA V (*i.e.,* September 2027), and how can MDUFA V support achieving that future state?

II. Topics for Discussion at the Public Meeting

Through this notice, we are announcing a public meeting to hear stakeholder views on the reauthorization of MDUFA for FYs 2023 through 2027, including specific suggestions for any changes to the user fee program that we should consider. We will conduct the meeting on April 7, 2020. In general, the meeting format will include presentations by FDA and a series of panels representing different stakeholder interest groups (such as patient advocates, consumer protection groups, industry, health care professionals, and academic researchers). FDA will also provide an opportunity for individuals to make presentations during the meeting, either during a specific session or the public comment session, and for organizations and individuals to submit written comments to the docket after the meeting. The presentations should focus on program improvements and funding issues, including specific suggestions for changes to performance goals, and not focus on other general policy issues. We will make the agenda for the public meeting available by March 12, 2020, on the internet at *https://www.fda.gov/medical-devices/workshops-*

conferences-medical-devices/2020-medical-device-meetings-and-workshops (Select this meeting from the posted events list.)

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public meeting from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by March 26, 2020, by 4 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when their registration has been accepted. You will be notified if you are on a waiting list. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8 a.m. We will update the website if registration closes before the day of the public meeting.

If you need special accommodations, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5661, *susan.monahan@fda.hhs.gov* no later than March 23, 2020.

Requests for Oral Presentations: During online registration, you may indicate if you wish to present during a public comment session or participate in a specific session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin and will notify selected speakers by April 1, 2020. All requests to make oral presentations must be received by the close of registration on March 26, 2020, at 4 p.m. Eastern Time. If selected for presentation, any presentation materials must be emailed to Ellen Olson (see **FOR FURTHER INFORMATION CONTACT**) no later than March 26, 2020. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Meeting: This meeting will also be webcast. The webcast link will be available on the registration web page after March 26, 2020. Organizations are requested to register all participants, but to view using one connection per location. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: As soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may also be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet *https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting from the posted events list.)

Dated: March 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04638 Filed 3–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5572]

Inclusion of Older Adults in Cancer Clinical Trials; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Inclusion of Older Adults in Cancer Clinical Trials.'' This draft guidance provides recommendations regarding the inclusion of older adult patients in clinical trials of drugs for the treatment of cancer. For the purpose of this draft guidance, older adults are those age 65 years and older. The draft guidance emphasizes the particular importance of including adults over age 75 years in cancer clinical trials. Specifically, this draft guidance includes recommendations for including an adequate representation of older adults in cancer clinical trials to better enable evaluation of the benefit-risk profile of cancer drugs in this population.

DATES: Submit either electronic or written comments on the draft guidance by May 5, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2019–D–5572 for ''Inclusion of Older Adults in Cancer Clinical Trials.''

Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Harpreet Singh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2137, Silver Spring, MD 20993–0002, 240–402–3561; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Inclusion of Older Adults in Cancer Clinical Trials.'' This draft guidance provides recommendations for stakeholders, including sponsors and institutional review boards, responsible for the development and oversight of clinical trials regarding the inclusion of older adult patients (*i.e.,* age 65 years and older) in clinical trials of drugs for the treatment of cancer. The draft guidance emphasizes the particular importance of including adults over age 75 years in cancer clinical trials.

Enrolling an adequate representation of the range of patients in a clinical trial that may be exposed to a drug after approval can maximize the generalizability of the trial results. It provides the ability to understand the drug's benefit-risk profile across the patient population likely to use the drug in clinical practice. Including information in the labeling describing use in older adults helps to promote the safe and effective use of these products and better informs treatment decisions in clinical practice.

Older adults are underrepresented in cancer clinical trials despite representing a growing segment of the population of cancer patients. Therefore, more information is needed to better inform treatment decisions for older adults with cancer. The issue persists in oncology despite FDA's efforts to increase the inclusion of older adults in clinical trials.

The draft guidance recommends that sponsors of cancer trials consider the age demographics of their target population early in development and that a strategy for inclusion of older adults be informed by any known information for older adults. The draft guidance includes recommendations for inclusion of older adults related to early clinical development; clinical trials, including considerations for trial design, recruitment, and developing and reporting discrete age subgroups; and the postmarket setting.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Inclusion of Older Adults in Cancer Clinical Trials.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: March 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04603 Filed 3–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–0987]

Policy for Diagnostics Testing in Laboratories Certified To Perform High Complexity Testing Under the Clinical Laboratory Improvement Amendments Prior to Emergency Use Authorization for Coronavirus Disease-2019 During the Public Health Emergency; Immediately in Effect Guidance for Clinical Laboratories and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Policy for Diagnostics Testing in Laboratories Certified to Perform High Complexity Testing under CLIA prior to Emergency Use Authorization for Coronavirus Disease-2019 during the Public Health Emergency.'' On February 4, 2020, the Secretary of Health and Human Services (HHS) determined that there is a public health emergency and that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus (2019-nCoV). Rapid detection of Coronavirus Disease-2019 (COVID–19) cases in the United States requires wide availability of diagnostic testing to control the emergence of this rapidly spreading, severe illness. This guidance describes a policy regarding laboratories using tests they develop and validate before FDA has issued an Emergency Use Authorization (EUA) for their test in order to achieve more rapid testing capacity in the United States. The guidance document is immediately in effect, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on March 6, 2020. The guidance document is immediately in effect, but it remains subject to comment in accordance with the Agency's good guidance practices.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2020–D–0987 for ''Policy for Diagnostics Testing in Laboratories Certified to Perform High Complexity Testing under CLIA prior to Emergency Use Authorization for Coronavirus Disease-2019 during the Public Health Emergency.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Policy for Diagnostics Testing in Laboratories Certified to Perform High Complexity Testing under CLIA prior to Emergency Use Authorization for Coronavirus Disease–2019 during the Public Health Emergency'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Brittany Goldberg, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 66, Rm. 3108, Silver Spring, MD 20993–0002, 301–796–2977.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Policy for Diagnostics Testing in Laboratories Certified to Perform High Complexity Testing under CLIA prior to Emergency Use Authorization for Coronavirus Disease-2019 during the Public Health Emergency; Immediately in Effect Guidance for Clinical Laboratories and Food and Drug Administration Staff.'' On February 4, 2020, the Secretary of HHS determined that there is a public health emergency and that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus (2019–nCoV).[1] Rapid detection of COVID–19 cases in the United States requires wide availability of diagnostic testing to control the emergence of this rapidly spreading, severe illness. This guidance describes a policy regarding laboratories using tests they develop and validate before FDA has issued an EUA for their test in order to achieve more rapid testing capacity in the United States.

In light of this public health emergency, FDA has determined that prior public participation for this guidance is not feasible or appropriate and is issuing this guidance without prior public comment (see section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i)) and § 10.115(g)(2)). Although this guidance is immediately in effect, FDA will consider all comments received and revise the guidance document as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on ''Policy for Diagnostics Testing in Laboratories Certified to Perform High Complexity Testing under CLIA prior to Emergency Use Authorization for Coronavirus Disease–2019 during the Public Health Emergency.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

[1] *https://www.fda.gov/media/135010/download.*

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Policy for Diagnostics Testing in Laboratories Certified to Perform High Complexity Testing under CLIA prior to Emergency Use Authorization for Coronavirus Disease–2019 during the Public Health Emergency; Immediately in Effect Guidance for Clinical Laboratories and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 20010 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collection of information for ''Emergency Use Authorization of Medical Products and Related Authorities Guidance for Industry and Other Stakeholders'' has been approved under OMB control number 0910–0595.

Dated: March 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04630 Filed 3–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3768]

Best Practices in Drug and Biological Product Postmarket Safety Surveillance for Food and Drug Administration Staff; Draft Document; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the notice entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff; Draft Document; Availability; Establishment of Public Docket; Request for Comments'' that appeared in the **Federal Register** of November 7, 2019. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period for the notice published on November 7, 2019 (84 FR 60094). Submit either electronic or written comments by May 5, 2020, to ensure that the Agency considers your comment on this draft document before it begins work on the final version.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2019–N–3768 for ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

Submit written requests for single copies of the draft document to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft document.

FOR FURTHER INFORMATION CONTACT: Eileen Wu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3472, Silver Spring, MD 20993–0002, 301–796–2345, *eileen.wu@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 2019 (84 FR 60094), FDA published a notice with a 60-day comment period to request comments on the draft document entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff.'' FDA is reopening the comment period until May 5, 2020. The Agency believes that an additional 60 days will allow adequate time for interested persons to submit comments without compromising the timely publication of the final version of the draft document.

II. Electronic Access

Persons with access to the internet may obtain the draft document ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff'' at *https://www.fda.gov/media/130216/download.*

Dated: March 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04591 Filed 3–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0360]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration Safety Communication Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Safety Communication Readership Survey.

DATES: Submit either electronic or written comments on the collection of information by May 5, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 5, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 5, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and

Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2009–N–0360 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration Safety Communication Readership Survey.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Safety Communication Readership Survey

OMB Control Number 0910–0341—Extension

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 375(b)) gives FDA authority to disseminate information concerning suspected or imminent danger to public health by any regulated product. Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) also authorizes FDA to conduct research relating to health information.

FDA's Center for Devices and Radiological Health (CDRH) carries out FDA's regulatory responsibilities regarding medical devices and radiological products. CDRH must be able to effectively communicate risk to healthcare practitioners, patients, caregivers, and consumers when there is a real or suspected threat to the public's health. CDRH uses safety communications to transmit information concerning these risks to user communities. Safety communications are released and available to organizations such as hospitals, nursing homes, hospices, home healthcare agencies, manufacturers, retail pharmacies, and other healthcare providers, as well as patients, caregivers, consumers, and patient advocacy groups. Through a process for identifying and addressing postmarket safety issues related to regulated products, CDRH determines when to release safety communications.

FDA seeks to evaluate the clarity, timeliness, and impact of safety communications by surveying a sample of recipients and obtaining their voluntary responses to determine the impact of safety communications on the knowledge of the recipients. Understanding how the target audiences view these publications will aid in determining what, if any, changes should be considered in their content, format, and method of dissemination. The collection of this data is an important step in determining how well CDRH is communicating risk. The results from this survey will emphasize the quality of the safety communications and customer satisfaction. This will enable us to better serve the public by improving the effectiveness of safety communications.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Public Health Notification Readership Survey	300	3	900	0.17 (10 minutes)	153

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: March 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04563 Filed 3–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Evaluation of the Maternal and Child Health Bureau's Autism CARES Act Initiative, OMB No. 0915–0335—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, provided below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than May 5, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Evaluation of the Maternal and Child Health Bureau's Autism CARES Act Initiative, OMB No. 0915–0335—Revision.

Abstract: In response to the growing need for research and resources devoted to autism spectrum disorder and other developmental disabilities, the U.S. Congress passed the Combating Autism Act of 2006 (Pub. L. 109–416); it was reauthorized by the Combating Autism Reauthorization Act of 2011 (Pub. L. 112–32), the Autism Collaboration, Accountability, Research, Education, and Support (Autism CARES) Act of 2014 (Pub. L. 113–157) and the Autism CARES Act of 2019 (Pub. L. 116–60). Through these Autism CARES public laws, HRSA has been tasked with increasing awareness of autism spectrum disorder and developmental disabilities, reducing barriers to screening and diagnosis, promoting evidence-based interventions, and training healthcare professionals in the use of valid and reliable diagnostic tools.

Need and Proposed Use of the Information: The purpose of this information collection is to design and implement an impact evaluation to assess the effectiveness of HRSA's Maternal and Child Health Bureau's activities in meeting the goals and objectives of the Autism CARES Act. This ICR is a revision to an existing package; this study is the fourth evaluation of HRSA's autism activities and employs similar data collection methodologies as the prior studies. Grantee interviews remain the primary form of data collection. Minor proposed revisions to the data collection process include (1) modifications to the interview questions based on the current legislation and HRSA's Notices of Funding Opportunity and (2) the creation of a new Grantee Survey to collect common data elements across the three program areas that focus on training, research, and state systems.

Likely Respondents: Grantees funded by HRSA's Autism programs will be the respondents for this data collection activity. The grantees are from the following HRSA programs: Leadership Education in Neurodevelopmental and Related Disabilities Training Program; Developmental Behavioral Pediatrics Training Program; State Innovation in Care Integration Program; State Innovation in Care Coordination Program; Research Network Program; Research Program; Interdisciplinary Technical Assistance Center; and the State Public Health Autism Center Resource Center.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS:

Grant program/form name	Number of respondents	Average number of responses per respondent	Total responses	Average hours per response	Total hour burden
Grantee Survey (Training and Research Grantees)	80	3	240.0	0.50	120.00
Grantee Survey (State Systems Grantees)	5	3	15.0	0.50	7.50
Training Interview Guide	64	1.5	96.0	1.25	120.00
State Systems Interview Guide	5	1.5	7.5	1.25	9.37
Research Interview Guide	24	1.5	36.0	1.00	36.00
Research Quantitative Data Collection Form	6	1	6.0	1.00	6.00
Interdisciplinary Technical Assistance Center Interview Guide	1	2	2.0	1.00	2.00
State Public Health Autism Center Interview Guide	1	2	2.0	1.00	2.00
Total	186		404.5		302.87

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–04600 Filed 3–5–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4474–DR; Docket ID FEMA–2020–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4474–DR), dated January 17, 2020, and related determinations.

DATES: The declaration was issued January 17, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 17, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Vermont from a severe storm and flooding during the period of October 31 to November 1, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. McPherson of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Addison, Chittenden, Essex, Franklin, Lamoille, Orange, Orleans, and Washington Counties for Public Assistance.

All areas within the State of Vermont are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–04584 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4404–DR; Docket ID FEMA–2020–0001]

Commonwealth of the Northern Mariana Islands; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–4404–DR), dated October 26, 2018, and related determinations.

DATES: This amendment was issued January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 31, 2020, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Pete Gaynor, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in the Commonwealth of the Northern Mariana Islands (CNMI) resulting from Super Typhoon Yutu during the period of October 24 to October 26, 2018, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declarations of October 26, 2018 and February 25, 2019, to authorize Federal funds for hazard mitigation measures associated with sections 404 and 406 of the Stafford Act at 100 percent of total eligible costs with the following conditions:

1. CNMI must maintain the 2018 International Building Code through the closeout of the disaster; and

2. CNMI must prioritize mitigation projects to improve resiliency for critical infrastructure approved by the FEMA Region IX Regional Administrator.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–04588 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4473–DR; Docket ID FEMA–2020–0001]

Puerto Rico; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated January 16, 2020, and related determinations.

DATES: This amendment was issued February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 16, 2020.

The municipalities of Adjuntas, Jayuya, Juana Díaz, Lajas, Las Marías, Mayagüez, Sabana Grande, and Utuado for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–04582 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4473–DR; Docket ID FEMA–2020–0001]

Puerto Rico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated January 16, 2020, and related determinations.

DATES: This amendment was issued February 5, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 16, 2020.

The municipalities of Arecibo, Ciales, Hormigueros, Juana Díaz, Las Marías, Mayagüez, Morovis, Orocovis, and Sabana Grande for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–04585 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4475–DR; Docket ID FEMA–2020–0001]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–4475–DR), dated January 21, 2020, and related determinations.

DATES: The declaration was issued January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 21, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from flooding during the period of October 9 to October 26, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dana C. Reynolds, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Barnes, Eddy, Foster, Grand Forks, Griggs, Kidder, LaMoure, Logan, Mountrail, Nelson, Sargent, Sheridan, Stutsman, Traill, Walsh, and Wells Counties for Public Assistance.

All areas within the State of North Dakota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–04577 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4472–DR; Docket ID FEMA–2020–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of New York (FEMA–4472–DR), dated December 19, 2019, and related determinations.

DATES: This change occurred on January 18, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Seamus K. Leary, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert Little III as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–04586 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2646–20; DHS Docket No. USCIS–2020–0002]

Notice of DHS's Requirement of the Temporary Labor Certification Final Determination Under the H–2A Temporary Worker Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security, U.S. Citizenship and Immigration Services is announcing, through this notice, that a printed copy of the electronic final determination form granting temporary labor certification under the H–2A program through the U.S. Department of Labor's new Foreign Labor Application Gateway system must be submitted with an H–2A petition as evidence of an original and valid temporary labor certification.

DATES: This notice is applicable March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department

of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC 20529–2120, Telephone Number (202)-272–8377 (not a toll-free call).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act (INA), as amended, establishes the H–2A nonimmigrant classification for a temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services . . . of a temporary or seasonal nature.'' INA section 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a). Employers must petition the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), for classification of prospective temporary workers as H–2A nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). DHS must approve this petition before the beneficiary can be considered eligible for an H–2A visa. Finally, the INA requires that ''[t]he question of importing any alien as [an H–2A] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],[1] after consultation with appropriate agencies of the Government . . . mean[ing] the U.S. Department of Labor and includ[ing] the U.S. Department of Agriculture.'' INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

DHS regulations provide that an H–2A petition for temporary employment in the United States must be accompanied by a single valid temporary labor certification (TLC) from the U.S. Department of Labor (DOL) issued in accordance with INA section 218, 8 U.S.C. 1188, and DOL regulations established at 20 CFR part 655. 8 CFR 214.2(h)(5)(i)(A), (D), (h)(5)(iv); *see also* INA sections 214(c)(1) and 218, 8 U.S.C. 1184(c)(1) and 1188.[2] The TLC serves as DHS's consultation with DOL regarding whether: (i) An able, willing, and qualified U.S. worker is available to fill the petitioning H–2A employer's job opportunity, and (ii) whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* INA sections 214(c)(1) and 218, 8 U.S.C. 1184(c)(1) and 1188; *see also* 8 CFR 214.2(h)(5)(ii); 20 CFR 655.100.

Historically, when a TLC was granted, DOL sent an original certified Form ETA–9142A, Application for Temporary Employment Certification, and a Final Determination letter on paper to the employer and a copy, if appropriate, to the employer's agent or attorney. 20 CFR 655.162. The original paper TLC was sent by means normally ensuring next day delivery, and the employer retained a signed copy of the certified Form ETA–9142A and the original signed Appendix A, as required by 20 CFR 655.167. *Id.* The employer or, if applicable, its agent or attorney, then attached the original paper TLC, along with all other supporting documentation and appropriate fees, to the Form I–129, Petition for a Nonimmigrant Worker, and filed the Form I–129 with USCIS. On December 10, 2012, DOL implemented electronic filing in the H–2A labor certification program, but continued to issue original certified ETA–9142A TLCs on paper.[3]

On August 22, 2019, and in accordance with the Paperwork Reduction Act (PRA), the Office of Management and Budget (OMB) approved revisions to DOL's H–2A Foreign Labor Certification Program information collection.[4] OMB also approved Form ETA–9142A, Final Determination: H–2A Temporary Labor Certification Approval, which allows DOL to issue electronic TLCs to employers or, if applicable, the authorized attorneys or agents. On August 27, 2019, DOL then announced on the Office of Foreign Labor Certification (OFLC) website a transition schedule for employers to submit the new H–2A application forms through its new Foreign Labor Application Gateway (FLAG) system beginning October 1, 2019.[5] Employers who file the Form ETA–9142A, including all applicable appendices and the new Form ETA–790/790A, H–2A Agricultural Clearance Order, through the FLAG system and are granted a TLC will receive the Form ETA–9142A, Final Determination: H–2A Temporary Labor Certification Approval, and Final Determination letter electronically.[6] In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the approved TLC documents electronically, DOL will send the Form ETA–9142A, Form ETA–790/790A, and Final Determination letter on paper and in a manner that ensures next day delivery.

DHS regulations refer to a valid TLC by various terms including ''Department of Labor determination'' at 8 CFR 214.2(h)(2)(i)(E), ''approved labor certification'' at 8 CFR 214.2(h)(5)(x), and ''temporary agricultural labor certification'' at 8 CFR 214.2(h)(5)(i)(A), (h)(5)(iv)(B). Under the current instructions for Form I–129, H–2A petitioners must submit a single valid temporary labor certification from DOL with the H–2A petition.[7] Since DOL, generally, will now only provide the approved TLC to an employer electronically, USCIS announced on its website on October 1, 2019, that employers whose application for a TLC was processed in FLAG must include a printed copy of the electronic one-page Form ETA–9142A, Final Determination: H–2A Temporary Labor Certification Approval, with their Form I–129, and that USCIS will consider this printed copy as an original and valid TLC.[8] USCIS is formally announcing through this notice that a printed copy of the Form ETA–9142A, Final Determination, completed and electronically signed by DOL, must be submitted as initial evidence with an H–2A petition, and that this printed copy of the one-page determination satisfies the requirement that petitioners provide evidence of a

[1] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

[2] Under certain emergent circumstances, petitions requesting a continuation of employment with the same employer for 2 weeks or less are exempt from the TLC requirement. *See* 8 CFR 214.2(h)(5)(x).

[3] *Electronic Filing of H–2A and H–2B Labor Certification Applications Through the iCERT Visa Portal System,* 77 FR 59670, 69672 (September 28, 2012).

[4] *See* OMB's Notice of Action issued on August 22, 2019, on DOL's information collection control number 1205–0466 at *https://www.reginfo.gov.*

[5] DOL announced that it would continue to accept original Form ETA–9142A through its legacy iCERT system until October 16, 2019. DOL also announced that, beginning October 1, 2019, employers seeking to file an emergency application under 20 CFR 655.134 or an application for workers in herding or production of livestock on the range, as defined in 20 CFR 655.201, must file the new Form ETA–9142A, Form ETA–790/790A, and appendices in the FLAG system. In addition, employers with a start date of need on or after December 15, 2019 must file the new Form ETA–790/790A and any appendices in the FLAG system. *See https://www.foreignlaborcert.doleta.gov/.*

[6] Employers may obtain a copy of the final decisions from the Historical table in the My Cases tab of their FLAG account. *See* DOL's Frequently Asked Questions, under the question, ''How can I find a copy of my issued application?'' at: *https://flag.dol.gov/support/FAQ#cases.*

[7] *See https://www.uscis.gov/i-129.* Under certain emergent circumstances, petitions requesting a continuation of employment with the same employer for 2 weeks or less are exempt from the TLC requirement. *See* 8 CFR 214.2(h)(5)(x).

[8] *See https://www.uscis.gov/news/alerts/h-2a-petitioners-must-include-temporary-labor-certification-final-determination-form-i-129.*

valid TLC that is required to accompany an H–2A petition.[9] As discussed above, this change in USCIS procedure aligns with DOL's change in its procedures, as DOL has transitioned to a new electronic filing and application processing environment through which, generally, DOL no longer provides the employer and, if applicable, the employer's authorized attorney or agent with an original paper TLC. This change in process is also appropriate since, in most circumstances, USCIS will no longer need to reference a paper copy of a certified Form ETA–9142A (including the Form ETA–790/790A and all appendices) because USCIS and DOL have in place an information sharing process that allows USCIS to validate substantive elements of the valid TLC based on case information supplied by DOL directly to USCIS.[10]

USCIS notes that there may be limited circumstances when an employer (or its authorized attorney or agent, if applicable) has a paper-based final determination from DOL because, among other reasons, the employer is unable to receive the final determination electronically.[11] In these limited circumstances, USCIS may accept and consider the paper-based certification documents as an original approved TLC. Additionally, USCIS notes that the submission of a printed copy of the electronic Form ETA–9142A, Final Determination does not preclude USCIS from issuing a request for evidence or a notice of intent to deny in certain warranted circumstances, including but not limited to, when the electronic systems are unavailable for validation, or the final determination document is substantively inconsistent with the information provided by DOL regarding that labor certification determination. In those instances, USCIS will request that an employer (or its authorized attorney or agent, if applicable) submit, in response to a request for evidence or a notice of intent to deny, supporting documentation, including but not limited to a copy(ies) of the complete certified Form ETA–9142A, Form ETA–790/790A, and its appendices. DOL has agreed that such evidence will be made available to employers (or authorized attorneys agents) in certain circumstances, for example, in the event of a FLAG system outage or scheduled maintenance.

Joseph Edlow,

Deputy Director for Policy, U.S. Citizenship and Immigration Services.

[FR Doc. 2020–04667 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–97–P

[9] *See* 8 CFR 103.2(b)(7)(ii).

[10] DHS USCIS and DOL entered into a Memorandum of Agreement regarding employment-based petition, labor certification, and labor condition application data sharing in support of their respective missions, effective January 12, 2017. *See https://www.uscis.gov/sites/default/files/files/nativedocuments/Employment-Based_Petition_Labor_Certification_and_Labor_Condition_Application_Data.pdf.* To view the Privacy Impact Assessment (PIA) for the Validation Instrument for Business Enterprises (VIBE), see *https://www.dhs.gov/publication/dhs-uscis-pia-044-validation-instrument-business-enterprises.* Note, though USCIS and DOL have in place an information sharing process, petitioners must provide a printed copy of the one-page determination with the submission of the H–2A petition.

[11] *See* 83 FR 53911, 53912 (October 25, 2018) (''In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the temporary labor certification documents electronically, ETA will send the certification documents printed on standard paper in a manner that ensures overnight delivery.'').

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2659–20; DHS Docket No. USCIS–2019–0025]

Notice of DHS's Requirement of the Temporary Labor Certification Final Determination Under the H–2B Temporary Worker Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security, U.S. Citizenship and Immigration Services, is announcing, through this notice, that a printed copy of the electronic final determination form granting temporary labor certification under the H–2B program through the U.S. Department of Labor's new Foreign Labor Application Gateway system must be submitted with an H–2B petition as evidence of an original approved temporary labor certification.

DATES: This notice is applicable March 6, 2020

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC 20529–2120, Telephone Number (202)-272–8377 (not a toll-free call). Individuals with a hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), for classification of prospective temporary workers as H–2B nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa. *Id.* Finally, the INA requires that ''[t]he question of importing any alien as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],[1] after consultation with appropriate agencies of the Government.'' INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

DHS regulations provide that an H–2B petition for temporary employment in the United States other than on Guam must be accompanied by an approved temporary labor certification (TLC) from the U.S. Department of Labor (DOL) issued pursuant to regulations established at 20 CFR part 655.[2] 8 CFR 214.2(h)(6)(iii)(A), (C)–(E), (h)(6)(iv)(A); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6), INA section 214(c)(1), 8 U.S.C. 1184(c)(1). The TLC serves as DHS's consultation with DOL regarding: (i) Whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity, and (ii) whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iv)(A).

[1] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

[2] In situations involving employment on Guam, the petitioning employer shall apply for a temporary labor certification with the Governor of Guam. *See* 8 CFR 214.2(h)(6)(iii).

Historically, when a TLC was granted, DOL sent an original approved Form ETA–9142B, Application for Temporary Employment Certification, and a Final Determination letter to the employer with a copy, if applicable, to the employer's authorized attorney or agent. 20 CFR 655.52. The original paper TLC was sent by means normally ensuring next day delivery, and the employer retained a signed copy of the certified Form ETA–9142B and the original signed Appendix B, as required by 20 CFR 655.56(c)(12). The employer or its authorized attorney or agent then attached the original paper TLC, along with all other supporting documentation and appropriate fees, to the Form I–129, Petition for a Nonimmigrant Worker, and filed the Form I–129 with USCIS. On October 15, 2012, DOL implemented electronic filing in the H–2B labor certification program, but continued to issue original certified ETA–9142 TLCs on paper.[3]

On May 17, 2019, and in accordance with the Paperwork Reduction Act (PRA), the Office of Management and Budget (OMB) approved revisions to DOL's H–2B Foreign Labor Certification Program information collection.[4] To promote greater efficiency in issuing TLCs and minimize delays associated with employers filing H–2B petitions with DHS, DOL received approval to issue electronic TLCs using the new Form ETA–9142B, Final Determination: H–2B Temporary Labor Certification Approval. On June 6, 2019, DOL then announced on the Office of Foreign Labor Certification's (OFLC's) website a transition schedule for employers to submit the new H–2B application forms beginning July 3, 2019, through its new FLAG system.[5] As of July 3, 2019, employers who file the new Form ETA–9142B, including all applicable appendices, through the FLAG system and are granted a TLC will receive an ETA–9142B, Final Determination: H–2B Temporary Labor Certification Approval, and Final Determination letter electronically.[6]

In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the approved TLC documents electronically, DOL will send the ETA–9142B and Final Determination letter on paper and in a manner that ensures next day delivery.

DHS regulations refer to an approved TLC by various terms including ''Department of Labor determination'' at 8 CFR 214.2(h)(2)(i)(E) and ''labor certification determination'' at 8 CFR 214.2(h)(6)(iii)(E). Under the current instructions for Form I–129, H–2B petitioners must submit an approved TLC from DOL with the H–2B petition.[7] Since DOL, generally, will now only provide the approved TLC to an employer electronically, USCIS announced on its website on July 26, 2019, that employers whose application for a TLC was processed in FLAG must include a printed copy of the electronic one-page ETA–9142B, Final Determination: H–2B Temporary Labor Certification Approval, with their Form I–129, and that USCIS will consider this printed copy as an original, approved TLC.[8] USCIS is formally announcing, through this notice, that a printed copy of the ETA–9142B final determination, completed and electronically signed by DOL, must be submitted with an H–2B petition, and that this printed copy of the one-page determination satisfies the requirement that petitioners provide evidence of an approved TLC. As discussed above, this change in USCIS procedure aligns with DOL's change in its procedures, as DOL has transitioned to a new electronic filing and application processing environment through which, generally, DOL no longer provides the employer and, if applicable, the employer's authorized attorney or agent with a paper copy of a certified Form ETA–9142B. This change in process is also appropriate since in most circumstances, USCIS will no longer need to reference a paper copy of a certified Form ETA–9142B (and its appendices) because USCIS and DOL have in place an information sharing process that allows USCIS to validate substantive elements of the approved TLC based on case information supplied by DOL directly to USCIS.[9]

USCIS notes that there may be limited circumstances when an employer (or its authorized agent, if applicable) has a paper-based final determination from DOL because, among other reasons, the employer is unable to receive the final determination electronically.[10] In these limited circumstances, USCIS may accept and consider the paper-based certification documents as an original approved TLC. Additionally, USCIS notes that the submission of a printed copy of the electronic ETA–9142B final determination does not preclude USCIS from issuing a request for evidence or a notice of intent to deny in certain warranted circumstances, including but not limited to, when the electronic systems are unavailable for validation, or the final determination document is substantively inconsistent with the information provided by DOL regarding that labor certification determination. In those instances, USCIS will request that an employer (or its authorized agent, if applicable) submit documentation, including but not limited to a copy or copies of the complete certified Form ETA–9142B and its appendices. DOL has agreed that such evidence will be made available to employers (or authorized agents) in certain circumstances, for example, in the event of FLAG system outage or scheduled maintenance.

Joseph Edlow,

Deputy Director for Policy, U.S. Citizenship and Immigration Services.

[FR Doc. 2020–04666 Filed 3–5–20; 8:45 am]

BILLING CODE 9111–97–P

[3] *Electronic Filing of H–2A and H–2B Labor Certification Applications Through the iCERT Visa Portal System,* 77 FR 59670, 69672 (Sept. 28, 2012).

[4] *See* OMB's Notice of Action issued on May 17, 2019, on DOL's information collection control number 1205–0509 at *https://www.reginfo.gov.*

[5] DOL announced that, beginning July 3, 2019, it will only accept H–2B applications submitted using the new Form ETA–9142B (*i.e.,* forms containing an expiration date of May 31, 2022). DOL continued to accept and process H–2B applications it received through the legacy iCERT system until 11:59 p.m. Eastern Time on July 2, 2019. *See https://www.foreignlaborcert.doleta.gov/.*

[6] Employers may obtain a copy of the final decisions from the Historical table in the My Cases tab of their FLAG account. *See* DOL's Frequently Asked Questions; *https://flag.dol.gov/support/FAQ#cases,* under the question, ''*How can I find a copy of my issued application?*''

[7] *See https://www.uscis.gov/i-129.*

[8] *See https://www.uscis.gov/news/alerts/h-2b-petitioners-must-include-temporary-labor-certification-final-determination-form-i-129.*

[9] *See https://www.dhs.gov/publication/dhs-uscis-pia-044-validation-instrument-business-enterprises.*

[10] *See* 84 FR 798, 799 (Jan. 31, 2019) (''In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the temporary labor certification documents electronically, ETA will send the certification documents printed on standard paper in a manner that ensures overnight delivery.'')

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2020–N028; FXES11130100000–201–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and

Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before April 6, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross TE–08964A–2):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–739923–9 ...	Hawaii Volcanoes National Park, HI.	Hawksbill sea turtle (*Eretmochelys imbricata*).	Hawaii	Harass by capture, measure, mark, attach transmitters, and release adults; locate, monitor, screen, and excavate nests; relocate eggs; release live hatchlings; and salvage.	Renew.
TE–08598C–1 ...	The Institute for Bird Populations, Point Reyes Station, CA.	Friendly ground-dove (*Gallicolumba stairi*).	American Samoa	Harass by survey, monitor, capture, handle, band, biosample, attach transmitters, release, and salvage.	Renew.
TE–66355D–0 ...	U.S. Geological Survey, Fort Collins Science Center, Fort Collins, CO.	Slevin's skink (*Emoia slevini*).	Commonwealth of the Northern Mariana Islands, Guam.	Harass by survey, monitor, capture, handle, mark, attach transmitters, biosample, release, and salvage.	New.
TE–67157D–0 ...	Oregon State University, Corvallis, OR.	Hawaiian common gallinule (*Gallinula galeata sandvicensis*).	Kauai, Hawaii	Harass by survey, monitor, capture, handle, band, biosample, attach transmitters, float eggs, release, and salvage.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Rolland White,

Assistant Regional Director—Ecological Services, Pacific Region.

[FR Doc. 2020–04565 Filed 3–5–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N015; FXES11140800000–190–FF08EVEN00]

Draft Environmental Assessment and Draft General Conservation Plan for Oil and Gas Activities in 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 General Conservation Plan (GCP), as well as the associated draft environmental assessment (EA), for oil and gas activities in Santa Barbara County. The Service developed the GCP in accordance with the Endangered Species Act to provide a streamlined mechanism for proponents engaged in oil and gas activities to meet statutory and regulatory requirements while promoting conservation of the Santa Barbara County distinct population segment of the California tiger salamander, California red-legged frog, and Lompoc yerba santa. The Service prepared the draft EA in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing permits under the GCP. We invite public comment on these documents.

DATES: Written comments should be received on or before April 6, 2020.

ADDRESSES: *Obtaining documents:* You may download a copy of the draft GCP and draft EA at *http://www.fws.gov/ventura/,* or you may request copies of the documents from the Ventura Fish and Wildlife Office by U.S. mail (address 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: sbc-oilandgasgcp@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Henry, Fish and Wildlife Biologist, Ventura Fish and Wildlife Office (see **ADDRESSES**), by phone at 805–677–3312 or via the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft General Conservation Plan (GCP), as well as the associated draft environmental assessment (EA), for oil and gas activities in Santa Barbara County. The GCP was developed by the Service in accordance with section 10(a)(2)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The GCP meets the issuance criteria as required by section 10(a)(2)(B) of the ESA for issuance of a section 10(a)(1)(B) incidental take permit (ITP).

The Service developed the GCP to provide a streamlined mechanism for proponents engaged in oil and gas development, expansion, operations, maintenance, and decommissioning of infrastructure to meet statutory and regulatory requirements while promoting conservation of the Santa Barbara County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and Lompoc yerba santa (*Eriodictyon capitatum*). The GCP includes measures to mitigate and minimize impacts to the covered species. Permits issued under the GCP would authorize incidental take of the covered species for up to 20 years after the plan becomes effective. The Service prepared the 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 permits under the GCP. We invite public comment on these documents.

Background

The Service listed the Santa Barbara County DPS of the California tiger salamander as endangered on September 21, 2000 (65 FR 57242); the Lompoc yerba santa as endangered on March 20, 2000 (65 FR 14888); and the California red-legged frog as threatened on May 23, 1996 (61 FR 25813).

Section 9 of the ESA and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. The ESA defines ''take'' as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. Our regulations at 50 CFR 17.3 define ''incidental taking'' as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32, respectively. Under the ESA, protections for federally listed plants differ from the protections afforded to federally listed animals. 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 Santa Barbara County DPS of the California tiger salamander, California red-legged frog, and Lompoc yerba santa.

Proposed Action

The proposed action is approval of the GCP that has been prepared by the Service in accordance with section 10(a)(2)(A) of the ESA to provide a more efficient and standardized mechanism for proponents engaged in commercial oil and gas development, expansion, operations, maintenance, and decommissioning of infrastructure on non-Federal lands. The GCP meets the permit issuance criteria as required by section 10(a)(2)(B) of the ESA and enables the establishment of a programmatic permitting and conservation process to address a defined suite of proposed activities over a defined planning area. The proposed GCP would allow private individuals, local and State agencies, and other non-Federal entities to meet the statutory and regulatory requirements of the ESA by applying for a permit and complying with the requirements of the GCP, including all applicable avoidance, minimization, and mitigation actions.

The draft EA provides the required NEPA documentation for the proposed Federal action (*i.e.,* approval of a conservation plan and subsequent issuance of permits pursuant to section 10(a)(1)(B) of the ESA), providing information on the environmental baseline and a discussion of impacts to the human and natural environment that may occur as a result of implementation of the proposed GCP. Importantly, the scope of the EA is limited to the evaluation of the proposed GCP as a mechanism to standardize permit issuance for covered activities; this EA neither evaluates nor results in approval of oil and gas development projects or activities.

Alternatives

We are considering a no-action alternative to the proposed action in the EA. Under this alternative, the Service would not establish the proposed GCP as a standardized mechanism for

compliance with section 10 of the ESA. Entities planning to conduct oil and gas activities involving potential impacts to the Santa Barbara County DPS of the California tiger salamander and California red-legged frog would continue to be required to obtain permits with associated project-specific HCPs.

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 view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Stephen Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2020–04562 Filed 3–5–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY921000.L14400000.ET0000; WYW 141567]

Public Land Order No. 7892; Extension of Public Land Order No. 7434; Withdrawal of Public Land for Whiskey Mountain Bighorn Sheep Winter Range, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order (PLO) No. 7434, which would otherwise expire on March 23, 2020, for an additional 20-year period. PLO No. 7434 withdrew 1,430.92 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not from leasing under the mineral leasing laws. The purpose of this withdrawal extension is to protect the Whiskey Mountain Bighorn Sheep Winter Range and capital investments in the area for an additional 20-year term.

DATES: This PLO takes effect on March 24, 2020.

FOR FURTHER INFORMATION CONTACT: Keesha Cary, Realty Specialist, at (307) 775–6189, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003. 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. 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: This Order extends the existing withdrawal to continue to protect the Whiskey Mountain Bighorn Sheep Winter Range and capital investments in the area.

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, PLO No. 7434 (65 FR 15920 (2000)), which withdrew 1,430.92 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not from leasing under the mineral leasing laws, is hereby extended for an additional 20-year period.

2. This withdrawal extended by this Order will expire on March 23, 2040, unless as a result of a review conducted prior to 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 further extended.

Dated: March 2, 2020.

Rob Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–04637 Filed 3–5–20; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1151]

Certain Photovoltaic Cells and Products Containing Same; Commission Decision Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 38) of the presiding administrative law judge (''ALJ'') granting complainants' unopposed motion to amend the complaint and notice of investigation (''NOI'') in the above-captioned investigation to substitute Hanwha Solutions Corporation (''HSC'') for Hanwha Q CELLS & Advanced Materials Corporation (''HQC–AMC'') as a complainant.

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

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 9, 2019, based on a complaint filed on behalf of Hanwha Q CELLS USA, Inc. of Dalton, Georgia and HQC–AMC of Seoul, Republic of Korea. 84 FR 14134–35 (April 9, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale

within the United States after importation of certain photovoltaic cells and products containing same by reason of infringement of certain claims of U.S. Patent No. 9,893,215. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named several respondents. The Office of Unfair Import Investigations is participating in the investigation.

On January 23, 2020, complainants filed an unopposed amended motion to amend the complaint and NOI to substitute HSC for HQC–AMC as a complainant.

The subject ID (Order No. 38) issued on January 30, 2020, granting complainants' motion to amend the complaint and NOI. The ID finds that good cause exists to grant the motion to amend under Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)) because complainants' motion is unopposed. No petitions for review were filed.

The Commission has determined not to review the ID.

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: March 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–04579 Filed 3–5–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–630 (Final)]

Glass Containers From China; Scheduling of the Final Phase of Countervailing Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–630 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of glass containers from China, provided for in subheading 7010.90.50 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized.

DATES: February 24, 2020.

FOR FURTHER INFORMATION CONTACT: Calvin Chang (202–205–3062) or Chris Robinson (202–205–2542), Office of Investigation, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 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 (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Scope.— For purposes of this investigation, Commerce has defined the subject merchandise as certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) Glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without ''mold seams,'' ''joint marks,'' or ''parting lines;'' and (3) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure to seal the container's contents, including but not limited to a lid, cap, or cork).

Glass containers subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7010.90.50. The HTSUS subheading is provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Background.—The final phase of this investigation is being scheduled pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of an affirmative preliminary determination by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of glass containers. The investigation was requested in a petition filed on September 25, 2019, by the American Glass Packaging Coalition, Tampa, Florida, and Chicago, Illinois.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the

Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on April 22, 2020, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on Wednesday, May 6, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 1, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on May 4, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 29, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 14, 2020. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before May 14, 2020. On June 3, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 5, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–04578 Filed 3–5–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–637 and 731–TA–1471 (Preliminary)]

Vertical Shaft Engines From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of vertical shaft engines from China that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2] The products subject to these investigations are primarily provided for in subheadings 8407.90.10, 8407.90.90, 8409.91.50, and 8409.91.99 of the Harmonized Tariff Schedule of the United States (''HTS'').

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On January 15, 2020, the Coalition of American Vertical Engine Producers,[3] filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of vertical shaft engines from China and LTFV imports of vertical shaft engines from China. Accordingly, effective January 15, 2020, the Commission instituted countervailing duty investigation No. 701–TA–637 and antidumping duty

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 8809 (February 18, 2020); *Certain Vertical Shaft Engines Between 223cc and 999cc, and Parts Thereof From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 8835 (February 18, 2020).

[3] The Coalition of American Vertical Engine Producers is comprised of Kohler Co., Kohler, Wisconsin, and Briggs & Stratton Corporation, Wauwatosa, Wisconsin.

investigation No. 731–TA–1471 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 23, 2020 (85 FR 3945). The conference was held in Washington, DC, on February 5, 2020, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on March 2, 2020. The views of the Commission are contained in USITC Publication 5034 (March 2020), entitled *Vertical Shaft Engines from China: Investigation Nos. 701–TA–637 and 731–TA–1471 (Preliminary).*

By order of the Commission.

Issued: March 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–04592 Filed 3–5–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Secretary's Order 02–2020—Procedures for Appointment of Individuals to Department of Labor Appellate Boards

1. Purpose. To cancel Secretary's Order 05–2018, which has created inefficiencies in the process by which individuals are appointed to the Department of Labor's appellate boards.

2. Authorities. This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations) and 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal).

3. Background. The Secretary of Labor has the authority and responsibility to appoint the members of the Department's three appellate boards: the Administrative Review Board (ARB), the Benefits Review Board (BRB), and the Employees' Compensation Appeals Board (ECAB). In Secretary's Order 05–2018, the Secretary created a formal, multi-step process by which these appointments are made. Because this process has caused unnecessary inefficiencies in the appointment of individuals to the Department's appellate boards, the Secretary has decided to rescind Secretary's Order 05–2018.

4. Directives Affected. Secretary's Order 05–2018 is hereby cancelled, effective immediately

Dated: February 21, 2020.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–04020 Filed 3–5–20; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Secretary's Order 03–2020—Establishment of the Management Review Board

1. Purpose. This Order establishes the Management Review Board (MRB), which shall serve as a forum for systematically furthering the Secretary's management objectives for the Department of Labor (DOL).

2. Authority and Directives Affected. This order supersedes and cancels Secretary's Order 05–2001.

3. Background. The MRB will serve as the principal forum for coordination, executive oversight, and integration of agency management processes, offering an essential Departmental perspective in assessing a variety of Agency administrative areas.

4. Composition.

A. Chairperson. The MRB shall be co-chaired by the Assistant Secretary for Administration and Management and the Chief Financial Officer (the Co-Chairs).

B. Membership. The membership of the MRB will consist of DOL Agency Heads or their designees. Designees will be at the Deputy Assistant Secretary level or the Agency's Administrative Officer.

C. Non-Member Subject Matter Experts. The following career executives will provide information and guidance to the MRB.

1. The Chief Information Officer
2. The Chief Human Capital Officer
3. The Senior Procurement Executive
4. The Chief Data Officer
5. The Chief Evaluation Officer
6. The Director of the Departmental Budget Center
7. The Director of the Performance Management Center

D. Logistics.

1. The MRB will meet monthly.

2. All meetings will be convened by the Co-Chairs with sufficient advanced notice as to promote member participation.

3. The Office of the Assistant Secretary for Administration and Management's Performance Management Center will provide logistical support including meeting materials and space.

4. The Executive Secretary is delegated authority and assigned responsibility for recording official decisions and assignments made at MRB proceedings and will participate in follow-up activities, as required.

5. Delegation of Authority and Assignment of Responsibility.

A. The Management Review Board is delegated authority and assigned responsibility for defining and addressing DOL management initiatives and major cross-cutting management issues; for providing a forum for eliciting the views and perspectives of affected DOL agencies and offices; and for ascertaining a coordinated Departmental perspective and recommended course(s) of action, as appropriate, in the following areas:

1. Evidence-building, including evaluation, performance management, and using data as a strategic asset;
2. information technology;
3. financial management, including enterprise risk management;
4. human resources;
5. acquisition management; and
6. security and safety.

B. The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and counsel to the Secretary and Deputy Secretary, the MRB, and other DOL agencies on all matters arising in the administration of this Order.

C. Agency Heads are responsible for:

1. Providing to the MRB the perspective of their respective agencies on matters before the MRB; and

2. consulting with the MRB on policies and activities which relate to the purposes or responsibilities of the MRB.

6. Independent Contributing Committees. The following committees are independent of the MRB, but may be called on to regularly provide updates:

A. Enterprise Shared Services Governance Board. This board governs Shared Services activities across DOL.

B. Security Advisory Board. This board provides organizational advice and recommendations to the Secretary regarding the security and safety of occupants of and visitors to DOL facilities.

C. Enterprise Risk Management Council. This council serves as the oversight body for the development of coordinated Department-wide positions on risk, risk management, risk mitigation, and execution in conformance with any guidance on risk governance issued by the Congress or the Office of Management and Budget.

D. Strategic Review Council. This council conducts the annual review of

the Strategic Plan and of program portfolios to document the Department's progress in meeting its strategic objectives.

7. Reservation of Authority and Responsibility.

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders affecting DOL is reserved to the Secretary.

B. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 04–2006 (February 21, 2006).

C. Except as provided above in Section 2, all other Secretary's Orders remain in full force and effect.

8. Effective Date. This Order is effective immediately.

Dated: February 21, 2020.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–04028 Filed 3–5–20; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Secretary's Order 01–2020—Delegation of Authority and Assignment of Responsibility to the Administrative Review Board

1. Purpose. To delegate authority and assign responsibility to the Administrative Review Board, define its composition, and describe its functions.

2. Authorities. This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. Background. The Secretary of Labor (''Secretary'') has the authority and responsibility to decide certain appeals from administrative decisions. The Secretary created the Administrative Review Board (''Board'' or ''ARB'') in Secretary's Order 02–96, which delegated authority and assigned responsibilities to the Board. Secretary's Order 01–2002 delegated this authority and assigned responsibility to the ARB, defined and expanded its composition, clarified ARB procedural authorities, and codified the location of the ARB in the Department's organizational structure. Secretary's Order 01–2010, then, created and designated a Vice-Chair to maintain and operate the Board during a Chair's absence or vacancy. Additionally, Secretary's Order 01–2010 delegated the responsibility for the operational management of the Board and its affairs to the newly created Vice-Chair. Secretary's Order 02–2012 provided updates to the delegation of authority and assignment of responsibilities laid out in the previous orders. Secretary's Order 01–2019 extended the term of membership of Board members from two years to four years. This Order allows for discretionary review by the Secretary of Board decisions.

4. Directives Affected. Secretary's Order 01–2019—Delegation of Authority and Assignment of Responsibility to the Administrative Review Board is hereby canceled. Any Secretary's Order or other DOL document (including policies and guidance) that references Secretary's Order 01–2019 is deemed to refer to this Order instead.

5. Delegation of Authority and Assignment of Responsibilities. The Board is hereby delegated authority and assigned responsibility to act for the Secretary of Labor in review or on appeal of the matters listed below. This authority includes, but is not limited to, the issuance of final agency decisions, as provided for in Section 6 of this Order, except in those cases reviewed by the Secretary in accordance with that Section. The Board shall report to the Secretary through the Deputy Secretary of Labor and shall immediately transmit its decisions to the Deputy Secretary once they are issued.

a. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and final decisions of Administrative Law Judges (''ALJs''), under the following:

1. The Davis-Bacon Act, 40 U.S.C. 3141 *et seq.;* any laws now existing or which may be subsequently enacted, providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.* (except matters pertaining to safety); the Copeland Act, 40 U.S.C. 3145; Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, subpart C and D.

2. The McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 6701 *et seq.;* the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.* (except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 CFR parts 4, 5, 6, subparts B, D, E.

3. Executive Order No. 13658, as implemented, 29 CFR 10.51 *et seq.*

4. Executive Order No. 13706, as implemented, 29 CFR 13.51 *et seq.*

b. Decisions and recommended decisions by ALJs as provided for or pursuant to the following laws and implementing regulations:

1. Age Discrimination Act of 1975, 42 U.S.C. 6103;

2. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-l; 29 CFR part 31;

3. Civil Service Reform Act of 1978, 5 U.S.C. 7120; 29 CFR part 458, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 458.91, and 458.93;

4. Clean Air Act, 42 U.S.C. 7622; 29 CFR part 24;

5. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9610; 29 CFR part 24;

6. Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); 29 CFR part 458, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 458.91, and 458.93;

7. Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. 5567, Public Law 111–203;

8. Consumer Product Safety Improvement Act of 2008, 15 U.S.C. 2087; 29 CFR part 1983;

9. Title IX of the Education Amendments of 1972, 20 U.S.C. 1682; 29 CFR part 36;

10. Employee Polygraph Protection Act of 1988, 29 U.S.C. 2005(a); 29 CFR part 801, subpart E;

11. Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; 29 CFR part 24;

12. Equal Access to Justice Act, 5 U.S.C. 504; 29 CFR part 16;

13. Executive Order No. 11246, as amended, 3 CFR part 339 (1964–1965 Comp.); reprinted in 42 U.S.C. 2000e app.; 41 CFR parts 60–1 and 60–30;

14. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m); 29 CFR part 531, §§ 531.4, 531.5;

15. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211(d); 29 CFR part 530, subpart E;

16. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c); 29 CFR part 525, § 525.22;

17. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 216(e); 29 CFR part 580;

18. Fair Labor Standards Act of 1938, as amended by the Affordable Care Act, 29 U.S.C. 218C, Public Law 111–148, section 1558;

19. Federal Railroad Safety Act, 49 U.S.C. 20109; 29 CFR part 1982;

20. Federal Unemployment Tax Act, 26 U.S.C. 3303(b)(3), 3304(c);
21. Federal Unemployment Tax Act (addressing agreements under the Trade Act of 1974, as amended), 26 U.S.C. 3302(c)(3); 20 CFR part 617;
22. Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 CFR part 24;
23. Foreign Service Act of 1980, 22 U.S.C. 4117; 29 CFR part 458, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 458.91, 458.92, and 458.93;
24. Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 20 CFR part 655, subpart E;
25. Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 20 CFR part 655, subpart M;
26. Immigration and Nationality Act, as amended, 8 U.S.C. 1182(n); 20 CFR part 655, subpart I;
27. Immigration and Nationality Act, as amended, 8 U.S.C. 1184(c)(14); 20 CFR part 655, subpart A; 29 CFR part 503, subpart C;
28. Immigration and Nationality Act, as amended, 8 U.S.C. 1188(b)(2); 20 CFR part 655, subpart A, 29 CFR part 503, subpart C;
29. Immigration and Nationality Act, as amended, 8 U.S.C. 1288(c) and (d); 20 CFR part 655, subpart G;
30. Immigration and Nationality Act, as amended, 8 U.S.C. 1188(g)(2); 29 CFR part 501, subpart C;
31. Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481(h); 29 CFR part 417, §§ 417.6, 417.7, 417.9(c), 417.13, 417.14, and 417.15;
32. Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 907(j)(2); 20 CFR part 702;
33. Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813, 1853; 29 CFR part 500, subpart F;
34. Motor Vehicle and Highway Safety Improvement Act of 2012, Section 31307 of the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. 30171;
35. National Apprenticeship Act, 29 U.S.C. 50; 29 CFR parts 29 and 30;
36. National Transit Systems Security Act of 2007, 6 U.S.C. 1142; 29 CFR part 1982;
37. Notification of Employee Rights Under Federal Labor Laws, 29 CFR part 471;
38. Older Americans Senior Community Service Employment Program, 42 U.S.C. 3056; 20 CFR 641.900;
39. Part B of the Black Lung Benefits Act, 30 U.S.C. 921–924; Section 3(d)(3) of the Black Lung Consolidation of Administrative Responsibility Act (2002); 20 CFR part 410 (2011);
40. Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129; 29 CFR part 1981;
41. Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3803; 29 CFR part 22;
42. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5177(a) and 5189a; 20 CFR part 625;
43. Section 423(d)(1) of the Black Lung Benefits Act, 30 U.S.C. 933(d)(1); 20 CFR part 726;
44. Section 428 of the Black Lung Benefits Act, 30 U.S.C. 938;
45. Seaman's Protection Act, 46 U.S.C. 2114;
46. Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353, 21 U.S.C. 399d;
47. Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; 41 CFR part 60–741, subpart B;
48. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 29 CFR part 32;
49. Section 1405(b) of the Taxpayer First Act, 26 U.S.C. 7623(d);
50. Safe Drinking Water Act, 42 U.S.C. 300j–9(i); 29 CFR part 24;
51. Sarbanes-Oxley Act of 2002, 18 U.S.C. 514A, as amended by Sections 922 and 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203; 29 CFR part 1980;
52. Single Audit Act of 1984, as amended, 31 U.S.C. 7501 *et seq.;* OMB Circular No. A–133, as amended; 29 CFR part 96;
53. Social Security Act, 42 U.S.C. 503; 20 CFR parts 601 and 602;
54. Solid Waste Disposal Act, 42 U.S.C. 6971; 29 CFR part 24;
55. Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 CFR part 1978;
56. Toxic Substances Control Act, 15 U.S.C. 2622; 29 CFR part 24;
57. Trade Act of 1974, as amended, 19 U.S.C. 2101–2321; 20 CFR part 617;
58. Unemployment Compensation for Federal Civilian Employees Program, 5 U.S.C. 8501–8508; 20 CFR part 609;
59. Unemployment Compensation for Ex-Service Members Program, 5 U.S.C. 8521–8525; 20 CFR part 614;
60. Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4211, 4212; 41 CFR part 60–250, subpart B, and part 60–300, subpart B;
61. Wagner-Peyser Act, as amended, 29 U.S.C. 49; 20 CFR part 658;
62. Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 CFR part 50–203;
63. Welfare to Work Act, 20 CFR 645.800(c);
64. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; 29 CFR part 1979;
65. Workforce Investment Act of 1998, as amended, 29 U.S.C. 2936; 20 CFR 667.830;
66. Workforce Innovation and Opportunity Act, 29 U.S.C. 3246; 20 CFR 683.830;
67. Workforce Investment Act of 1998, as amended, 29 U.S.C. 2938; 29 CFR part 37 (see 37.110–112);
68. Workforce Innovation and Opportunity Act, 29 U.S.C. 3248; 29 CFR part 38 (see 38.112); and
69. Any laws or regulations subsequently enacted or promulgated that provide for final decisions by the Secretary of Labor upon appeal or review of decisions, or recommended decisions, issued by ALJs, and any federal law that extends or supplements unemployment compensation and provides for final decisions by the Secretary of Labor.

The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The Board also shall not have jurisdiction to review decisions to deny or grant exemptions, variations, and tolerances and does not have the authority independently to take such actions. In issuing its decisions, the Board shall adhere to the rules of decision and precedent applicable under each of the laws enumerated in Sections 5(a) and 5(b) of this Order, until and unless the Board or other authority explicitly reverses such rules of decision or precedent. The Board's authority includes the discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute.

6. *Discretionary Review.*

a. Finality of Board Decisions

1. Except as otherwise provided in this Section or by statute, a decision of the Board shall become the final action of the Department after the passage of 28 calendar days from the date on which the decision was issued.

2. In the case of a decision for which a petition has been filed under subsection (b)(1), but that the Board has not referred to the Secretary for review, such decision shall become the final action of the Department after the passage of 28 calendar days from the date on which the petition was filed.

3. In the case of a decision that the Board has referred to the Secretary for review under Subsection (b)(1), such decision shall become the final action of the Department either after the passage of 28 calendar days from the date on which the decision was referred, or on the date on which the Secretary declines

review, whichever comes first, if the Secretary has declined review or if no action has been taken in response to the Board's referral.

4. In the case of a decision that the Secretary has directed the Board to refer to the Secretary under Subsection (b)(2), or in the case of a decision referred to and accepted by the Secretary under Subsection (b)(1), such decision shall not become the final action of the Department and shall have no legal force or effect, unless and until the Secretary adopts the Board's decision as his or her own.

b. Referral of Cases to the Secretary

1. At any point during the first 14 calendar days after the date on which a decision of the Board was issued, a party to the case may file a petition with the Board for further review by the Secretary. Such petition shall not exceed 15 pages in length and must begin with a statement of the legal issue or issues of which the party is seeking review and why the case involves a matter of exceptional importance. A brief in opposition to the petition may be filed within 10 calendar days after the filing of the petition, and shall not exceed 15 pages in length. Within 21 calendar days of the date on which the petition for further review was filed, if a majority of the Board determines that the petition presents a question of law that is of exceptional importance and warrants review by the Secretary, the Board shall advise the Secretary of such determination in writing and explain why the Board believes review by the Secretary is warranted. The Secretary may, in his or her sole discretion, decline, accept, or take no action on the Board's referral as the Secretary deems appropriate.

2. At any point during the first 28 calendar days after the date on which a decision was issued, the Secretary may, in his or her sole discretion, direct the Board to refer such decision to the Secretary for review.

c. Review by the Secretary

1. When the Secretary undertakes the review of a decision of the Board, the Board shall promptly notify the parties to the case in writing of such action and supply the Secretary with the administrative record and the petition and briefs filed by the parties.

2. In any case the Secretary decides, the Secretary's decision shall be made solely based on the administrative record, the petition and briefs filed with the Board, and any amicus briefs permitted by the Secretary. The decision shall be stated in writing and transmitted to the Board. The Board shall publish the decision and transmit it to the parties to the case.

3. The Secretary's decision shall constitute final action by the Department and shall serve as binding precedent on all Department employees and in all Department proceedings involving the same issue or issues.

d. Reservation of Authority—Nothing in this Section shall be construed as limiting the Secretary's power to supervise or direct the actions of the Board.

7. *Composition and Panel Configuration.*

a. The Board shall consist of a maximum of five Members, one of whom the Secretary shall designate as Chair, and a second of whom the Secretary shall designate as Vice-Chair. The Members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board.

b. Except as provided in Section 7(c), the Board shall sit, hear cases, render decisions, and perform all other related functions in panels of two or three Members, as may be assigned by the Chair, unless the Chair specifically directs that an appeal or review will be decided by the full Board.

c. Except as otherwise provided by law or duly promulgated regulation (see, *e.g.,* 29 CFR parts 7 and 8), if the petitioner(s) and the respondent(s) (or the appellant(s) and the appellees(s)) consent to disposition by a single Member, the Chair may determine that the decision shall be by a single Member. Upon an affirmative determination, the Chair of the Board shall, in his or her discretion, designate himself, herself, or any other Member of the Board to decide such an appeal under Section 9.

d. The Vice-Chair shall preside at meetings in the absence of the Chair. In the event of the vacancy of the Chair's position, the Vice-Chair shall assume all of the Chair's authority and shall act as Chair.

e. The Vice-Chair shall be responsible for the operational management of the Board and its affairs.

8. *Terms of the Members.*

a. Members of the Board shall be appointed for a term of four years or less. Term of service may be extended, if deemed necessary by the Secretary, to promote the efficiency of service, and will be considered on a case-by-case basis.

b. Appointment of a Member of the Board to a term not to exceed a specified time period shall not affect the authority of the Secretary to remove any Member at any time prior to the completion of the term, consistent with applicable law.

c. Vacancies in the membership of the Board shall not impair the authority of the remaining Member(s) to exercise all the powers and duties of the Board.

9. *Voting.* A petition for review by the Board may be granted upon the affirmative vote of one Member, or at the direction of the Secretary, except where otherwise provided by law or regulation. A decision in any matter, including the issuance of any procedural rules, shall be by a majority vote, except as provided in Section 7(c).

10. *Location of Board Proceedings.* The Board shall hold its proceedings in Washington, DC, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

11. *Rules of Practice and Procedure.* The Board shall prescribe such rules of practice and procedure, as it deems necessary or appropriate, for the conduct of its proceedings. The rules which are prescribed as of the date of this Order in 29 CFR part 7 and Part 8 with respect to Sections 5(a) and 5(b), respectively, of this Order until changed, govern the respective proceedings of the Board when it is deciding appeals described in Section 5 of this Order.

12. *Departmental Counsel.* The Solicitor of Labor shall have the responsibility for representing the Secretary, the Deputy Secretary, and other officials of the Department and the Board in any administrative or judicial proceedings involving agency decisions issued pursuant to this Order, including representing officials of the Department before the Board. In addition, the Solicitor of Labor, or his or her designee, shall have the responsibility for providing legal advice to the Secretary, the Deputy Secretary, and other officials of the Department with respect to decisions covered by this Order, as well as the implementation and administration of this Order, except that no individual involved in the investigation or prosecution of a case shall advise the Secretary on the exercise of the powers described in Section 6 of this Order with respect to such case or a case involving a common nucleus of operative facts. The Solicitor of Labor, or his or her designee, may also provide legal advice and assistance on the same terms to the Chair and/or Vice-Chair of the Board, as appropriate.

13. *Effective Date.* This delegation of authority and assignment of responsibility is effective immediately.

Dated: February 21, 2020.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–04019 Filed 3–5–20; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0003]

Proposed Extension of Information Collection; Radiation Sampling and Exposure Records

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Radiation Sampling and Exposure Records.

DATES: All comments must be received on or before May 5, 2020.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- Federal eRulemaking Portal: *https://www.regulations.gov*. Follow the instructions for submitting comments for docket number MSHA–2020–0006. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Under the authority of Section 103 of the Federal Mine Safety and Health Act of 1977, MSHA is required to issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act.

Airborne radon and radon daughters exist in every uranium mine and in several other underground mining commodities. Radon is radioactive gas. It diffuses into the underground mine atmosphere through the rock and the ground water. Radon decays in a series of steps into other radioactive elements, which are solids, called radon daughters. Radon and radon daughters are invisible and odorless. Decay of radon and its daughters results in emissions of alpha energy.

Medical doctors and scientists have associated high radon daughter exposures with lung cancer. The health hazard arises from breathing air contaminated with radon daughters which are in turn deposited in the lungs. The lung tissues are sensitive to alpha radioactivity.

The amounts of airborne radon daughters to which most miners can be exposed with no adverse effects have been established and are expressed as working levels (WL). The current MSHA standard is a maximum personal exposure of 4 working level months per year.

Excess lung cancer in uranium miners, just as coal workers' pneumoconiosis, silicosis, and other debilitating occupational diseases, has been recognized for many years. Thus, an adequate base of accurate exposure level data is essential to control miners' exposures and permit an evaluation of the effectiveness of existing regulations.

The standard at 30 CFR 57.5037 established the procedures to be used by the mine operator in sampling mine air for the presence and concentrations of radon daughters. Operators are required to conduct weekly sampling where concentrations of radon daughters exceed 0.3 WL. Sampling is required bi-weekly where uranium mines have readings of 0.1 WL to 0.3 WL and every 3 months in non-uranium underground mines where the readings are 0.1 WL to 0.3 WL. Mine operators are required to keep records of all mandatory samplings. Records must include the sample date, location, and results, and must be retained at the mine site or nearest mine office for at least 2 years.

The standard at 30 CFR 57.5040 requires mine operators to calculate and record individual exposures to radon daughters on MSHA Form 4000–9 ''Record of Individual Exposure to Radon Daughters.'' The calculations are based on the results of the weekly sampling required by 30 CFR 57.5037. Records must be maintained by the operator and submitted to MSHA annually.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Radiation Sampling and Exposure Records. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Background documents related to this information collection request are available at *https://regulations.gov* and in DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice from the previous collection of information.

III. Current Actions

This information collection request concerns provisions for Radiation Sampling and Exposure Records. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0003.

Affected Public: Business or other for-profit.

Number of Respondents: 4.

Frequency: On occasion.

Number of Responses: 404.

Annual Burden Hours: 402 hours.

Annual Respondent or Recordkeeper Cost: $20.

MSHA Form: MSHA Form 4000–9, Record of Individual Exposure to Radon Daughters.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov*.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2020–04583 Filed 3–5–20; 8:45 am]

BILLING CODE 4510–43–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Updated Guidance for Completing the Transition to the Next Generation Internet Protocol, Internet Protocol Version 6 (IPv6)

AGENCY: Office of Management and Budget.

ACTION: Notice of public comment period.

SUMMARY: The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled, *Completing the Transition to Internet Protocol Version 6.*

DATES: The public comment period on the draft memorandum begins on the day it is published in the **Federal Register** and ends 30 days after date of publication in the **Federal Register**. The draft memorandum is available at: *https://www.cio.gov/assets/resources/internet-protocol-version6-draft.pdf.*

ADDRESSES: Interested parties should provide comments via electronic mail to the following inbox: *OFCIO@omb.eop.gov.* The Office of Management and Budget is located at 725 17th Street NW, Washington, DC 20503. No physical copies will be accepted.

FOR FURTHER INFORMATION CONTACT: Carol Bales, OMB, at 202.395.9915 or *cbales@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is proposing updated guidance to Federal agencies on completing the transition to Internet Protocol Version 6 (IPv6). In August 2005, OMB issued M–05–22, *Transition Planning for Internet Protocol Version 6 (IPv6),* requiring agencies to enable IPv6 on their backbone networks by June 30, 2008. This policy outlined deployment and acquisition requirements. In September 2010, OMB issued a memo titled ''*Transition to IPv6*'', requiring Federal agencies to operationally deploy native IPv6 for public internet servers and internal applications that communicate with public servers. The intent of the newly proposed policy articulated in the draft memorandum is to communicate the requirements for completing the operational deployment of IPv6 across all Federal information systems and services, and help agencies overcome barriers that prevent them from migrating to IPv6-only systems.

In the last 5 years, IPv6 momentum in industry has dramatically increased, with large IPv6 commercial deployments in many business sectors now driven by reducing cost, decreasing complexity, improving security and eliminating barriers to innovation in networked information systems. Mobile networks, data centers and leading-edge enterprise networks, for example, have been evolving to IPv6-only networks. It is essential for the Federal government to expand and enhance its strategic commitment to the transition to IPv6 in order to keep pace with and capitalize on industry trends. The draft memorandum was prepared by the Office of Management and Budget, in collaboration with the Federal Chief Information Officers Council and Federal Chief Information Security Officers Council, and supports the Administration's goals for modernizing Federal Information Technology.

Privacy/FOIA Notice: Comments submitted in response to this notice may be publically available and are subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such sensitive personal information or proprietary information, or any other information that you would not want publically disclosed.

Suzette Kent,

Federal Chief Information Officer, Office of the Federal Chief Information Officer, Office of Management Budget.

[FR Doc. 2020–04635 Filed 3–5–20; 8:45 am]

BILLING CODE 3110–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–025)]

Term and Condition Notification of Harassment Form

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by May 5, 2020.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 202–358–2375.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports NASA's term and condition regarding sexual harassment, other forms of harassment, and sexual assault. This term and condition requires recipient organizations to report to NASA any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding a NASA funded Principle Investigator (PI) or Co-Investigator (Co-I). The new term and condition will also require the recipient to report to NASA if the PI or Co-I is placed on administrative leave or if the recipient has imposed any administrative action on the PI or Co-I, or any determination or an investigation of an alleged violation of the recipient's policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

In reviewing harassment notifications pursuant to the term and condition, it will be necessary for the Agency to have complete information provided in a consistent manner. The information provided will be used by the Agency to assess the matters reported and to consult with the Authorized Organizational Representative (AOR), or designee of the reporting institution. Based on the results of this review and consultation, NASA may, if necessary, assert its programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any co-PI, reduce the award funding amount, or where neither of those previous options is available or adequate, to suspend or terminate the award.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Term and Condition Notification of Harassment Form.

OMB Number:

Type of review: New.

Affected Public: NASA grant recipient institution reporting officials.

Estimated Annual Number of Activities: 20.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 20.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 20.

Estimated Total Annual Cost: $2,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2020–04560 Filed 3–5–20; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–11; NRC–2019–0148]

Rancho Seco Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Special Nuclear Materials (SNM) License SNM–2510 for the Rancho Seco Nuclear Plant Independent Spent Fuel Storage Installation (ISFSI) (Rancho Seco ISFSI) located in Sacramento County, California. The NRC has prepared an environmental assessment (EA) for this proposed license renewal in accordance with its regulations. Based on the EA, the NRC has concluded that a finding of no significant impact (FONSI) is appropriate. The NRC also is conducting a safety evaluation of the proposed license renewal.

DATES: The EA and FONSI referenced in this document are available on March 6, 2020.

ADDRESSES: Please refer to Docket ID NRC–2019–0148 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0148. Address questions about NRC docket IDs 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.
- *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 in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867, email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering a license renewal request for SNM–2510 for the Rancho Seco specifically-licensed ISFSI located in Sacramento County, California (ADAMS Accession No. ML18221A281). The licensee, Sacramento Municipal Utility District (SMUD), is requesting to renew license SNM–2510 for the Rancho Seco ISFSI for an additional 40-year period. The current license will expire on June 30, 2020. If approved, SMUD would be able to continue to possess and store spent nuclear fuel at the Rancho Seco ISFSI in accordance with the requirements in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''

The NRC staff has prepared a final EA as part of its review of this license

renewal request in accordance with the requirements of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the final EA, the NRC has determined that an environmental impact statement (EIS) is not required for this proposed action and a FONSI is appropriate. The NRC is also conducting a safety evaluation of the proposed license amendment pursuant to 10 CFR part 72, and the results will be documented in a separate Safety Evaluation Report (SER). If SMUD's request is approved, the NRC will issue the license renewal following notification in the **Federal Register** of the availability of this final EA and FONSI and the SER .

II. Final Environmental Assessment Summary

SMUD is requesting to renew license SNM–2510 for the Rancho Seco specifically-licensed ISFSI for a 40-year period. The NRC has assessed the potential environmental impacts of the proposed action and alternatives to the proposed action, including license renewal for an additional 20-year term, shipment of spent fuel to an offsite facility, and the no-action alternative. The results of the NRC's environmental review can be found in the final EA (ADAMS Accession No. ML19241A378). The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. In conducting the environmental review, the NRC considered information in the license renewal application (ADAMS Accession No. ML18221A281); communications and consultation with the California State Historic Preservation Office; the State of California Native American Heritage Commission (NAHC) and eight Native American Tribes; the California Department of Fish and Wildlife (CDFW); and the California State Department of Health Services.

Approval of SMUD's proposed license renewal request would allow the 22 Standardized NUHOMS–24P sealed surface storage casks to continue to remain on the Rancho Seco ISFSI for an additional 40 years. The estimated annual dose to the nearest permanent resident from ISFSI activities is 0.0016 mSv/yr (0.16 mrem/yr) (ADAMS Accession No. ML18221A281), which is below the 0.25 mSv/yr (25 mrem/yr) limit specified in 10 CFR 72.104(a) and the 1 mSv/yr (100 mrem/yr) limit in 10 CFR 20.1301(a)(1). Furthermore, SMUD maintains a radiation protection program for the ISFSI in accordance with 10 CFR part 20 to ensure that radiation doses are as low as is reasonably achievable (ALARA). Accordingly, no significant radiological or non-radiological impacts are expected to result from approval of the license renewal request, and the proposed action would not significantly contribute to cumulative impacts at the Rancho Seco site. Additionally, there would be no disproportionately high and adverse impacts on minority and low-income populations.

In its license renewal request, SMUD is proposing no changes in how it handles or stores spent fuel at the Rancho Seco ISFSI. Approval of the proposed action would not result in any new construction or expansion of the existing ISFSI footprint beyond that previously approved. The ISFSI is a largely passive facility that produces no liquid or gaseous effluents. No significant radiological or nonradiological impacts are expected from continued normal operations. Occupational dose estimates associated with the proposed action and continued normal operation and maintenance of the ISFSI are expected to be at ALARA levels and within the limits of 10 CFR 20.1201. Therefore, the NRC staff has determined that pursuant to 10 CFR 51.31, preparation of an EIS is not required for the proposed action, and pursuant to 10 CFR 51.32, a FONSI is appropriate.

Furthermore, the NRC staff determined that this license renewal request does not have the potential to cause effects on historic properties, assuming those were present; therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the National Historic Preservation Act. The NRC staff, however, reached out to and informed the California State Historic Preservation Officer (SHPO) via letter dated December 14, 2018 (ADAMS Package Accession No. ML18348A551) and eight Native American Tribes of its determination via letters dated January 9, 2019 (ADAMS Package Accession No. ML18341A258). The California SHPO responded via letter dated January 9, 2019, indicating they had no comments or concurrence on the finding of no effect (ADAMS Accession No. ML19010A118). The NRC staff, with the assistance of the U.S. Fish and Wildlife Service Information for Planning and Consultation (IPaC) project planning tool, determined that the listed species and/or critical habitat will not be adversely affected by the proposed action.

III. Finding of No Significant Impact

Based on its review of the proposed action in the EA, in accordance with the requirements in 10 CFR part 51, the NRC has concluded that the proposed action, renewal of NRC Special Nuclear Materials License No. SNM–2510 for the Rancho Seco ISFSI located in Sacramento County, California, will not significantly affect the quality of the human environment. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, that preparation of an EIS is not required for the proposed action and a finding of no significant impact is appropriate.

Dated at Rockville, Maryland, this 3rd day of March, 2020.

For the Nuclear Regulatory Commission.

Cinthya I. Roman-Cuevas,

Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–04639 Filed 3–5–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–100]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 10, 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

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).:* CP2020–100; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* March 2, 2020; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* March 10, 2020.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–04601 Filed 3–5–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: February 27, 2020, at 2:30 p.m.

PLACE: Washington, DC.

STATUS: Closed.

ITEMS CONSIDERED:

1. Administrative Issues.
2. Strategic Issues.

On February 27, 2020, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC. The Board determined that no earlier public notice was practicable.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2020–04785 Filed 3–4–20; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Wednesday, March 11, 2020.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: March 4, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–04752 Filed 3–4–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88309; File No. SR–CboeEDGX–2020–010]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend EDGX Rule 11.8(g), Which Describes the Handling of Midpoint Discretionary Orders Entered on the Exchange

March 2, 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 19, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend EDGX Rule 11.8(g), which describes the handling of Midpoint Discretionary Orders entered on the Exchange. 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://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), 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

A Midpoint Discretionary Order (''MDO'') is a Limit Order that is executable at the national best bid (''NBB'') for an order to buy or the national best offer (''NBO'') for an order to sell while resting on the EDGX Book, with discretion to execute at prices to and including the midpoint of the national best bid or offer (''NBBO'').[3] The purpose of the proposed rule change is to amend EDGX Rule 11.8(g) to introduce two optional instructions that Users would be able to include on MDOs entered on the Exchange. First, the Exchange would allow Users to enter MDOs with an offset to the NBBO, similar to orders entered with a Primary Peg Instruction today.[4] Second, the Exchange would allow Users to enter MDOs that include a Quote Depletion Protection (''QDP'') instruction that would disable discretion for a limited period in certain circumstances where the best bid or offer displayed on the EDGX Book is executed or cancelled below one round lot. The Exchange believes that both of these features would enhance the usefulness of MDOs to members and investors, and would allow the exchange to better compete with other national securities exchanges that currently offer order types that include similar features.

Offset Instruction

As explained, MDOs are pegged to the same side of the NBBO, with discretion to execute at prices to and including the midpoint of the NBBO. An MDO is therefore similar to an order entered with both a Primary Peg instruction and an instruction to exercise discretion to the NBBO midpoint. It is also similar to certain order types offered by other national securities exchanges, including Discretionary Peg Orders offered by the Investors Exchange LLC (''IEX'').[5] Today, Users can include an offset on orders entered on the Exchange that include a Primary Peg instruction, which allows them to specify that the order be pegged to a price above or below the NBB or NBO to which the order is pegged. Specifically, pursuant to Rule 11.6(j)(2), which defines the Primary Peg instruction, a User may, but is not required to, select an offset equal to or greater than one Minimum Price Variation (''MPV'') above or below the applicable NBB or NBO. Although an offset is generally available to Users that enter an order with the Primary Peg instruction, it is not available for an MDO that is similarly pegged to the same side of the NBBO—*i.e.,* pegged to NBB for buy orders, or NBO for sell orders. The Exchange now proposes to extend the flexibility to include an offset instruction to MDOs, thus increasing the usefulness of this order type.

As proposed, MDOs entered with an offset would function in the same manner as currently implemented for Primary Peg orders entered with an offset pursuant to Rule 11.6(j)(2), thereby ensuring a familiar and consistent experience for Users. First, a User entering an MDO would be able to select an offset equal to or greater than one MPV above or below the NBB or NBO that the order is pegged to (''Offset Amount''). Second, the Offset Amount for an MDO that is to be displayed on the EDGX Book would need to result in the price of such order being inferior to or equal to the inside quote on the same side of the market.[6] Although the Exchange expects that some Users may continue to want MDOs that are ranked at the same side of the NBBO without any offset, certain other Users may find the offset functionality useful as it would allow them to specify more or less aggressive pegged prices for MDOs resting on the EDGX Book. The Exchange is therefore proposing to introduce the offset functionality as an optional feature that can be included at the preference of the User entering an MDO for trading on the Exchange.

The proposed changes related to the offset instruction are included in proposed subparagraph (9) under EDGX Rule 11.8(g). In addition, the Exchange proposes to make conforming changes to language currently included in EDGX Rule 11.8(g). First, rather than explaining that an MDO is ''executable at'' the applicable NBB or NBO, the rule would instead provide that an MDO is ''pegged to'' the NBB or NBO, ''with or without an offset.'' Second, language that describes when an MDO is executable at its limit price would be amended to state that an MDO to buy (sell) with a limit price that is less (higher) than its pegged price, including any offset, is posted to the EDGX Book at its limit price. This change would replace references to circumstances where an MDO is posted to the EDGX Book at its limit price due to such limit price being less aggressive than the prevailing NBB or NBO, as the applicable NBB or NBO is not the relevant pegged price for MDOs entered with an offset. Third, the Exchange would amend language contained in EDGX Rule 11.8(g)(6) and (8), which deal with limit up-limit down (''LULD'') and locked/crossed market handling, respectively, to account for the fact that an MDO entered with an offset would not be posted at the NBB or NBO. Specifically, the Exchange would amend EDGA Rule 11.8(g)(6) to reference handling in situations where the applicable LULD price band is at or through the ''the order's pegged price'' rather than ''an existing Protected Bid'' or ''an existing Protected Offer.'' With the introduction of an offset, the

[3] *See* EDGX Rule 11.8(g).

[4] *See* EDGX Rule 11.6(j)(2).

[5] *See* IEX Rule 11.190(b)(10). Discretionary Peg Orders on IEX are posted at the less aggressive of one MPV less aggressive than the primary quote or the order's limit price.

[6] An MDO defaults to a Displayed instruction unless the User includes a Non-Displayed instruction on the order. *See* EDGX Rule 11.8(g)(4). Similar to the current handling of orders entered with a Primary Peg instruction, the Exchange is not proposing to accept displayed MDOs with an aggressive offset at this time. Such orders would add functionality to the Exchange that would effectively set the NBBO through a pegged order, and the Exchange believes that this could potentially add complexity to its System.

Exchange's LULD handling would only apply when the LULD price band is at or through the pegged price of the MDO, which could be different from the price of an existing Protected Bid or Offer. Similarly, the Exchange would amend EDGX Rule 11.8(g)(8) to provide that an MDO's pegged price would be adjusted to the current NBO (for bids) or NBB (for offers), when ''an MDO posted on'' the EDGX Book is crossed by another market. The current version of the rule references the EDGX Book being crossed by another market since the MDO would be posted at the best price available on the Exchange (*i.e.,* the applicable NBB or NBO). With the introduction of an offset, however, an MDO may be more or less aggressive than the NBB or NBO, and this handling would apply when the posted MDO is itself crossed by another market. Each of these changes are meant to reflect the proposed operation of MDOs that are entered with an offset, as previously described, and would not otherwise impact the handling of MDOs entered on the Exchange.

Quote Depletion Protection

The Exchange also proposes to introduce an optional instruction that Users would be able to include on an MDO to limit the order's ability to exercise discretion in certain circumstances: ''Quote Depletion Protection'' or ''QDP.'' [7] Similar to crumbling quote features offered for Discretionary Peg Orders entered on IEX, QDP would restrict the exercise of discretion on MDOs entered with this instruction in circumstances where applicable market conditions indicate that it may be less desirable to execute within an order's discretionary range.[8] The QDP feature would do this by tracking significant executions or cancellations of orders that constitute the best bid or offer on EDGX.[9] As proposed, a ''QDP Active Period'' would be enabled or refreshed for buy (sell) MDOs if the best bid (offer) displayed on the EDGX Book is either: (A) Executed below one round lot; or (B) at the national best bid (offer) and cancelled below one round lot.[10] During this QDP Active Period, an MDO entered with a QDP instruction would not exercise discretion for a limited period of time. Instead, such an order would be only be executable at its ranked price.[11]

Once activated, the QDP Active Period would remain in place to prevent the execution of MDOs within their discretionary ranges for a specified period. Specifically, the Exchange proposes that when a QDP Active Period is initially enabled, or refreshed by a subsequent execution or cancellation of the best bid (offer) then displayed on the EDGX Book, it would remain enabled for a configurable period of up to five milliseconds. The Exchange would determine the duration of the QDP Active Period, and would publish this value in a circular distributed to members. As the Exchange gains experience with the proposed QDP functionality, it may revise the chosen duration to better reflect the needs of members and investors using the this instruction. Such changes would be made with the goal of facilitating the protection provided by the QDP instruction, while at the same time not unduly limiting the ability of orders entered with this instruction to exercise discretion and execute at more aggressive prices within the order's discretionary range.

Finally, since the QDP instruction is designed to protect resting MDOs based on the execution or cancellation of the best bids and offers displayed on the EDGX Book, the Exchange anticipates that Users may prefer to utilize the QDP instruction along with an offset instruction that results in the MDO being posted at a price that is inferior to the applicable NBB or NBO (with discretion to the midpoint). The Exchange also believes that given the less aggressive offset, and the fact that these orders are seeking additional protection, there may be less incentive for Users to include a Displayed instruction. As a result, unless the User chooses otherwise, an MDO to buy (sell) entered with a QDP instruction would default to a Non-Displayed instruction and would include an Offset Amount equal to one Minimum Price Variation below (above) the NBB (NBO).[12] This implementation is similar to the implementation of Discretionary Peg Orders on IEX but would permit Users to change these default instructions based on their specific needs.[13]

Examples. The examples below illustrate the proposed operation of the QDP instruction: [14]

Example 1:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Buy 100 shares @ $10.00 Displayed
Order 2: Buy 200 shares @ $10.01—MDO with QDP, Hidden, Offset= −$0.01
Order 3: Sell 1 shares @ $10.00 IOC—Time = 12:00:00:000
Order 4: Sell 100 shares @ $10.00 Midpoint Pegged IOC—Time = 12:00:00:001

Order 2, which is an MDO to buy, is ranked at $9.99 non-displayed with discretion to the midpoint price of $10.005. When Order 3 is entered it will trade a single share with Order 1 at $10.00, triggering a QDP Active Period for Order 2 because of the execution of the EDGX Best Bid below one round lot. This restricts the ability for Order 2 to exercise discretion for two milliseconds, and prevents the execution of Order 4 within Order 2's discretionary range. As a result, the Order 4 would be cancelled without an execution.

Example 2:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Buy 100 shares @ $10.00 Displayed
Order 2: Buy 200 shares @ $10.01—MDO with QDP, Hidden, Offset= −$0.01
Order 3: Sell 200 shares @ $9.99 ISO IOC—Time = 12:00:00:000

This example is the same as Example 1, except that Order 3 is an ISO IOC for

[7] Proposed changes related to the introduction of the QDP instruction are reflected in proposed subparagraph (10) under EDGX Rule 11.8(g).

[8] A Discretionary Peg order resting on IEX is only eligible to trade at its resting price during periods of ''quote instability.'' *See* IEX Rule 11.190(b)(10). In turn, IEX Rule 11.190(g) describes IEX's quote instability calculation, which uses a proprietary mathematical formula ''to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price.''

[9] The Exchange would look to the terms of any replacement order to determine if an order modified by a cancel/replace message pursuant to EDGA Rule 11.10(e) qualifies as a cancellation that would trigger a QDP Active Period. For example, a cancel/replace message that increases the size of an order would not trigger a QDP Active Period, notwithstanding that the message cancels the order before replacing it with greater size.

[10] Rule 611 of Regulation NMS generally limits executions to prices that are at or better than the protected best bid or offer. However, there are circumstances, such as the use of intermarket sweep orders, where an order may be executed at an inferior price. In these circumstances, an execution of the EDGX BBO below one round lot would trigger a QDP Active Period even though that quotation is inferior to the NBBO.

[11] An MDOs ranked price is the order's displayed or non-displayed pegged price, which may or may not include an offset, as proposed, or the order's limit price if that limit price is less aggressive than the applicable pegged price.

[12] The Exchange also proposes to amend EDGX Rule 11.8(g)(4) to reflect the fact that MDOs entered with a QDP instruction would default to Non-Displayed. MDOs that are not entered with the QDP instruction would continue to default to a Displayed instruction, as currently provided in EDGX Rule 11.8(g)(4).

[13] As previously discussed, Discretionary Peg Orders on IEX are posted at the less aggressive of one MPV less aggressive than the primary quote or the order's limit price. *See* supra note 5. Such orders are also Non-Displayed. *See* IEX Rule 11.190(a)(3).

[14] For purposes of these examples, orders are reflected in the order in which they are received, and only the identified orders are present on the EDGX Book.

200 shares that is priced equal to the non-displayed ranked price of Order 2, and there is no Order 4. Order 3 would trade 100 shares with Order 1 at $10.00, triggering a QDP Active Period. However, the triggering of a QDP Active Period would not prevent the execution of an MDO at its ranked price. As a result, Order 3 would trade its remaining 100 shares with Order 2 at $9.99.

Example 3:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Buy 100 shares @ $10.00 Displayed
Order 2: Buy 200 shares @ $10.01—MDO with QDP, Hidden, Offset= −$0.01
Order 3: Sell 100 share @ $10.00 IOC—Time = 12:00:00:000
Order 4: Sell 100 shares @ $10.00 Midpoint Pegged IOC—Time = 12:00:00:003

This example is the same as Example 1, except that Order 3 is for 100 shares and Order 4 is entered after the QDP Active Period has concluded. In this example, Order 3 would trade 100 shares with Order 1 at $10.00, triggering a QDP Active Period. The QDP Active Period triggered by the execution of the EDGX Best Bid below one round lot would be disabled after two milliseconds, and Order 4 would execute 100 shares against Order 2 at $10.005.

Example 4:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Buy 100 shares @ $10.00 Displayed
Order 2: Buy 200 shares @ $10.01—MDO with QDP, Hidden, Offset= −$0.01
Order 3: Sell 200 shares @ $10.00 IOC—Time = 12:00:00:000

Order 2, which is an MDO to buy, is ranked at $9.99 non-displayed with discretion to the midpoint price of $10.005. When Order 3 is entered it would first trade 100 shares with Order 1 at $10.00. A QDP Active Period is then immediately enabled for Order 2 because of the execution of the EDGX Best Bid below one round lot. This restricts the ability for Order 2 to exercise discretion for two milliseconds, and prevents the execution of the remaining 100 shares of Order 3 within Order 2's discretionary range. As a result, the remaining quantity of Order 3 would be cancelled.

Example 5:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Buy 100 shares @ $10.00 Displayed
Order 2: Buy 200 shares @ $10.01—MDO with QDP, Hidden, Offset= −$0.01
Order 1: Full Cancel—Time = 12:00:00:000
Order 3: Sell 200 shares @ $10.00 IOC—Time = 12:00:00:001

This example is the same as Example 4, except that Order 1 is cancelled one millisecond before the receipt of Order 3. Because Order 1, which establishes the EDGX Best Bid, is priced at the NBB, a QDP Active period would be immediately enabled following its cancellation. This restricts the ability for Order 2 to exercise discretion for two milliseconds, and prevents the execution of Order 3 within Order 2's discretionary range. As a result, Order 3 would be cancelled without an execution.

Example 6:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Sell 100 shares @ $10.01 Displayed
Order 2: Buy 200 shares @ $10.01—MDO with QDP, Hidden, Offset= −$0.01
Order 1: Full Cancel—Time = 12:00:00:000
Order 3: Sell 200 shares @ $10.00 IOC—Time = 12:00:00:001

This example is the same as Example 5, except that Order 1 is an offer priced at the NBO rather than a bid at the NBB. A QDP Active Period for an MDO would only enabled by an execution or cancellation of an order on the same side of the market. Thus, Order 2, which is an MDO to buy, would not be impacted by the cancellation of Order 1, which is an order to sell. As a result, Order 3 would execute 200 shares with Order 2 at $10.00.

Example 7:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Buy 100 shares @ $9.99 Displayed
Order 2: Buy 200 shares @ $10.01—MDO with QDP, Hidden, Offset = −$0.01
Order 1: Full Cancel—Time = 12:00:00:000
Order 3: Sell 200 shares @ $10.00 IOC—Time = 12:00:00:001

This example is the same as Example 5, except that Order 1 is entered at a price that is inferior to the NBB. Because Order 1 is not at the NBB, its cancellation does not trigger a QDP Active Period. As a result, Order 3 would trade 200 shares with Order 2 at $10.00.

Example 8:

QDP Active Period = 2 milliseconds
NBBO: $10.00 × $10.01
Order 1: Buy 100 shares @ $9.99 Displayed
Order 2: Buy 100 shares @ 10.00 Displayed
Order 3: Buy 100 shares @ $10.01—MDO with QDP, Hidden, Offset = −$0.02
Order 4: Sell 100 shares @ $10.00 IOC—Time = 12:00:00:000
Order 5: Sell 100 shares @ $9.99 ISO IOC—Time = 12:00:00:001
Order 6: Sell 100 shares @ $10.00 ISO IOC—Time = 12:00:00:002

Order 3, which is an MDO to buy, is ranked at $9.98 non-displayed with discretion to the midpoint price of $10.005. When Order 4 is entered it would trade 100 shares with Order 2 at $10.00. A QDP Active Period is then immediately enabled for Order 3 because of the execution of the EDGX Best Bid below one round lot. This restricts the ability for Order 3 to exercise discretion for two milliseconds. When Order 5 is entered it would trade 100 shares with Order 1, which is now the EDGX Best Bid, at $9.99, refreshing the QDP Active Period and extending it until 12:00:00:003. When Order 6 is entered it would be cancelled without an execution as Order 3 would still be subject to the extended QDP Active Period.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The two proposed changes would increase the usefulness of MDOs offered by the Exchange, and would allow the Exchange to better compete with order types on other national securities exchanges that offer similar features to their members.

Offset Instruction for MDOs

The Exchange believes that it is consistent with the protection of investors and the public interest to introduce an offset instruction that Users could choose to include on their MDOs.[17] With this proposed change,

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] The Exchange notes that technical changes proposed to EDGX Rule 11.8(g), including paragraphs (6) and (8) thereunder merely reflect

MDOs would behave similarly to orders entered with a Primary Peg instruction today in that such orders could be entered with an offset that results in the order being pegged to a price that is more or less aggressive than the applicable NBB or NBO on the same side of the market (*i.e.,* NBB for buy orders and NBO for sell orders). This change would make MDOs a more flexible tool for members and investors. Further, the introduction of the offset instruction on MDOs would be similar to and competitive with features offered on other national securities exchanges that offer similar order types. For example, Discretionary Peg Orders offered on IEX are pegged one MPV less aggressive than the applicable NBB or NBO when posted to the order book, with discretion to the midpoint of the NBBO (subject to the order's limit price). Introducing an offset instruction for MDOs offered on EDGX would allow members and investors that trade on the Exchange to utilize similar functionality. Such functionality could be used for a number of purposes, including to mitigate risk by posting an order at a price that is lower (higher) than the prevailing NBB (NBO). At the same time, the offset instruction would be offered on a purely voluntary basis, and with flexibility for Users to choose the amount of any offset, thereby maintaining flexibility to continue using the current offering, which pegs MDOs to the applicable NBB or NBO without an offset, and to choose different offsets based on a User's specific needs. As is the case for orders entered with a Primary Peg instruction and an offset, displayed MDOs would not be accepted with an offset that results in such orders being posted at a price that is better than the applicable NBB or NBO. Users that wish to enter an MDO with an aggressive offset would be required to enter such orders with a non-displayed instruction, thereby ensuring that such orders would not be eligible to set a new NBBO, which the Exchange believes may unnecessarily increase the complexity of its System.[18]

Quote Depletion Protection

The Exchange also believes that it is consistent with the protection of investors and the public interest to introduce the QDP instruction to provide additional protection to Users that enter MDOs with this instruction. Similar to Discretionary Peg Orders offered by IEX, the QDP instruction would provide Users with protective features that would limit the order's ability to exercise discretion in certain circumstances that may be indicative of a quotation that is moving against the resting MDO—*i.e.,* a buy quotation that is moving to a lower price for MDOs to buy, or a sell quotation that is moving to a higher price for MDOs to sell. The specific trigger for enabling a QDP Active Period, or refreshing a QDP Active Period that has already been enabled, would be based on the execution or cancellation of the best bid or offer displayed by the Exchange on the same side of the market. Any trade that results in such bid or offer being executed below one round lot would trigger a QDP Active Period. A cancellation of the Exchange's best bid or offer below one round lot, however, would only trigger a QDP Active period if such best bid or offer quotation is also at the NBBO. The Exchange believes that a cancellation of orders displayed at the Exchange's best bid or offer, but not at the NBBO, may not be indicative of an quotation that is about to transition to a less aggressive price, and is therefore proposing to limit the triggering of a QDP Active Period to instances where that quotation is at the best price available in the market. When a QDP Active Period is enabled or refreshed, the MDO would forgo discretion for a limited period but would remain executable at its displayed or non-displayed ranked price. Thus, the QDP instruction may provide additional comfort to Users entering MDOs that would allow them to utilize discretion, and thereby provide potential price improvement opportunities to incoming orders, while at the same time limiting the exercise of discretion in circumstances where an execution within the order's discretionary range may be undesirable. The Exchange therefore believes that the introduction of the QDP instruction would remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, while the QDP instruction would be available to all Users, use of this instruction would be voluntary, meaning that Users could choose to use this instruction, or not, based on their specific needs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is a competitive response to similar features available on other markets, such as IEX, and would therefore facilitate increased competition between exchange markets. As with other national securities exchanges, the Exchange must continually assess and improve its offerings to compete with other exchanges and off-exchange venues. The proposed rule change is indicative of this competition. Further, the Exchange does not believe that the proposed rule change would implicate any competitive concerns with respect to its Users. Both instructions proposed to be introduced for MDOs with this filing would be available to all Users on an equal and non-discriminatory basis. Rather than impede competition, the proposed rule change would provide additional tools for members and investors to facilitate their trading goals.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received 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 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–CboeEDGX–2020–010 on the subject line.

language changes that are necessary since an MDO would be allowed with an offset. The Exchange believes that these changes would promote just and equitable principles of trade as they would ensure that MDO handling remains transparent with the introduction of the offset instruction.

[18] *See* supra note 6.

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–CboeEDGX–2020–010. 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–CboeEDGX–2020–010, and should be submitted on or before March 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04575 Filed 3–5–20; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88310; File No. SR–OCC–2020–001]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Modify the Fees for Exercise Notices Submitted After the Deadlines and To Change the Deadline for Submitting a Late Exercise Notice on Non-Expiration Dates

March 2, 2020.

I. Introduction

On January 14, 2020, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2020–001 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to modify the fee imposed for submitting a late exercise notice and change the deadline by which such a notice must be submitted on non-expiration dates.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on January 30, 2020.[4] The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

OCC's rules require Clearing Members to submit option exercise notices within the timeframes prescribed by OCC. OCC's rules provide for an exception process to accommodate exercise notices submitted outside of such timeframes solely for the purpose of correcting a bona fide error on the part of a Clearing Member or customer.[5] OCC's process for accommodating late exercise notices includes, among other things, a late filing fee and a final deadline by which any such notice must be received by OCC. OCC proposes to amend its Rules 801 and 805 to modify the fees for exercise notices submitted after the deadlines by which all option exercise notices must be submitted and to change the deadline for submitting a late exercise notice on non-expiration dates.[6]

OCC's Rule 801 governs the exercise of an options on days other than the option's expiration date. OCC's Rule 805 governs the exercise of an option on the option's expiration date. Under OCC's Rule 801(d), the filing of a late exercise notice by a Clearing Member may be deemed a violation of OCC's procedures and may subject the Clearing Member to disciplinary action. Additionally, under OCC's Rule 801(d) and Rule 805(g), a Clearing Member submitting a late exercise notice is liable to OCC for a $75,000 fee per line item listed on a late exercise notice.[7]

OCC observed that the Clearing Members submitting late exercise notices in 2017 and 2019 captured dividends on the securities underlying the late exercised options, thereby securing the financial gains associated with such captured dividends.[8] Further, OCC observed that the amount of dividends captured ranged from $93,600 to $436,800.[9] OCC has previously stated that the late exercise fee is intended as an incentive for Clearing Members to be especially diligent in processing exercise notices and to improve back office procedures while at the same time preserving their ability to correct bona fide operational errors.[10]

On November 9, 2017, OCC discussed late exercise notices submitted in 2017 at its OCC Roundtable, an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, a cross-section of OCC Clearing Members, and OCC staff.[11] The OCC Roundtable participants noted the dollar amount at issue in connection with late exercises received in 2017, which reflected the amount of dividends received by the person submitting the late exercise as a result of receiving the underlying shares. As a result of these discussions, Roundtable participants agreed that an increase in the late exercise fee from the current $75,000 fee per line item to $250,000 fee per line item would be appropriate and in a range to incentivize Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 85 FR 5491.

[4] Securities Exchange Act Release No. 88030 (Jan. 24, 2020), 85 FR 5491 (Jan. 30, 2020) (SR–OCC–2020–001) (''Notice of Filing'').

[5] *See* OCC Rules 801 and 805, available at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf.*

[6] OCC did not propose to change deadlines related to the late exercise of options on an option's expiration date.

[7] A line item is an exercise instruction which includes the account, series, and quantity to be exercised.

[8] *See* Notice of Filing, 85 FR at 5492.

[9] *See* Notice of Filing, 85 FR at 5492, n. 10. OCC also stated that the amount of late exercises notices received since 2017 was significantly more than the preceding seven years. *See* Notice of Filing, 85 FR at 5492.

[10] *See* Securities Exchange Act Release No. 57584 (Mar. 31, 2008), 73 FR 18844 (Apr. 7, 2008) (SR–OCC–2007–016); Notice of Filing, 85 FR at 5492.

[11] *See* Notice of Filing, 85 FR at 5492.

Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.[12]

OCC's Rule 801(d) defines the deadline for submitting late exercise notices for exercises other than at expiration. Under its current rules, OCC will not accept a late exercise notice received after 6:30 a.m. CT, and Clearing Members assigned late exercises must be notified by 8:00 a.m. CT.[13] OCC's rules, therefore, may provide OCC with as little as 90 minutes to accommodate an exception to OCC's standard option exercise processes. OCC's exception process requires the (1) review of Clearing Member positions, (2) escalation of the request to submit a late exercise notice to senior management, (3) random assignment of late exercised positions to Clearing Members, and (4) communication to assigned Clearing Members.[14] OCC represented that the 90-minute period from 6:30 a.m. to 8:00 a.m. CT was a narrow window for OCC staff to complete these steps, which are necessary to properly process late exercises and assignments, without delays.[15] As a result, in addition to increasing the late exercise fee as discussed above, OCC proposes to change the deadline for submission of late exercises to 6:00 a.m. CT to provide an additional 30 minutes of processing time. The OCC Roundtable discussed the proposal described above and agreed that it would be appropriate and in a range to incentivize Clearing Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.[16]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[17] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Sections 17A(b)(3)(D) and 17A(b)(3)(F) of the Exchange Act.[18]

A. Consistency With Section 17A(b)(3)(D) of the Exchange Act

Section 17A(b)(3)(D) of the Exchange Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[19] Based on its review of the record, the Commission believes that the proposed increase in the late exercise notice fee is reasonable for the reasons described below.

As described above, under Rules 801(d) and 805(g), the filing of a late exercise notice may be deemed by OCC to be a violation of OCC's procedures and could subject the Clearing Member who submits such a filing to disciplinary action, as well as a $75,000 late exercise fee. At the same time, OCC's Rules provide for a late exercise process designed to allow OCC to accommodate exceptions to its rules governing the option exercise process for bona fide errors. As noted above, OCC observed that, despite subjecting Clearing Members to the late exercise fee and potentially subjecting them to disciplinary action for violating OCC's procedures, Clearing Members were nevertheless filing late exercise notices, thereby securing the financial gains associated with the captured dividends on the securities underlying the late exercised options.

OCC proposes to increase the late exercise fee from $75,000 to $250,000 per line item. As noted above, OCC's determination to increase the late exercise fee by this amount was based on discussions at the 2017 OCC Roundtable among representatives from OCC's participant exchanges, a cross-section of OCC Clearing Members, and OCC staff regarding a potential increase in the amount of the late exercise fee that would be appropriate and in a range to incentivize Clearing Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.[20] As part of those discussions, Roundtable participants reviewed the dollar amounts at issue in connection with late exercises received in 2017, which reflected the amount of dividends received by the person submitting the late exercise as a result of receiving the underlying shares. Based on these discussions, the Roundtable participants agreed that an increase in the late exercise fee from the current $75,000 fee per line item to $250,000 fee per line item would be appropriate and in a range to accomplish the goals noted above.

The Commission understands that, as part of OCC's exception process, one of the purposes of the late exercise fee is to incent Clearing Members to be especially diligent in complying with OCC's Rules regarding processing exercise notices, while at the same time preserving the ability of Clearing Members to correct bona fide operational errors in those relatively rare instances when such a need arises.[21] To that end, as noted above, OCC coordinated with relevant stakeholders to discuss the relevant information and determine the level of fees related to late exercise notices that would strike an appropriate balance between these goals. The Commission views OCC's efforts in this regard as reasonable. Likewise, given that dividends captured through the late exercise process in 2017 and 2019 ranged from $93,600 to $436,800, the Commission believes that OCC's proposal to adopt the consensus recommendation from the 2017 OCC Roundtable to raise the late exercise fee to $250,000 is equally reasonable.

Taken together, and given the purpose of the late exercise fee and the financial incentives represented by such dividends, the Commission believes that the proposed increase to $250,000 per line item for late exercise notices is reasonable and, therefore, is consistent with the requirements of Section 17A(b)(3)(D) of the Exchange Act.[22]

B. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[23] Based on its review of the record, the Commission believes that the proposed change to the deadline for submitting late exercise notices is consistent with the promotion of prompt and accurate clearance and settlement of securities transactions for the reasons described below.

As described above, the late exercise notice process is designed to accommodate exceptions for bona fide errors to the routine options exercise

[12] *See* Notice of Filing, 85 FR at 5492.

[13] *See* OCC Rule 801(d)(2), available at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf*.

[14] *See* Notice of Filing, 85 FR at 5492.

[15] *See* Notice of Filing, 85 FR at 5492.

[16] *See* Notice of Filing, 85 FR at 5492.

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(D) and 15 U.S.C. 78q–1(b)(3)(F).

[19] 15 U.S.C. 78q–1(b)(3)(D).

[20] *See* Notice of Filing, 85 FR at 5492.

[21] *See* Securities Exchange Act Release No. 57584 (Mar. 31, 2008), 73 FR 18844 (Apr. 7, 2008) (SR–OCC–2007–016); Notice of Filing, 85 FR at 5492.

[22] 15 U.S.C. 78q–1(b)(3)(D).

[23] 15 U.S.C. 78q–1(b)(3)(F).

process. OCC's current rules may provide as little as 90 minutes to process late exercise notices. Processing such notices requires a number of procedural steps, including the notification of Clearing Members affected by the random assignment of late exercises. The Commission believes that successful and timely completion of exercise and assignment processes is important to the prompt and accurate settlement of securities transactions. The Commission further believes that providing an additional 30 minutes to facilitate the processing of late exercises and assignments without delay would promote the prompt and accurate clearance and settlement of securities transactions and is, therefore, consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[24]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [25] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[26] that the Proposed Rule Change (SR–OCC–2020–001) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04576 Filed 3–5–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88308; File No. SR–ICEEU–2020–003]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to the ICE Clear Europe Rules and Procedures

March 2, 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 18, 2020, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

ICE Clear Europe Limited proposes to revise its Clearing Rules (the ''Rules''),[3] the Standard Terms contained in the annexes to the Rules, the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, FX Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures, and General Contract Terms (collectively, the ''Amended Documents'') to make various updates and enhancements.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

ICE Clear Europe is submitting proposed amendments to the Amended Documents that are intended to make a variety of improvements and changes, including (1) to enhance the customer documentation framework for Non-FCM/BD Clearing Members to facilitate default management by the Clearing House, (2) to adopt an ''externalised payments mechanism'' to facilitate making certain payments to and from Clearing Members outside of the standard net settlement process, (3) to make certain amendments to the variation and mark-to-market margin settlement process (and related calculations) in order to facilitate treatment of such margin as a settlement payment rather than collateral for purposes of Clearing Member capital calculations, (4) to revise certain provisions relating to option settlement to enhance clarity and reflect operational procedures, (5) to revise certain disciplinary and complaints procedures, (6) to add certain provisions relating to compliance with applicable U.S. tax requirements, (7) to make certain other default management enhancement and clarifications, (8) to update and clarify various aspects of the Delivery Procedures and (9) to make certain other drafting improvements and clarifications, in each case as described in further detail herein.

Specifically, ICE Clear Europe proposes to make amendments to Parts 1, 2, 3, 4, 5, 7, 8, 9, 10 and 12 of the Rules, the Customer-Clearing Member Standard Terms contained in the annexes to the Rules, and the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures and General Contract Terms. The text of the proposed Rule and Procedure amendments is attached [sic] in Exhibits 5A–5J, with additions underlined and deletions in strikethrough text. The proposed Rule and Procedure amendments are described in detail as follows.

(i) Customer Documentation Framework

Changes have been proposed to strengthen the legal foundations for the Standard Terms, which form part of the ICE Clear Europe customer documentation framework for Non-FCM/BD Clearing Members.[4] The existing Standard Terms promote post-default porting in the case of a Non-FCM/BD Clearing Member default through contractual provisions that bind Customers and Clearing Members. These provisions are designed to limit interference with the porting process and give additional comfort that margin is transferred by Customers to Clearing Members on terms that allow usage and porting of margin and positions. Purported close-out actions by the Customer against a defaulting Clearing Member prior to porting are also restricted, so that all terminations and re-establishments of cleared contracts occur at the same time and at the same

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] The Standard Terms do not apply to FCM/BD Clearing Members and their customers.

price, reducing the possibility of valuation disputes or other claims that might prevent or reduce the likelihood of porting.

In order to enhance the Standard Terms framework, and in particular ICE Clear Europe's ability to rely on the Standard Terms so as to carry out default management and use margin without interference from claims by Customers of defaulting Clearing Members, ICE Clear Europe is proposing to make the following amendments:

Under existing Rule 202(b), Non-FCM/BD Clearing Members are required to ensure that the Standard Terms are contractually binding as between themselves and their Customers. As a further protection to support this requirement, Rule 202(b) would be amended to add an additional provision that Customers and Non-FCM/BD Clearing Members will be deemed to be bound by the Standard Terms through acceptance by conduct as a result of their continued use of the Clearing House. The change would provide an additional basis for certainty that the Standard Terms would apply as between the Customer and Non-FCM/BD Clearing Member, notwithstanding that a Non-FCM/BD Clearing Member had otherwise failed to obtain its Customer's agreement to the Standard Terms. ICE Clear Europe believes that this additional protection is a reasonable approach, in light of the Customer's choice to clear its transaction through the Non-FCM/BD Clearing Member at ICE Clear Europe, and given that the provisions in question are published and referred to in ICE Clear Europe's customer disclosures under the European Market Infrastructure Regulation (''EMIR'').[5]

Amendments to Rule 504(c) would extend Clearing Member warranties with respect to Permitted Cover to expressly cover all transfers of Permitted Cover to ICE Clear Europe (rather than merely the usage of Permitted Cover in accordance with the Rules) as not violating applicable law or third party rights or contractual obligations. This change would further enhance ICE Clear Europe's assurance that it can accept Permitted Cover without risk of interference from third party claims.

A change in Rule 102(o) would clarify that the Rules, together with the applicable Clearing Membership Agreement, and other documents listed in Rule 102(f) that are given contractual force pursuant to these Rules (other than the Standard Terms and Settlement and Notices Terms) form a contract between the Clearing House and each Clearing Member. (By contrast, the Standard Terms and Settlement and Notice Terms apply as between the Non-FCM/BD Clearing Member and its Customer.) Pursuant to the Standard Terms themselves, ICE Clear Europe would also benefit from the Standard Terms as a third party beneficiary under the UK Contracts (Rights of Third Parties) Act 1999.

In Rule 401(n), it is proposed that the words ''at the same time as the Contract'' be added after the words ''an opposite Customer-CM F&O Transaction shall arise between such Customer and Non-FCM/BD Clearing Member''. The additional words are intended to clarify that the opposite Customer-CM F&O Transaction arises at the same time as the F&O Contract arises. In ICE Clear Europe's view, this timing is implicit in the current Rule, and so the amendment would not result in an actual change in the timing at which the Customer-CM F&O Transaction arises. ICE Clear Europe believes that the amendment is a non-substantive drafting improvement that would nonetheless improve the clarity of the Rules on this point.

In section 2 of each of the Standard Terms (CDS, F&O and FX), added drafting would make it clear that attempts by Customers or Non-FCM/BD Clearing Members to modify or disapply the Standard Terms are of no effect and that the Standard Terms cannot be overridden. The amendment would also provide that ICE Clear Europe is a third party beneficiary of the Standard Terms and may enforce them. This provision is intended to assist in promoting the consistent implementation of the Standard Terms, without modification, to govern the contractual relationships between Non-FCM/BD Clearing Members and their Customers. A non-standard modification of the Standard Terms could, in theory, interfere with or complicate attempts by the Clearing House to provide post-default porting in accordance with the Rules. The proposed amendments do not reflect any particular problem or scenario experienced by the Clearing House, but are intended as a general default management planning improvement in furtherance of ICE Clear Europe's ability to provide post-default porting.

In Section 3(b) of each of the Standard Terms, the proposed change would remove the reference to transactions arising (as between Non-FCM/BD Clearing Member and Customer) ''at the Acceptance Time'' and replaces this with a reference to CDS transactions arising (as between the Non-FCM/BD Clearing Member and Customer) ''as set out in Part 4 of the Rules''. This change is necessary as a drafting matter, since the term ''Acceptance Time'' is not defined in the Rules. In addition, the cross-reference to Part 4 of the Rules is appropriate because Part 4 contains various provisions dictating how contracts and transactions arise pursuant to the Rules, rather than solely dictating the time at which a contract is deemed to be formed.

In Section 4(b) of each of the Standard Terms, the proposed change is intended to: (a) Clarify the Customer's consent for margin to be used by the Non-FCM/BD Clearing Member consistent with its obligations, representations and warranties under the Rules; (b) provide that the Customer makes substantially equivalent representations, warranties and acknowledgments with respect to collateral posted by the Non-FCM/BD Clearing Member to the Clearing House with respect to the relevant Customer Account; (c) provide further assurance that, if any perfection or other formalities are required for ICE Clear Europe to use the collateral originating with the Customer, as ICE Clear Europe is entitled to do so under the Rules, ICE Clear Europe is able to instruct the Customer to take such additional steps; and (d) limit Customer assertions that such collateral is subject to encumbrances in favor of the Customer. The amendments are collectively designed to provide additional clarity to the Clearing House as to its ability to use collateral ultimately provided by a Customer, including to cover default losses and to provide for porting of the Customer's positions in case of the relevant Non-FCM/BD Clearing Member's default, in each case to the extent permitted by the Rules, and mitigate the risk of any Customer or third party claims with respect to such collateral that may interfere with such uses.

In Section 5(c) of each of the Standard Terms (and related changes at Rule 202(b)(iii)), ICE Clear Europe proposes to clarify its approach to the use of automatic early termination in client clearing documentation of Non-FCM/BD Clearing Members. It has come to ICE Clear Europe's attention that some EU Non-FCM/BD Clearing Members may use automatic early termination provisions in their client clearing documentation even though Rule 202(b)(iii) (as currently in force) generally prohibits this. In that case, such Clearing Member-Customer clearing agreements may not adequately support porting to the extent legally possible. In particular, such provisions

[5] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

expose ICE Clear Europe, the Non-FCM/BD Clearing Member and any Customer to the risk that the Customer-Clearing Member Transaction and cleared Contract may terminate at different times, and accordingly may have different termination values following a post-default close-out. Automatic or early termination clauses also may give rise to legal uncertainties as to whether certain protections from the disapplication of insolvency law for porting in Part VII of the UK's Companies Act 1989 are available, since following an automatic termination there would be no contract left to port or transfer. The Clearing House's position is that such terminated contracts may still be subject to porting but a legal uncertainty is acknowledged. To reduce risks related to such situations, it is proposed that the prohibition on including automatic early termination provisions in Clearing Member-Customer documentation in Rule 202(b)(iii) be removed and a new section 5(c) of the Standard Terms be introduced instead. The new section 5(c)(ii) would disapply automatic termination provisions for contracts cleared at ICE Clear Europe (with an exception for parties incorporated in Switzerland [6] or other jurisdictions designated by the Clearing House) and new section 5(c)(i) would instead provide for the suspension of performance under the Customer-Clearing Member Transaction until the corresponding cleared Contract is terminated or the relevant payment date for the net sum owed between the Customer and Non-FCM/BD Clearing Member following termination has occurred. The suspension of performance provides similar economic protections for Customers as compared to automatic termination (as the Customer would not be obligated to make payments to a defaulting or insolvent Non-FCM/BD Clearing Member) but does not expose ICE Clear Europe to the risks of inconsistent timing or valuation between the Customer-Clearing Member Transaction or expose Customers to the risks of their positions being not portable due to automatic termination of the Customer-Clearing Member Transaction. Section 5(c)(iii) would provide that even if, notwithstanding the other provisions of the Standard Terms, automatic early termination of the Customer-Clearing Member transaction occurred, the provisions of the Standard Terms relating to calculation of termination values and portability would apply with necessary modifications.

(ii) Externalised Payments Mechanism

A number of changes have been proposed to the Rules and Procedures to introduce a new ''Externalised Payments Mechanism'' alternative for certain cash flows. Under the Externalised Payments Mechanisms, mark-to-market or variation margin payment flows or certain other payment flows (including potentially, for example, clearing house and exchange fees), between ICE Clear Europe and the relevant Clearing Member can, at the option of the Clearing Member, not be netted in the same way as they would be under the standard approach (referred to in the amended Rules as the ''Standard Payments Mechanism''). The introduction of a payments mechanism under which such amounts exchangeable between ICE Clear Europe and a Clearing Member are not netted has been requested by CDS Clearing Members, some of which wish to align payment flows more closely with those in the OTC markets or under their Customer documentation. The various changes proposed to implement the Externalised Payments Mechanism are described in more detail as follows:

New defined terms ''Standard Payments Mechanism'' and ''Externalised Payments Mechanism'' are proposed to be added in Rule 101, which would cross-refer to the full definitions of these terms in Rule 302(a). Proposed changes to Rule 302(a) would clarify that the current provisions regarding the calculation of a net amount payable by or to ICE Clear Europe in respect of each Account are part of the Standardised Payments Mechanism. In addition, new language would be added to confirm that the Standard Payments Mechanism would apply unless the Clearing House has agreed that the Externalised Payments Mechanism applies to a particular kind of cash payment, account and Clearing Member. The definition of Externalised Payments Mechanism is proposed to be added at the end of Rule 302(a). This definition would provide that the Externalised Payments Mechanism is an alternative payments mechanism available to Clearing Members who elect to use it, provided that ICE Clear Europe agrees to such usage in relation to particular accounts. The proposed definition also clarifies that the Externalised Payments Mechanism can only be used for certain Margin and other cash payments as specified in the Finance Procedures. The effect of using the Externalised Payments Mechanism in respect of cash payments would be that payments would be settled pursuant to a separate cash flow process at a separate time from that under the Standard Payments Mechanism.

Various conforming changes are proposed throughout the Rules and Procedures to reflect the introduction of the Externalised Payments Mechanism and the different processes applicable where payments are settled under the Externalised Payments Mechanism. In Rule 301(f), amendments clarify which provisions set out under that paragraph are only applicable to (a) payments made under the Standard Payments Mechanism or (b) payments made under the Externalised Payments Mechanism. Other amendments of a similar nature are proposed to Rules 110(g), 303(a) and 1902(h)(i).

A number of changes are also proposed to the Finance Procedures to implement the Externalised Payments Mechanism. Paragraph 6.1(b) would be amended to clarify that cash payments between ICE Clear Europe and a Clearing Member (including Margin) may only be set off and consolidated where the Standard Payments Mechanism is used.

In paragraphs 6.1(i)(i) and (ii), new language is proposed to explain the effect of the Externalised Payments Mechanism on payment flows, namely that ''cash payments will be settled through a separate cash flow and not included in a combined overnight call or return as would apply under the Standard Payments Mechanism''. Paragraph 6.1(b) would provide that Clearing Members are able to elect for upfront fees, Mark-to-Market Margin, FX Mark-to-Market Margin, Variation Margin or other payments to be dealt with using the Externalised Payments Mechanism, subject to the written consent of ICE Clear Europe. It is expected that the process would principally be used for Mark-to-Market Margin. Further, in paragraph 6.1(i)(vii), a drafting change would be made to clarify that other amounts payable by a Clearing Member to ICE Clear Europe (or vice versa) would be included within an end-of-day or ad hoc payment under the Standard Payments Mechanism. Paragraph 6.1(i)(vii) is also expanded to reference certain other types of payments under the Rules and Procedures (including option premiums corporate action payments for delivered investments under certain Financials & Softs Contracts, amounts resulting from reduced gain distributions, product terminations and non-default losses) as includible in end-of-day or ad hoc

[6] The exception for Switzerland reflects the fact that such jurisdiction is the only Clearing Member jurisdiction for which automatic early termination is recommended for derivatives by the International Swaps and Derivatives Association, Inc. (''ISDA'').

payments under the Standard Payments Mechanism.

A new paragraph 6.1(i)(viii) would address the applicability of the Externalised Payments Mechanism in circumstances where certain payments are being made under Part 9 of the Rules (Default Rules), including Margin Adjustment Amounts in connection with reduced gain distribution under Rule 914, Product Termination Amounts in connection with product termination under Rule 916 and Collateral Offset Obligations under Rule 919. Specifically, where the Externalised Payments Mechanism applies to variation or mark-to-market margin payments, the Clearing House can net Margin Adjustment Amounts against payments under the Standard or Externalised Payments Mechanism, at the Clearing House's discretion. Similarly, the Clearing House may choose to net or aggregate Product Termination Amounts with payments under the Standard or Externalised Payment Mechanism, at its discretion. Payments of Collateral Offset Obligations, assessments and Guaranty Fund contributions and replenishments would be made under the Standard Payment Mechanism unless otherwise directed by the Clearing House. In addition, paragraph 6.1(i)(ix) (as renumbered) would be amended to clarify that additional original or initial margin requirements as a result of the payment of variation margin or mark-to-market margin in a different currency from the contractual currency (as a result of a currency holiday) would be collected via the Standard Payments Mechanism, regardless of whether the Externalised Payments Mechanism applies to the relevant variation or mark-to-market margin payment in question.

(iii) Clearing Member Capital Requirements and Settlement to Market Amendments

Certain changes are proposed to the Rules and Procedures to reflect requirements under the EU Capital Requirements Regulation (the ''CRR'').[7] In Rule 101, it is proposed that the defined term ''Capital'' be revised to remove outdated references to the EU Banking Consolidation Directive, which is no longer in force. This directive, which set out the capital requirements framework for EU banks and broker-dealers, was replaced and superseded by the CRR and Capital Requirements Directive (together referred to as the ''CRD IV'' package). Related to this, new definitions of ''Capital Requirements Directive'' and ''Capital Requirements Regulation'' are proposed to be introduced to replace the outdated ''Banking Consolidation Directive'' definition (which is proposed to be deleted). Although, as a technical matter, Rule 102(a) provides already for the update of references to legislation as they are amended or supplemented, as a matter of clarity ICE Clear Europe is proposing this amendment to explicitly and correctly reference current EU law. ICE Clear Europe does not believe the change will have any substantive effect on Clearing Members or the Clearing House.

In addition, ICE Clear Europe proposes to amend the Rules to provide more clearly for the characterization of Clearing Members' exposures for cleared derivatives under Article 274(2)(c) CRR as ''settled to market'' (as opposed to ''collateralized to market''). For the Article 274(2)(c) treatment to be available, Variation Margin or Mark-to-Market margin must be characterized as a cash payment ''to settle outstanding exposure following specific payment dates'',[8] rather than as collateralizing the exposure. The proposed amendments do not change the manner in which Variation Margin or Mark-to-Market Margin is calculated, or other current operational practices. Rather, the amendments consist of revisions to terminology and other drafting changes to clarify the legal characterization that payments of Variation Margin and Mark-to-Market Margin represent settlement payments rather than collateral payments for purposes of the CRR, as requested by Clearing Members.

With respect to settlement to market, changes have been proposed to the defined terms ''Margin'', ''Mark-to-Market Margin'' and ''Variation Margin'' to more accurately and certainly characterize such margin as settlement payments, so that the relevant exposures more clearly benefit from the settlement to market treatment under Article 274(2)(c) CRR. In the defined term ''Margin'', changes are to be made to the language in parentheses to confirm that Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin are all ''provided to or by the Clearing House by outright transfer of cash as a settlement payment''. The defined term ''Mark-to-Market Margin'' currently refers to such margin being provided ''by way of title transfer pursuant to a Clearing Membership Agreement or Sponsored Principal Clearing Agreement or[. . .]by way of a pledge pursuant to a Pledged Collateral Addendum''. This would be replaced with clear language denoting that such margin would be provided ''by way of outright transfer of cash as a settlement payment''. Similarly, the definition of ''Variation Margin'' is proposed to be updated to clarify that the cash required to be provided or actually provided by a Clearing Member is ''by way of outright transfer of cash as a settlement payment''.

The defined term ''Original Margin'' is proposed to be amended to move the words '', but excluding in any case Variation Margin'' to the end of the definition. This is a drafting change to ensure that Variation Margin is excluded from the entirety of this definition, as the definition generally concerns Permitted Cover provided as collateral.

In various places throughout the Rules and Procedures, amendments are proposed to remove all references to the term ''deposit'' in the context of this being a word to describe the transfer of cash variation or mark-to-market margin. This, and similar terms, would be replaced with terms that are more consistent with a settlement payment characterization of margin, such as ''transfer''. The amendments will not reflect a change in actual operational practice. These proposed changes would also more accurately reflect ICE Clear Europe's role in receiving cash payments under title transfer and its regulatory status as a central counterparty (''CCP'') which is not a bank or credit institution.[9] The changes fall into the following types and are proposed in relation to the provisions of the Rules and Procedures noted below:

(a) Removal of the term ''deposit'' (or a derivation thereof) from existing drafting where a suitable alternative term (such as ''transfer'') is already present: Rules 101 (definition of ''Monetary Default''); 110(b); 110(c); 110(e); 204(a)(vi); 208(b)(iii); 919(e) and paragraph 4.2 of the Membership Procedures (section B, row 1 of the table);

(b) Replacing the word ''deposit'' (or a derivation thereof) with the word ''transfer'' (or a derivation thereof): Rule 102(q); 1602(a); 1602(b); 1602(c); 1602(d); 1605(i); 1804(b); 1806(a); paragraphs 3.3(b), 3.7, 3.8, 3.32, 6.1(f), 6.1(g), 10.4, 10.5 and 10.12 of the Finance Procedures (in 3.3(b), 3.7 and 3.32 the words ''[from/to] the Clearing House'' are also added as a drafting improvement); and

[7] Regulation (EU) No 575/2013.

[8] CRR, Article 274(2)(c).

[9] In this regard, ICE Clear Europe does not keep payments it receives on deposit for its customers, nor does it engage in the regulated activity of deposit-taking in the UK, for which a banking license is required.

(c) Similar drafting changes to achieve the same effect are made in Rule 202(a)(xi) (replacing the words ''for the deposit of funds in Eligible Currencies and the deposit of securities required to be transferred to and from the Clearing House'' with the words ''for the purposes of cash transfers to and from the Clearing House in Eligible Currencies''; Rule 1103(b) (replacing the words ''pledged to or deposited with'' with ''transferred to''); Paragraph 3.26 of the Finance Procedures (replacing the words ''on deposit'' with the words ''upon completion of the relevant transfer to the Clearing House''); Paragraph 10.17 of the Finance Procedures (replacing the words ''confirmation of deposit'' with the words ''confirmation of completion of the relevant transfer''); and Paragraph 11.1 of the Finance Procedures (replacing the words ''All transactions to deposit or withdraw'' with the words ''All transactions including each transfer to or withdrawal'').

In Rule 505, changes are proposed to clarify that settlement payments (including payments of Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin) are excluded from constituting financial collateral within the scope of the UK Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral (the ''FCD'')). These proposed changes reflect feedback received by ICE Clear Europe from some Clearing Members and are to ensure consistency with the characterization of such payments as contractual payments settling derivatives liabilities and not as collateral, as described above. In addition, the word ''collateral'' in the last sentence would be replaced with the more general term ''such assets''. This links the clause back to statutory definitions more clearly, since only collateral of certain types (essentially ''cash'' and ''financial instruments'') are covered by the FCD and, for example, gold collateral accepted by ICE Clear Europe is not.

A new concept of ''CDS Price Alignment Amount'' would be added. Pursuant to Rule 1519(e), a daily payment in respect of CDS Price Alignment Amounts would be required on each Business Day. The CDS Price Alignment Amount would be economically equivalent to the price alignment ''interest'' that ICE Clear Europe currently pays or charges a CDS Clearing Member with respect to net Mark-to-Market Margin transferred between the parties. Since the term ''interest'' may be more typically associated with collateral, ICE Clear Europe proposes to refer to such amounts as CDS Price Alignment Amounts to avoid confusion over the characterization of Mark-to-Market Margin as settlement payments. Correspondingly, references to interest on Mark-to-Market Margin would be removed in the CDS Procedures, as discussed below. The definition of CDS Price Alignment Amount would be added in Rule 1501(h), which cross-refers to the definition in the CDS Procedures as proposed to be amended (discussed below).

Although FX clearing has not yet been launched, similar changes would be made to relevant FX clearing provisions to maintain consistency throughout the Rules. The defined term ''FX Mark-to-Market Margin'' is proposed to be amended to clarify that Permitted Cover would be provided ''by way of outright transfer as a settlement payment''. This change is intended to support the characterization of mark-to-market margin as a settlement payment. There is also a small drafting tweak within this definition to clarify that the relevant Procedures are the FX Procedures. The defined term ''FX Mark-to-Market Interest'' would be deleted and replaced with a new defined term of ''FX Price Alignment Amount''. The deleted definition currently refers to ''interest calculated by reference to the FX Mark-to-Market Margin Balance''. The new definition of ''FX Price Alignment Amount'' would instead refer to ''a price alignment amount calculated by reference to the relevant FX Notional Margin Balance'', which avoids any reference to interest (or a similar concept) for the reasons discussed above. Similarly, amendments to the defined term ''FX Mark-to-Market Margin Balance'' are proposed so that references to FX Mark-to-Market Margin being ''delivered'' by a Clearing Member or ICE Clear Europe are replaced with references to such margin being ''transferred'' and it is clear that that FX Mark-to-Market Margin is a settlement payment. It is also intended that the definition be renamed ''FX Notional Margin Balance'', with the word ''notional'' being added within the definition, to ensure that the FX Price Alignment Amounts are regarded as using the mark-to-market margin merely as a notional sum to calculate the relevant amount, rather than such amounts constituting an interest or an interest-like return on deposited assets. The proposed addition of the words ''(notwithstanding that FX Mark-to-Market Margin is a settlement payment)'' within the definition would further support a settlement payment characterization.

Rule 1703 is proposed to be amended to reflect the replacement of the current defined term ''FX Mark-to-Market Interest'' with the new defined term ''FX Price Alignment Amounts'', as discussed above. The heading of the rule would be updated to reflect the new defined term and the words ''an amount in respect of FX Mark-to-Market Interest'' are to be replaced with the term ''FX Price Alignment Amount''. Proposed additional language to be added after this amendment would expressly confirm in the Rules that payment of the FX Price Alignment Amount must be made on each Business Day in accordance with the FX Procedures. In the FX Procedures themselves, amendments are proposed at paragraph 7.2 to reflect the replacement of ''FX Mark-to-Market Interest'' with ''FX Price Alignment Amounts'' and the replacement of ''FX Mark-to-Market Margin Balance'' with ''FX Notional Margin Balance''. These include replacing the old defined term with the new defined term and adding additional language to remove any interpretative doubt that ''FX Mark-to-Market Margin is a settlement payment''. Headings and the table of contents are to be updated accordingly.

In the Finance Procedures, a new paragraph 2.3 is proposed which would confirm explicitly that Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin are transferred to and from ICE Clear Europe by way of outright cash transfer and that no such margin would be subject to any pledge under the Rules or Procedures, or the requirement in Rule 1603(c) for Margin provided by an FCM/BD Clearing Member in respect of a Customer Account to be in the form of Pledged Collateral. As with the various changes set out above, it is proposed that this clarification be added to ensure that Margin provided by way of outright cash transfer is characterized as a settlement payment, so that the settlement to market treatment can be applied.

Changes are also proposed in paragraph 6.1(i)(i) of the Finance Procedures to refer to the ''resulting settlement payments'' from Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin calls, to support the characterization discussed above. Additional language would be added to explain that once settlement payments resulting from daily margin calls have been paid in cleared funds, the valuation of the Contracts would be reset to zero. This is consistent with the requirements of settlement to market

treatment under Article 274(2)(c) CRR, which requires that contracts ''are structured to settle outstanding exposure following specified payment dates and where the terms are reset so that the market value of the contract is zero on those specified dates''. A drafting change is also proposed in this paragraph to clarify that the standard process would be for adjustments to margin requirements to be calculated, and payments to be executed, in the currency of the relevant Contracts, but leave it open for payments to be made in a different currency.

Similarly, it is proposed that paragraph 6.1(i)(iv) of the Finance Procedures be amended so that it addresses the payment of price alignment amounts in relation to variation margin separately from interest payable on initial margin. Language that previously referred to interest being payable on variation margin would be deleted and new language would be inserted confirming that price alignment amounts instead fall payable as further detailed in the relevant Procedures for the Contract in question. The heading to this provision would be updated accordingly.

In the CDS Procedures, new defined terms of ''CDS Price Alignment Amount'' and ''CDS Notional Margin Balance'' are proposed to be added in paragraph 1, which are intended to replace the terms ''Mark-to-Market Interest'' and ''Mark-to-Market Margin Balance'' respectively. ''CDS Price Alignment Amount'' describes amounts paid with reference to Mark-to-Market Margin as price alignment amounts calculated daily ''by applying the applicable overnight rate'' to the CDS Notional Margin Balance. The CDS Notional Margin Balance is defined as a notional sum based on the aggregate amount of transferred Mark-to-Market Margin, to be consistent with the characterization of the Mark-to-Market Margin as a settlement payment.

Further to these changes, it is proposed that paragraph 1 of the CDS Procedures be amended to replace the defined term ''Daily Aggregate MTM Interest Amount'', with a new defined term ''Daily Aggregate CDS Price Alignment Amount''. Instances of usage of the terms ''Mark-to-Market Interest'', ''Mark-to-Market Margin Balance'' and ''Daily Aggregate MTM Interest Amount'' are also proposed to be replaced with the new defined terms ''CDS Price Alignment Amount '', ''CDS Notional Margin Balance'' and ''Daily Aggregate CDS Price Alignment Amount'' respectively. Similar changes would be made in paragraphs 3.1 and 3.3 of the CDS Procedures.

(iv) Enhancement of Settlement for Option and Futures

Various changes are proposed to the Rules and Procedures to clarify certain provisions relating to Options cleared by ICE Clear Europe, including use of terminology and other drafting improvements, and to address more clearly the concept of ''net liquidating value''. As discussed herein, the changes are in the nature of drafting clarifications and improvements following an internal legal and operational review of the relevant provisions. The amendments are also intended to harmonize drafting of similar provisions across certain affiliated ICE futures clearing organizations.

A number of changes are proposed to the definitions in Rule 101 with the aim of clarifying, improving and harmonising the drafting of terms used in the Rules to refer to concepts applicable to both Futures and Options. The definition of ''Deliverable'' is proposed to be updated to reflect the fact that the term is used not only in relation to property deliverable under F&O Contracts, but also in relation to the calculation of settlement amounts. The words ''or with respect to which settlement amounts are calculated'' are to be added at the end of the definition to clarify this point. The term ''Reference Price'' in relation to Options would be removed from the Rules and replaced with ''Exchange Delivery Settlement Price''. The definition of ''Exchange Delivery Settlement Price'' would be updated to clarify that it also applies to Options, through addition of a cross-reference to the option settlement price determination procedure under Rule 802. These changes, and conforming changes throughout the Rules, are intended to simplify and clarify the drafting of the Rules around option settlement (and are not intended to materially change the operational process for such settlement). Other non-substantive drafting clarifications would also be made to the definitions of ''Put'', ''Set'' and ''Short''.

A number of similar drafting clarifications and related changes have been proposed to Part 8 to ensure that provisions set out thereunder clearly and accurately describe relevant settlement processes in relation to Options. Rule 802 would be amended to reflect the replacement of the term ''Reference Price'' with the term ''Exchange Delivery Settlement Price'' to refer to the settlement price of an Option. Changes have also been proposed in Rule 802 to better describe the processes surrounding determination and publication of the Exchange Delivery Settlement Price in relation to Options on the basis of data provided or published by the relevant Market. The preamble to Part 8 is also proposed to be amended to refer to F&O Contracts ''that are Options'', rather than F&O Contracts generally (which would include Futures, which are outside the scope of Part 8).

Moreover, changes are proposed to Rule 809(d) to provide flexibility for the Clearing House, in a scenario where it directs a Clearing Member to make delivery of a Deliverable in settlement of an option directly to another Clearing Member (rather than to the Clearing House) in accordance with that Rule, to also permit payments to be made directly between such parties rather than to and from the Clearing House.

Changes are proposed in Rule 810(d) to reflect the replacement of the term ''Reference Price'' with the term ''Exchange Delivery Settlement Price'' for Options, and to clarify the cash settlement price for an Option would be determined using the Exchange Delivery Settlement Price ''on the day of settlement or exercise''. In addition, the amendment would provide that all outstanding premium payments must have been made in relation to the relevant set of Options (in addition to Margin payments) in order to receive cash settlement. This change is being proposed to more clearly describe relevant Clearing House operational practices and processes (and is not intended to alter those practices and processes).

Similar provisions related to Futures would also be updated for consistency. Rules 701 to 705 would be amended to ensure that the provisions relating to (a) the determination of the Exchange Delivery Settlement Price for Futures, (b) the processes for cash settlement and physical settlement, and (c) the number of Contracts by reference to which settlement and delivery obligations are calculated all reflect operational practice. As with the changes described above in Rule 802, the proposed changes to Rule 701 would more clearly describe the processes surrounding determination and publication of the Exchange Delivery Settlement Price in relation to Futures on the basis of data provided or published by the relevant Market (and are not intended to result in a change in those processes). While the existing Rules currently describe these processes, the amendments are intended as drafting improvements to better ensure that the description is clear. In Rules 702(b) and 705(a), the words ''Without prejudice to any contractual netting under Rule 406 or

the Clearing Procedures'' are proposed to be added. Under Rule 406, contractual netting may be applied to offsetting positions in respect of one of a Clearing Member's Customer accounts even though such positions are ordinarily held gross. The additional language clarifies that while cash settlement and delivery amounts are determined for Customer Accounts based on gross positions under Part 7, this does not preclude contractual netting of positions where provided for under Rule 406 or the Clearing Procedures (including contractual netting within the positions of a particular Customer of a Clearing Member). The change is intended to avoid any potential questions as to whether there might otherwise be a conflict between Part 7 and Rule 406. In Rule 702(c), changes are proposed to clarify the method of determining the amount payable for cash settlement of a Future. The amended language would confirm that the relevant amount is based on the price at which Open Contract Positions were last recorded on ICE Clear Europe's books and the Exchange Delivery Settlement Price (and not necessarily the difference between these two prices), in any case as provided in the applicable Contract Terms. In addition, in Rule 703(a), a clarification would be added that a Market may administer matters or exercise rights on behalf of ICE Clear Europe pursuant to Rule 703 and the Delivery Procedures. This reflects the fact that Markets are typically involved in the delivery process for Futures and may carry out functions otherwise specified to be discharged by ICE Clear Europe pursuant to the Rules or Procedures.

In Rule 703(f), a parallel change for Futures would be made to that described above in Rule 809(d) for options, to provide flexibility for the Clearing House, in a scenario where it directs a Clearing Member to make delivery of a Deliverable in settlement of an option directly to another Clearing Member (rather than to the Clearing House) in accordance with that Rule, to also permit payments to be made directly between such parties rather than to and from the Clearing House. Changes are also proposed to Rule 703(h) to provide that both legs (not just one side) of a Contract in delivery may be subject to mandatory cash settlement directions in the case of Clearing Member default. This will facilitate management of such a default by the Clearing House, and avoid need for the Clearing House itself to make or take delivery of the underlying asset. Finally, a new Rule 703(j) would be added to require Sellers to represent that they convey good title to products (free of encumbrances) when physical settlement takes place. This would be consistent with market expectation around deliveries, consistent with any other deliveries made of such products in the relevant cash markets.

A change is proposed to Rule 906(a) to refer to the ''abandonment'' of an Option in addition to the ''exercise'' of an Option in subparagraph (iii) under the description of ''L'', one of the variables in the net sum calculation. This change is proposed because abandoning an Option could also affect the aggregate amount payable by or to a defaulting Clearing Member in respect of positions recorded in a given account and such impact should be taken into account in addition to the impact of any exercise of an Option.

Various changes have been proposed in the Clearing Procedures to reflect the use of the Exchange Delivery Settlement Price for Options (which replaces the ''Reference Price'') and provide greater detail on the calculation and application of net liquidating value for an Option (''NLV''). Paragraph 4.4(c) would be amended to clarify that NLV would be calculated on each Business Day based on relevant Exchange Delivery Settlement Prices. The new language would also confirm that for long Option holders, a positive NLV amount would be applied against the requirement for Original Margin, and that for short Option holders, negative NLV would contribute to the requirement for Original Margin. This approach reflects current practice for calculating margin requirements, but is not currently not stated explicitly in the Procedures. Moreover, the amendments in paragraph 4.4(c) confirm that where a gross margin model is used for a particular account, NLV would be held on a gross basis without any setting off between different Customers interested in the account. Paragraphs 5.1, 5.5(a) and 5.6 of the Clearing Procedures are also to be amended to reflect the replacement of the Reference Price with the Exchange Delivery Settlement Price for Options.

Several other changes are also proposed in the Clearing Procedures to better reflect the processes and terminology used in relation to Options. Paragraph 5.2(d) would be amended to specify that it only applies in relation to Options ''whose Deliverable is a Future Contract''. This provision specifies that where such Options are exercised a Contract at the Strike Price would arise in accordance with Rule 401, and such Contract would only arise if the Deliverable under the Option Contract is a Future (as opposed to a security). Changes are also proposed to paragraph 5.7(a) to cross-reference the operation of automatic exercise (as applicable), as described in paragraph 5.5 of the Clearing Procedures, as relevant to determining whether elective exercise and/or abandonment of Options on the relevant expiry day is permitted.

In the General Contract Terms, paragraph 3.1(b) would be amended to reflect changes to defined terms and other relevant terms relating to settlement prices for Contracts (including replacement of ''Market Delivery Settlement Price'' and ''Reference Price'', with ''Exchange Delivery Settlement Price'').

(v) Complaints and Disciplinary Processes

Various changes are proposed to Part 10 of the Rules and to the Complaint Resolution Procedures to streamline and improve ICE Clear Europe's complaints and disciplinary processes. Many of the proposed changes are drafting improvements and other enhancements following a detailed internal review at both ICE Futures Europe and ICE Clear Europe, based on lessons learned from the practice of previous complaint and disciplinary processes, especially at the exchange level where such processes occur more regularly.

Changes have been proposed to Rule 1001(d) to ensure that the scope of the Complaint Resolution Procedures extends to complaints against Directors, committees and any individual committee members of ICE Clear Europe. Current Rule 1001(d) currently only expressly applies to officers and employees of ICE Clear Europe. ICE Clear Europe did not intend to exclude directors and committees from the scope of the Complaints Resolution Procedures, and believes it is appropriate and beneficial for Clearing Members and other market participants to include such persons explicitly in the coverage of those procedures.

Drafting improvements are proposed to Rule 1002 to improve the clarity of the provisions governing investigations into breaches of the Rules. These changes involve clearer language in certain places to aid readability and also inserting language in Rule 1002(c) to ensure that ICE Clear Europe's advisers treat not only information obtained in the course of the investigation as confidential, but also information that the advisers have been given access to. Changes have also been proposed to Rule 1002(d)(iv) to require a Clearing Member, as part of their cooperation with an investigation, to provide access to documents and materials in its

possession at the direction of the Clearing House (in addition to the making such documents or materials available for inspection).

Rule 1002(e) is proposed to be amended to clarify that non-compliance with an investigation can lead to additional disciplinary action being brought against a Clearing Member. This provision currently specifies that failure to co-operate with an investigation would constitute a breach of the Rules, but the added language would specify that non-compliance is capable of giving rise to separate and/or additional disciplinary action in accordance with Part 10 of the Rules (including by amendment of the Notice of alleged breaches pursuant to Rule 1003(i)). Certain typographical corrections and clarifications would be made in Rule 1002(f) and (g), and Rule 1002(g) would also be amended to clarify that initial meetings following service of a Letter of Mindedness would be conducted in private.

Proposed changes to Rule 1002(h), in the context of investigations, would clarify that the initial findings to be communicated to the Clearing Member in writing must also be accompanied by an indication of the intended steps to be taken under Rule 1002(i) (for example, discontinuing the investigation or commencing disciplinary proceedings). The Clearing House would also be required to provide certain notices to the Clearing Member of the acts or practice which it has been found to taken, the relevant provisions breached and the proposed sanctions to be taken. Similar changes have also been proposed to Rule 1003 in relation to different stages involved in disciplinary proceedings and to section 1 of the Complaint Resolution Procedures.

Rule 1002(i) would be amended to better clarify certain of the steps that ICE Clear Europe may take following the communication of its initial findings to a Clearing Member, as set out in clauses (i)–(vii). In clause (v), the amendments would specify that the Clearing House may refer a matter for further inquiry by the Clearing House, a Market or Governmental Authority, where the Clearing House considers it necessary that the matter be investigated further. Clause (vii) would be revised to add a reference to written comments that may be received from the Clearing Member following the service of the Letter of Mindedness under Rule 1002(g). Certain typographical corrections would also be made in Rule 1002(i). A new subclause (viii) would also be added to state expressly that ICE Clear Europe may take a combination of the actions listed.

Various amendments proposed to Rule 1003 would enhance and clarify the process for disciplinary proceedings. The changes would, for example, reduce unnecessarily complex drafting, describe the various steps involved in the disciplinary process in more detail (similar to those changes proposed for Rule 1002(h) in the context of investigations) and specify further the timing by which certain actions must be taken. Specifically, in Rule 1003(b), the amendments would require notice to the Clearing Member in writing that disciplinary proceedings are to be commenced and state explicitly that the Clearing House will appoint the chairman and members of a disciplinary panel. Revised Rule 1003(c) would establish that the Clearing Member subject to the proceeding would be notified of the composition of the Disciplinary Panel within seven calendar days and then have ten further calendar days to object in writing to any particular appointment. Other changes include specifying, in further detail in Rule 1003(p), what information the Disciplinary Panel must communicate (to ICE Clear Europe and the relevant Clearing Member) once a decision has been made as to whether a breach of the Rules has been proven (following a hearing). This includes, for example, the rationale for the Disciplinary Panel's decision, details of the breach of the Rules and any sanctions to be imposed. The amendment further clarifies that sanctions will be suspended pending the determination of any appeal, unless the Clearing House determines that any order of suspension of the Clearing Member should be enforced during that period. In addition, Rule 1003(s) would be amended to clarify the Disciplinary Panel's ability to order a party to pay costs of disciplinary proceedings, including specifically the fees and expenses of the members of the Disciplinary Panel. This amendment is meant to clarify current practice, currently governed by a broad discretion by the panel to give awards on costs, and not substantively change the Disciplinary Panel's authority with respect to assessment of costs.

In Rule 1004, various amendments would be made to clarify certain conditions surrounding the use of the Summary Procedure and to improve the drafting of the provisions in this Rule more generally. The Summary Procedure is designed to be used in a scenario where a full disciplinary process would be disproportionate in terms of time or cost. Rule 1004(a) would be revised to clarify the timing for the use of the Summary Procedure, in order to facilitate prompt resolution of matters subject to the Summary Procedure. Rule 1004(b) would be amended to provide ICE Clear Europe with the express ability to refuse the use of the Summary Procedure for matters which are more serious or are ''considered of particular significance or relevance to the market in general or in the public interest''. This changes thus would clarify the circumstances in which ICE Clear Europe may reject the inappropriate use of the Summary Procedure. It is also proposed that Rule 1004(i) be amended to specify the information that the Summary Disciplinary Committee must communicate to the Clearing Member in greater detail (mirroring the changes to similar requirements imposed on the Disciplinary Panel under Rule 1003). Rule 1004(i) would also clarify that in keeping with the summary nature of the proceeding, the range of sanctions available to the Summary Disciplinary Committee would be limited to those set out in the Notice and any additional sanctions arising out of the conduct of the proceeding. Various other non-substantive drafting clarifications would be made in Rule 1004.

Rule 1005, addressing appeals in the context of disciplinary proceedings, would be revised to include a number of drafting clarifications and typographical corrections. Rule 1005(a)(ii) would clarify that the stated grounds in that provision are the only grounds for appeal. Rule 1005(d) would be amended to add a requirement that the lawyer appointed to the Appeal Panel has been in practice for more than ten years and to clarify that an expert assessor may not have a personal or financial interest in or have been involved in the investigation of or proceedings with respect to the matter under consideration.

A new Rule 1006 would be added to address the interaction between ICE Clear Europe's disciplinary procedures under the Rules and any similar procedures under Market Rules. Exchanges that ICE Clear Europe clears are likely to have their own disciplinary procedures, with the result that a single disciplinary issue may give rise to two different disciplinary procedures dealing with the same fundamental issues. For example, ICE Futures Europe has disciplinary procedures set out in Section E of its Regulations. The intention behind new Rule 1006 is to: (a) Ensure that the existence of parallel disciplinary procedures under Market Rules does not preclude ICE Clear Europe's own disciplinary procedures; and (b) confirm that where an exchange is carrying out disciplinary proceedings

at the same time as ICE Clear Europe in relation to an exchange member that is also a Clearing Member, such proceedings may be consolidated with those of ICE Clear Europe to avoid unnecessary duplication of efforts and resources. For example, it may be appropriate for the exchange and the Clearing House to rely on the same pieces of evidence and for combined interviews of witnesses to be conducted on behalf of both the exchange and the Clearing House in the investigative phase of the disciplinary process, to avoid unnecessary duplication of effort. Such coordinated proceedings may be appropriate in a range of circumstances, including alleged breaches of operational systems and controls, AML matters, market abuses and delivery failures.

Various changes have also been proposed to the Complaint Resolution Procedures to ensure that ICE Clear Europe's complaints procedures are consistent with the applicable requirements of UK law and are clear to follow and to improve the processes concerning the investigation and handling of complaints by ICE Clear Europe. Relevant changes would include:

(a) Adding a clarification in paragraph 2.1 of the Complaint Resolution Procedures that Eligible Complaints are only those complaints relating to the manner in which the Clearing House has performed, or failed to perform, its regulatory functions as defined by section 291(3) of the Financial Services and Markets Act 2000 (''FSMA''). FSMA imposes various regulatory functions on markets and clearing houses such as ICE Clear Europe. The Complaint Resolution Procedures are intended specifically, and solely, to address complaints involving the regulatory functions specified in such section of the FSMA, in accordance with the requirements of FSMA.[10] Similar changes to include a reference to section 291(3) of FSMA have also made in paragraphs 4.4 and 7.4 of the Complaint Resolution Procedures. In addition, the scope of Eligible Complaints would be amended in Rule 2.2 to clarify that as with its relationship with employees, the Clearing House's relationship with directors, officers, committees and committee member would not be the subject of an Eligible Complaint (consistent with the clarifications discussed above as to the role of such persons in the context of the disciplinary procedures). The amendments would also clarify the drafting of the exclusion for commercial disputes in paragraph 2.2(b);

(b) adding a time-limited ability for ICE Clear Europe to apply alternative processes instead of an investigation (including mediation) to resolve an Eligible Complaint, under new paragraph 3.6 of the Complaint Resolution Procedures;

(c) revising and clarifying stages of the Eligible Complaints investigation process under paragraph 4 of the Complaint Resolution Procedures—this includes new provisions dealing with the process for appointing of an investigator, procedures for delaying the complaints process where there are contemporaneous court or other proceedings dealing with the same or a related matter, timelines for complaints investigations, and procedures surrounding the referral of complaints to the independent Complaints Commissioner where they are not dealt with expeditiously by an investigation. The revisions also address the matters that the investigator must have regard to when deciding whether a complaint should be upheld, which are a failure to act fairly, a failure to perform the Clearing House's regulatory functions having regard to all of the circumstances, a lack of care or a mistake, or an act of fraud, bad faith or negligence (which factors are consistent with the requirements of FSMA);

(d) in paragraph 5, clarifying the manner in which the investor will provide his conclusions and recommendations for remedial action, if any, to the Clearing House and complainant, and removing an unnecessary reference to referral of a complaint to the Commissioner (which is covered in paragraph 4 and 6);

(e) confirming, in new section 6.3 of the Complaint Resolution Procedures, that the Commissioner's decision, if adopted by the Clearing House, would be in full and final resolution and settlement of a complaint, binding a Clearing Member and preventing the use of any other dispute resolution procedure in relation to the same complaint (for example arbitration). Similar language in existing section 1.4 of the Complaint Resolution Procedures would be removed as duplicative

(f) in paragraph 7, revising the timing for certain actions of the Commissioner upon referral of a complaint and making similar changes as discussed regarding paragraph 4 above to clarify the basis for uphold or rejecting complaint, consistent with the FSMA;

(g) in paragraph 8, clarifying the procedures for the Commissioner to report on the results of the investigation and providing the Clearing House's discretion to make such report, in whole or in part, public; and

(h) throughout the Complaint Resolution Procedures, including paragraphs 1, 9, 10 and 11, making a number of typographical and similar corrections, updates to cross-references, and similar non-substantive drafting corrections.

(vi) U.S. Tax Requirements

The proposed amendments would adopt a new Paragraph 6.1(k) of the Finance Procedures to address the application of Section 871(m) (''Section 871(m)'') of the Internal Revenue Code of 1986, as amended (the ''I.R.C.'') and regulations thereunder to futures and option contracts that reference certain underlying equity securities or equity indexes and are cleared by ICE Clear Europe (''equity contracts''). Section 871(m) imposes a 30% withholding tax on ''dividend equivalent'' payments that are made or deemed to be made to non-U.S. persons with respect to certain derivatives that reference equity of a U.S. issuer. Under the regulations implementing Section 871(m), certain financial transactions entered into by a non-U.S. person are considered ''Section 871(m) Transactions'' and can potentially give rise to dividend equivalents subject to withholding tax. A dividend equivalent is deemed to arise if a dividend is paid on the underlying U.S. equity referenced by such Section 871(m) Transaction. Furthermore, under applicable regulations, ICE Clear Europe itself becomes a ''Withholding Agent'' whenever it enters into a Section 871(m) Transaction with a non-U.S. Clearing Member. Unless the non-U.S. Clearing Member enters into certain agreements with the Internal Revenue Service (''IRS''), ICE Clear Europe would be required to withhold on dividend equivalents with respect to any transactions with the non-U.S. Clearing Member that are Section 871(m) Transactions. However, a potential Withholding Agent, such as ICE Clear Europe, can avoid the burden of reporting, collecting, and remitting the withholding taxes imposed by Section 871(m) on certain payments (including dividend equivalent payments) made or deemed to be made to a non-U.S. Clearing Member if (i) with respect to transactions in which the non-U.S. Clearing Member acts as a principal, such non-U.S. Clearing Member has

[10] As provided in paragraph 1.3 of the Complaint Resolution Procedures, these procedures do not preclude the Clearing House from considering or addressing any other complaint pursuant to such procedures as it may determine, and in accordance with any applicable law. Accordingly, the Clearing House may use such other procedures for purposes of considering or addressing complaints relating to other applicable laws, including the Exchange Act.

entered into a ''qualified intermediary agreement'' with the IRS as a ''qualified derivatives dealer'' whereby the non-U.S. Clearing Member essentially agrees to undertake the withholding responsibilities (a ''QDD'') and (ii) with respect to transactions in which the non-U.S. Clearing Member acts as an intermediary, such non-U.S. Clearing Member has entered into a qualified intermediary agreement with the IRS as a ''qualified intermediary'' and the non-U.S. Clearing Member assumes the primary obligation for withholding under relevant tax provisions (a ''Withholding QI'').

For these reasons, ICE Clear Europe is proposing to adopt a new paragraph 6.1(k) of the Finance Procedures. Subparagraph (i) would require that, as a precondition for a non-U.S. Clearing Member to clear equity contracts with ICE Clear Europe, any such non-U.S. Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes must enter into appropriate agreements with the IRS and meet certain other specified qualifications under procedures of the IRS, such that ICE Clear Europe will not be responsible for withholding on dividend equivalents under Section 871(m). Subparagraph (ii) would require non-U.S. Clearing Members to certify annually to the clearing house that they satisfy these requirements. Subparagraph (iii) would require non-U.S. Clearing Members to provide, on an annual basis, certain information necessary for ICE Clear Europe to make required IRS filings. Subparagraph (iv) would require non-U.S. Clearing Members to notify the clearing house of relevant changes in their circumstances affecting compliance with paragraph 6.1(k). Subparagraph (v) would clarify that a Clearing Member's tax status as an ''intermediary'' or ''dealer'' for this purpose would not affect its status for regulatory or other purposes.

(vii) Other Default Management Changes

The amendments would make a number of other changes related to default management. The definition of ''Bankruptcy'' in Rule 101 would be amended to include a scenario where a person is ''granted suspension of payments''. Insolvency laws may sometimes allow for a suspension of payments, which ICE Clear Europe would treat as a ''Bankruptcy'' under the Rules to ensure that it has the full range of default management powers available to address such a scenario. (The amendment would not affect the existing limitations on exercising default remedies in connection with a Resolution Step.)

The definition of ''Failure to Pay'' in Rule 101 would be amended to clarify the length of the cure period between the service of a failure to pay notice on ICE Clear Europe by a Clearing Member and the point at which a ''Failure To Pay'' occurs, in circumstances where ICE Clear Europe is granted an extension under Rule 110(b) or (c).

The definitions of ''Insolvency'' and ''Insolvency Practitioner'' in Rule 101 would be amended to ensure that all relevant insolvency scenarios and insolvency office-holders are covered by the definitions. The defined term ''Insolvency'' would be widened to also cover a suspension of payments or moratorium being granted, which reflects a similar change made to the ''Bankruptcy'' definition (described above). In addition, the proposed changes would bring the making of an ''instrument or other measure'' by a Governmental Authority pursuant to which a person's property is transferred within the definition, in addition to ''orders'' of a similar nature. These changes have been proposed following a legal review of relevant clearing member jurisdictions.

A change is proposed at Rule 901(a)(viii) to expand the list of approvals and similar statuses, the revocation of which may constitute an Event of Default, to include loss of relevant ''exemptions'' by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility. The change is being made as the loss of such an exemption is effectively equivalent to the loss of a licence or regulatory authorization, and ICE Clear Europe accordingly believes that loss of an exemption should similarly be treated as an Event of Default under Rule 901(a)(viii).

A new Rule 902(d) is proposed to be added, which would provide that ''Transfer Orders shall be legally enforceable, irrevocable and binding on third parties in accordance with Part 12, even on the occurrence of an Event of Default''. This proposed new provision refers to Part 12 of the Rules within the main default rules in Part 9, which is intended to provide comfort that the protections from the application of insolvency law under EMIR and the UK Companies Act 1989 for the default procedures of a central counterparty are available for Transfer Orders described under Part 12.

In Rule 904(b), changes are proposed to clarify the price at which positions are transferred (''ported'') from a defaulting Clearing Member to a non-defaulting Clearing Member and the relevant time for the determination of such price, which is at the discretion of the Clearing House. The proposed changes would allow ICE Clear Europe to use the time of porting, the time of an Event of Default, Insolvency or Unprotected Resolution Step, or the end of the Business Day prior to porting, Event of Default, Insolvency or Unprotected Resolution Step as the time to determine the porting price. These changes are designed to facilitate ICE Clear Europe's ability to manage defaults efficiently and effectively, taking into account different insolvency regimes in Clearing Member jurisdictions. Similar changes are also proposed to Rule 905(b)(xiv) to provide that ICE Clear Europe would determine the price at which it ports positions to a transferee Clearing Member.

Rule 905(b)(vi), which addresses how ICE Clear Europe would determine the liquidation price for offsetting Contracts that are to be paired and cancelled as part of the default management process, would be revised to refer to a new Rule 905(g). Rule 905(g) would provide that for purposes of liquidations, terminations and close-outs under Rule 905 ICE Clear Europe would have discretion to determine the relevant price of the Contract. ICE Clear Europe would be permitted to do so on the basis of the Exchange Delivery Settlement Price, Mark-to-Market Price, FX Market Price, Reference Price, Market-to-Market Value, current market value or any other price specified by ICE Clear Europe. The changes would also clarify that ICE Clear Europe has discretion to determine the reference time for the purposes of the liquidation price calculation. A further change has been proposed to Rule 905(b)(vi) to insert the words ''buy and sell or'' before ''Long and Short Positions'' to reflect the terminology used throughout the Rules to refer to opposite positions in Futures. (''Long and Short'' are typically used to refer to positions in Options rather than Futures.)

New Rule 905(b)(xix) would be added to clarify that ICE Clear Europe has authority to carry out default auctions and construct auction lots, which may include positions relating to multiple customer accounts of a Non-FCM/BD Clearing Member. (Consistent with US regulatory requirements, an auction lot relating to Contracts of a defaulting FCM/BD Clearing Member may only contain positions relating to a single account.) The new provision would not permit a single auction lot to consist of both proprietary and client positions. Further, the new provision would provide ICE Clear Europe with the explicit power to use a single bid price received for a particular lot of auctioned

positions to calculate liquidation values and net sums by apportioning this bid price across the various accounts in which the contracts in the auction lot are recorded. Although the existing Rules do not necessarily preclude ICE Clear Europe from constructing an auction lot consisting of contracts recorded in different accounts, the proposed amendment would provide an express authority to do so. The amendment would thus enhance transparency.

In Rule 906(a), the definition of the ''GFC'' variable in the net sum calculation, which references guaranty fund contributions of the Defaulter, would be amended to provide that guaranty fund contributions must be applied for this purpose ''in accordance with Rules 906(b) and (c)''. The referenced provisions set out restrictions on the setting off or aggregation of assets attributable to different accounts of a defaulting Clearing Member for the purposes of the net sum calculation and require a separate net sum calculation to be carried out for each account. The reference in the ''GFC'' definition to these provisions is not intended to change current practice, but to clarify that these limitations apply to the use of the guaranty fund contributions in determining the net sum calculations. A similar change is proposed to the final subparagraph of Rule 906(b), to clarify that guaranty fund contributions and other amounts may be used for the purpose of calculating any net sum on any account of the defaulting Clearing Member, subject to the restrictions in Rule 906(c) (the restrictions in Rule 906(b) are already referenced in the current version of this provision).

Rule 906(c) is proposed to be amended to provide that ICE Clear Europe ''shall'' aggregate, set off, or apply surplus assets in relation to a defaulting Clearing Member's Proprietary Account to meet a shortfall on one or more of its Customer Accounts (rather than ''may''). This is not intended to change the Clearing House's default management practices (under which such application of the Proprietary Account would be made), but is intended to clarify the operation of the Rules and avoid potential questions regarding whether or not ICE Clear Europe has legitimately exercised its discretion to set off assets in this way.

A clarification would be made in Rule 912(b)(iv), which addresses liability of the Sponsor and Sponsored Principal on an Individually Segregated Sponsored Account, to add the words ''and severally'' after the word ''jointly''. The change was suggested by counsel to an industry association concerning the sponsored principal model, and is intended to fix a drafting error to ensure that the liabilities and assets on sponsored accounts have mutuality. The revised language is consistent with other provisions in Part 19 addressing joint and several liability for such accounts, and the ''and severally'' language in this provision was inadvertently omitted.

Rule 1202(b)(i) would be amended to include a new paragraph (B) stating an additional circumstance in which a Securities Transfer Order would be deemed to arise under the designated system operated by ICE Clear Europe for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999. In the event of one Clearing Member (or Sponsored Principal) allocating an F&O Contract to another Clearing Member (or Sponsored Principal) under Part 4 of the Rules, a new Securities Transfer Order would be deemed to arise under the Designated System under new Rule 1202(b)(i)(B). The intended result of this change is that such a transfer would be covered by the settlement finality provisions under the Settlement Finality Regulations (implementing the EU Settlement Finality Directive), and subject to section 20 of those Regulations, and benefit from the Regulations' protections against the application of national EU insolvency laws. Changes have also been proposed to Rule 1202(f) to implement this new Transfer Order for allocations by inserting the words ''or allocated'' after ''transferred, assigned or novated''.

In Rule 1202(m)(iv)(A), changes are proposed to refer to rights, liabilities and obligations of Clearing Members being transferred or assigned, in addition to the current reference to these being novated. These proposed changes would ensure consistency with the terminology used elsewhere in the Rules (for example in Part 9) in relation to the transfer of positions from one Clearing Member to another Clearing Member (whether in a default scenario or otherwise) and that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another. Rule 1202(m)(vi)(B) is also proposed to be amended to add the words ''or Customer'' after the word ''Affiliate'' to correct an unintentional omission.

Rule 1205(i) would be amended to provide that New Contract Payments Transfer Orders shall also be satisfied if and at the point that the relevant F&O Transaction or Contract ''has become subject to a Position Transfer Order that has itself become satisfied under Rule 1205(b)''. This drafting change has been proposed to clarify that a New Contract Payment Transfer Order would terminate if the relevant transaction or contract to which it relates has become subject to a Position Transfer Order that has been satisfied, which would occur once the relevant contracts have been transferred, assigned or novated to the relevant transferee Clearing Member.

(viii) Delivery Procedures Changes

In the Delivery Procedures, various changes would be made to ensure that the procedures are consistent with the operational practices and systems of ICE Clear Europe and affiliated trading venues, including with respect to the processes set out in the delivery timetables. Paragraph 19 of the General Provisions, which describes the Guardian electronic grading and delivery system used by ICE Clear Europe, would be amended to reflect the fact that other deliverable products may be dealt with in the Guardian system in addition to those financials & softs commodities already specifically listed in that paragraph.

In Parts A and C of the Delivery Procedures, a new paragraph would be added to clarify that all references to timings or times of day in that Part are references to London times. In addition, updates to several Parts of the Delivery Procedures would be made to reflect current operational practices whereby certain submissions (such as delivery intentions) are made electronically through the ECS system, rather than through submission of specified delivery forms, which in many cases are out of date (and accordingly references to such forms have been removed). Other changes to update deadlines and descriptions for particular delivery steps or, in some cases, to delete delivery steps that are no longer carried out would be made. Section 7, which addressed alternative delivery procedure for certain European emissions contracts, would be deleted as it is unnecessary in light of the provisions of Part A of the Delivery Procedures. The various changes have been proposed in the following parts of the Delivery Procedures: Part A, paragraphs 5.1, 5.2 and 5.3 (Delivery Timetables); Part B, paragraph 2 (Delivery Timetable) and paragraph 4 (Delivery Documentation Summary); Part C, paragraph 5 (Delivery Timetable) and paragraph 9 (Delivery Documentation Summary); Part D, paragraphs 5.1 and 5.2 (Delivery Timetables) and paragraphs 8.1 and 8.2

(Delivery Documentation Summaries); Part F, paragraphs 6.1 and 6.2 (Delivery Timetables) and paragraphs 9.1 and 9.2 (Delivery Documentation Summaries); Part G, paragraphs 5.1 (Delivery Timetable) and 8.1 (Delivery Documentation Summary); Part H, paragraphs 5.1 (Delivery Timetable) and 8.1 (Delivery Documentation Summary); Part I, paragraphs 6.1 (Delivery Timetable) and 9.1 (Delivery Documentation Summary); Part K, paragraphs 4 (Delivery Timetable) and 8 (Delivery Documentation Summary); Part L, paragraphs 4 (Delivery Timetable) and 8 (Delivery Documentation Summary); Part N, paragraph 5 (Delivery Timetable); Part Q, paragraph 1 (Delivery Timetable); Part U, paragraphs 1.6 and 1.9 (Delivery Timetables); and Part AA, paragraphs 6.1 (Delivery Timetable) and 9.1 (Delivery Documentation Summary).

(ix) Other Changes

Various other miscellaneous changes and clarifications are proposed to the Rules and Procedures.

Changes have been proposed to expand the definition of ''Board'' in Rule 101 so that it clearly includes, in the context of any power, discretion or authority of the board, other similar bodies and committees established by ICE Clear Europe thereunder. Similarly, in a number of places in the Rules, changes have been proposed to include ''committees'', ''individual committee members'' and similar terms in addition to existing terms referring to persons exercising governance or other functions for ICE Clear Europe or a Clearing Member, such as ''directors'' or ''officers''. These were previously omitted in various places or terms were used inconsistently to describe individuals or governance bodies in different provisions of the Rules. ICE Clear Europe has determined, following an internal review, to make these changes to more accurately describe the persons involved in governance in a consistent way in the Rules. The proposed changes are contained in Rules 102(j)(B), 102(p), 109(c), 111(a), 114(a), 201(a)(xxvi), 905(f), 1001(d) and 1003(q). The definition of ''Representative'' has also been expanded so as to cover any persons who are employed or authorised by, or appointed to act on behalf of, another person and such term would be inserted in the Rules to refer to representatives of Clearing Members in Rule 102(j).

Certain changes have also been proposed to the Rules to improve the provisions concerning intellectual property (''IP'') rights. The definition of ''Intellectual Property'' in Rule 101 would be revised to improve the international coverage of the definition, by expressly confirming that it covers IP rights in any part of the world and all IP rights ''for the entire duration of such rights''. This clarifies the provisions relating to IP under the Rules to ensure that all the standard IP rights are covered. In addition, a new Section 12(d) would be inserted in each of the Standard Terms, which would require Customers to agree to Rule 406(g), which concerns the Clearing House's intellectual property rights. As part of its review of the Standard Terms more generally, as discussed herein, ICE Clear Europe has determined that this change is appropriate to avoid any uncertainty as to the applicability of Rule 406(g) in the context of customer transactions. The representation in question supports the position in relation to IP rights provided for in the Rules. ICE Clear Europe has added this provision to ensure that it has the same contractual representation from Customers as regards IP rights as it does from Clearing Members.

Rule 106 would be amended to expand the provisions relating to confidentiality and the disclosure of information. For drafting clarity, redesignated paragraph (b) would set out the information to be held in confidence by the Clearing House, and redesignated paragraph (c) would specify disclosures of confidential information permitted to be made by the Clearing House. In terms of the scope of confidential information under Rule 106(b), clarifications would be made to provide that any information in relation to a Customer in connection with Margin payments is covered by the confidentiality obligation. Changes proposed to Rule 106(c) would clarify and extend the circumstances in which ICE Clear Europe would be permitted, under the Rules, to disclose confidential information. Specifically, a clarification would be added at Rule 106(c)(i) to allow for confidential information to be disclosed where ''lawful requests'' are received from regulators (rather than only a formal statutory request with legal force or Court order) or if necessary for the making of a complaint or report for offences which may have been committed under Applicable Laws. This amendment follows an internal review of these provisions and is intended to avoid potential questions as to ICE Clear Europe's ability to disclose confidential information when ICE Clear Europe is subjected to regulatory requests for information or where the disclosure is advisable under Applicable Law but not necessarily required by formal exercise of statutory powers or an unequivocal court order or statutory mandate.

Rule 115(b), which addresses the sharing of information with Governmental Authorities or referrals of complaints to Exchanges, Clearing Organisations or Regulatory Authorities, would be amended to provide that such actions are subject to the requirements of Rule 106.

Various corrections and clarifications are proposed at Rule 110(a), Rule 114(d) and paragraph 4.2 of the Business Continuity Procedures relating to ICE Clear Europe's ability to extend or waive requirements of the Rules. In Rule 110(a), a sentence would be added providing that waivers may be publicized at the discretion of ICE Clear Europe. (ICE Clear Europe does not believe that this amendment alters its existing authority, but believes it would be useful to clarify that it may make public information about any such waiver.) A new Rule 114(d) is proposed to provide expressly that ICE Clear Europe may take any measure that it deems reasonably necessary in relation to the organization and operation of the Clearing House. ICE Clear Europe is proposing to add this provision to ensure that it is not prevented from taking action under a range of circumstances that may arise, including, but not limited to a default scenario, merely because there is no specific provision of the Rules explicitly empowering it to do so. This authority is subject to a proviso that ICE Clear Europe may not take any action in breach of any provision of the Rules or Procedures or that would modify the Rules or Procedures, and that any such action must be taken in accordance with the Clearing House's internal governance requirements. ICE Clear Europe does not believe that this amendment would alter its existing ability to take actions in such circumstances, but the amendment would provide greater clarity and legal certainty as to its permitted scope of action. ICE Clear Europe would rely on its internal controls and compliance function to ensure that any such actions are consistent with its Rules and Procedures. A related change at paragraph 4.2 of the Business Continuity Procedures would clarify that ICE Clear Europe's discretionary powers to amend or waive requirements or deadlines in the case of a Business Continuity Event affecting a Clearing Member only apply to the affected Clearing Member(s).

It is proposed that Rule 117(k) be amended to clarify that Clearing Members with the ability to claim

sovereign immunity would be deemed to have ''irrevocably'' waived such immunity for the purposes of dispute resolution processes under Rule 117, to the extent permitted by applicable law. This approach is consistent with typical practice for waivers of sovereign immunity and the documentation thereof in the derivatives markets. ICE Clear Europe is adopting this amendment, following an internal review, for clarity and to avoid any suggestion that a waiver of immunity in this context could be revoked.

Various enhancements to clearing membership requirements for Clearing Members have been proposed in Rule 201(a). For example, the need for representatives of Clearing Members to hold all authorizations, licences, consents and approvals required under applicable laws would be added in Rule 201(a)(vi). Additional detail on operational, managerial, back office, systems, controls, business continuity and banking requirements, among others, for Clearing Members has been proposed in Rules 201(a)(xi), (xiv), (xxv), (xxvi) and (xxvii). Similarly, changes are proposed to Rule 202(a)(xiv), (xxii) and (xxiii) to enhance the ongoing requirements for Clearing Members. These changes include additional detail on system and controls requirements and the addition of two new requirements to ensure that ICE Clear Europe has sufficient access rights in relation to its Clearing Members. Proposed new Rule 202(a)(xxii) would require Clearing Members to be accessible during and for two hours immediately after close of business on every business day. Further, proposed new Rule 202(a)(xxiii) would require Clearing Members to provide such access as ICE Clear Europe requires to their premises, records and personnel for the purposes of, for example, carrying out investigations or audits. Following an internal review of relevant requirements, ICE Clear Europe has proposed some of these proposed changes to address identified commercial and operational risks for ICE Clear Europe and to ensure that Clearing Members meet appropriate and evolving standards concerning their systems and operations based on day-to-day operational experience with Clearing Members. The amendments also generally reflect improvements are further intended to better harmonize Rules and membership requirements across ICE clearinghouses.

In Rule 203(a)(xvi), a change is proposed to clarify that Clearing Members are prohibited from engaging in conduct that would render them unable to satisfy obligations on Clearing Members under Rule 202(a) (just as the current Rule prohibits conduct that would render the Clearing Member unable to satisfy the membership criteria under Rule 201(a)). The amendment is intended to avoid any potential gap in ongoing obligations under the Rule. New Rule 203(a)(xxii) would explicitly limit the ability of Clearing Members or Affiliates to exercise set-off rights against ICE Clear Europe where such Clearing Members (or their Affiliates) have a relationship in another capacity, for example providing banking or custodial services to ICE Clear Europe. This change is intended to reduce the risks that other contractual agreements contain provisions that could interfere with default management or operational processes. The approach aims to provide a level playing field for all Clearing Members, regardless of any other commercial relationships with the ICE group.

Changes are proposed in Rules 204(a)(xii) and 204(b)(i) to enhance certain notification requirements imposed on Clearing Members. The Clearing Members' notification requirement at Rule 204(a)(xii) would be extended to require notification of investigations or allegations of breaches of Applicable Laws by a Clearing Member (if they are non-frivolous and non-vexatious), in addition to actual breaches. ICE Clear Europe believes this is an appropriate extension of the Rule, to facilitate ongoing monitoring by the Clearing House of circumstances that may significantly affect Clearing Members. In Rule 204(b)(i), additional language is proposed to require that a Clearing Member notify the Clearing House of a change of control where that change of control is subject to the approval of the FCA or PRA, in addition to a change of control notifiable to the FCA or PRA (as required under the current version of Rule 204(b)(i)). In ICE Clear Europe's view, the amendment avoids a potential gap in notification requirements based on a distinction between regulatory notice and approval that is not relevant in this context.

It is proposed that Rules 206(a) and (b) be amended to reflect the fact that Clearing Members are required to maintain other financial resources requirements (in addition to Capital) under the relevant CDS, Finance and Membership Procedures. (The amendment thus does not change requirements applicable to Clearing Members but is intended to correctly cross-refer to the existing requirements of various Procedures documents.) The proposed amendments would also require Clearing Members to provide documentation and statements supporting calculations of financial resources requirements, as well as details of the terms and conditions of any documentation relating to financial resources requirements, upon ICE Clear Europe's request.

Rule 301(f) would be revised to allow the Clearing House to grant an exception to the requirement for payments to be made by electronic transfer from an account at an Approved Financial Institution for any type of payment (and not merely application fees, as in the current Rules). This is intended to provide ICE Clear Europe with greater flexibility to allow payments to be made using a different method should this become necessary.

A clarification is proposed to Rule 404(a)(vii) that ICE Clear Europe must have requested additional Margin or Permitted Cover ''at the time of the Transaction'' for a Contract to be voidable under this provision if such additional Margin or Permitted Cover is not provided by a specified time. The amendment is intended to provide greater legal certainty by ensuring that the Clearing House's ability to void the Contract is limited to the specific situation where additional margin is requested at the time of the transaction and is not provided. (A failure to provide margin requested at other times would be addressed by the default rules.)

In Rule 501(a), a change is proposed that Approved Financial Institutions may only act in another capacity if ICE Clear Europe has provided its approval ''in writing''. The amendment is intended to provide greater certainty for the Clearing House and Approved Financial Institutions as to the capacities in which such institutions may be acting.

At the beginning of Part 15 of the Rules and at paragraph 1.86 of the CDS Procedures, changes have been proposed to clarify that references to timings or times of day in connection with CDS Contracts are to Greenwich Mean Time (without taking into account daylight savings time (British Summer Time)). These changes are necessary to reflect applicable timings for the CDS market under standard CDS documentation, and to avoid application of Rule 102(h) (which specifies London time by default, including with daylight savings time adjustments). This change is intended to avoid 'basis risk' between cleared CDS Contracts and uncleared CDS contracts (which also follow standard CDS documentation using Greenwich Mean Time). The changes reflect current operational practices and remove an

unintended inconsistency in the Rules and Procedures.

Various changes have been proposed in paragraphs 2.2, 2.4(c), 2.6–2.7, 6.1(a)(i) and 6.2(g) of the Clearing Procedures to update certain deadlines in order to conform to or reflect relevant Market Rules, conform to certain operational practices and specify the message format requirements for F&O Contracts to be validly accepted by ICE Clear Europe's systems. In paragraph 2.2(c)(ii) a reference to allocation of trades within one hour would be removed, as the timing of allocation may be a matter of the relevant Market Rules. Paragraph 2.6 would make explicit in the Clearing Procedures the Clearing House's position that Clearing Members bear the risk of late or incorrect instructions to the Clearing House. Paragraph 2.7 would provide clarity as to specific reasons for rejection of F&O Contracts and procedures for resubmission.

The Finance Procedures would be amended to clarify references to certain operational practices involved in settling margin payments between ICE Clear Europe and its Clearing Members. Changes have been proposed in paragraphs 2.1 and 2.2 to reflect settlement requirements in relevant currencies, whether in whole or in part. The amendments would also clarify the drafting of the existing provision providing for a ''haircuts'' to be applied to original margin provided in a currency other than the reference currency for a particular contract. Similarly, changes are to be made in paragraphs 5.6 (Table 1) and 6.1(i)(i) of the Finance Procedures to refer to the full range of currencies aside from EUR, USD and GBP that are currently available to be used for settlement. These amendments are intended to update the Finance Procedures to reflect current settlement practice.

Paragraph 6.1(b) of the Finance Procedures would be reorganized and a statement would be added (for clarification and reflecting the current requirements of the Rules) that payment requirements in respect of Margin adjustments would be subject to Part 3 of the Rules. In addition, drafting clarifications in paragraphs 6.1(e) and (f) would confirm that instructions for withdrawals of cash must be received by the deadlines specified in the relevant table for cash to be withdrawn on the same day and to specify the conditions that must be satisfied for ICE Clear Europe to accept cash transfers entered into its systems after the instruction deadlines. The amendments are intended to state more clearly current operational practices of the Clearing House.

Paragraph 6.1(g) would be revised to provide explicitly that ICE Clear Europe has the ability to delay cash withdrawals by a Clearing Member under paragraph 6.1 if there are outstanding amounts payable by that Clearing Member (or any Affiliate of that Clearing Member) to ICE Clear Europe, and that such amounts withheld would be treated as additional required margin of the Clearing Member. This amendment would codify an existing operational practice of the Clearing House and will enhance the Clearing House's ability to manage the credit and liquidity risk of a potential default by a Clearing Member that has not completed its daily settlement obligations.

In paragraphs 6.1(i)(i) and 6.1(i)(ii) of the Finance Procedures, amendments have also been proposed to provide that ICE Clear Europe may publish circulars in relation to certain matters relating to intra-day margin calls affecting a significant number of Clearing Members but is not obligated to do so. The change is intended to provide the Clearing House flexibility to determine the best means of communicating with affected Clearing Members under the particular circumstances, which will not necessarily be a widely distributed circular to the entire market.

In paragraph 6.1(i)(iii) of the Finance Procedures, amendments would provide that adjustments to guaranty fund contributions will be made 5 Business Days after the date of notification by circular for all guaranty fund segments (a change from two Business Days for the CDS and FX Guaranty Funds). ICE Clear Europe believes that it is appropriate to harmonize the guaranty fund contribution requirements across all product categories, and further that the five Business Day timeframe is sufficiently protective of the Clearing House in the case of ordinary course adjustments to the guaranty funds.

In paragraph 6.1(i)(vii), the list of types of payments that may be included in end-of-day or ad hoc net payments would be updated to include Option premiums, corporate action payments, and amounts resulting from reduce gain distributions, product terminations or non-default loss contributions under Part 9 of the Rule. The change is intended to reflect the full range of payments that may be made to and from the Clearing House, consistent with current practice.

Various changes have been proposed in paragraph 7.2 of the Finance Procedures in relation to non-cash assets provided as Permitted Cover. The changes are intended to update and improve the drafting of this provision and more clearly reflect the operational detail of how ICE Clear Europe deals with Permitted Cover, including the use of the ECS system to provide information in relation to non-cash Permitted Cover provided to the Clearing House. The amendments would also reflect in the Rules the Clearing House's existing ability to generate liquidity from non-cash assets transferred to the Clearing House by title transfer pursuant to repurchase transactions, secured lending facilities or similar arrangements, subject to the requirement of the Clearing House to return unused Margin and Guaranty Fund contributions of the same kind as was provided. (The use of such transactions is not currently addressed in the Rules.) In paragraph 8.2, a clarification would be added that a request form to lodge new certificates of deposit is available on ICE Clear Europe's website.

In paragraphs 11.2 and 11.4 of the Finance Procedures, changes are proposed to remove a presumption that instructions relating to securities are for same-day settlement and to reflect that ICE Clear Europe accepts settlement instructions specifying a settlement date up to two business days after the relevant trade date, and to make certain other drafting improvements. This amendment is intended to reflect existing practice for the range of securities accepted by ICE Clear Europe, and the amendments are intended to provide improved clarity.

Various other typographical corrections and similar changes have been proposed elsewhere throughout the Finance Procedures.

A drafting change is proposed to paragraph 3.1(m) of the General Contract Terms to make the general termination provision for all contracts more generic. Following the proposed amendments, paragraph 3.1(m) would simply state that contracts terminate automatically ''only in accordance with and at the times specified in the Rules''. This change would ensure that this provision of the General Contract Terms does not need to be updated when termination provisions in the Rules are amended.

The Membership Procedures would be amended in various places to update the various requirements that Clearing Members must meet to attain and maintain membership (consistent with the amendments to the membership provisions of the Rules discussed above), and ensure that the Membership Procedures use terminology consistent with the Rules. Paragraph 1.1 would be amended to confirm that ICE Clear

Europe would require evidence of authority of Clearing Member signatories to be provided, which is consistent with the Clearing House's current practices. In the table at paragraph 4.2, various updates are proposed to reflect the wording used in the current Rules (as amended by this and previous filings) and to ensure that accurate details of timing and other requirements for submission of notifications and documentation are specified. In parts C.4, D.5, D.7 and D.11 of the table, references to key personnel of a clearing member (or similar references) have been expanded to include the board of directors. Amendments to part C.11 would also clarify that notices relating to changes in Eligible Persons (*i.e.* persons for which Clearing Members clear) include suspension of clearing arrangements for Eligible Persons, and are separate from any requirements under the Clearing Membership Agreement. In part E.2, the timeframe for certain notices relating to complaints has been revised to be consistent with amendments to the Complaint Resolution Procedures.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [11] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[12] In particular, Section 17A(b)(3)(F) of the Act requires that that rule changes be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, tåhe safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest.[13]

As discussed herein, the proposed rule changes are principally designed to enhance key aspects of the clearing framework, including by improving the customer documentation framework for Non-FCM/BD Clearing Members, adopting an Externalized Payments Mechanism, facilitating treatment of variation and mark-to-market margin as settlement payments for purposes of Clearing Member capital requirements, improving futures and option settlements and related calculations, facilitating compliance with certain U.S. tax requirements and improving overall default management. The amendments also clarify various aspects of the Rules and Procedures to improve drafting and ensure consistency with operational practices and processes as they have evolved. In ICE Clear Europe's view, these changes, as discussed in detail herein, will facilitate the prompt and accurate clearance and settlement of transactions through the Clearing House and are further generally consistent with the protection of investors and the public interest. Furthermore, enhancing the customer documentation framework, and improving the ability of ICE Clear Europe to conduct post-default porting, as well as other improvements to the margin process and the default management processes discussed herein, will enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible. As such, the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[14]

With respect to proposed paragraph 6.1(k) of the Finance Procedures, the changes are intended to facilitate compliance by ICE Clear Europe and Clearing Members with their obligations under Section 871(m) and related U.S. tax obligations. ICE Clear Europe further believes that the amendments will facilitate the clearance and settlement of securities and derivative transactions by allowing it to avoid having to withhold on payments to non-U.S. Clearing Members relating to dividend equivalents. The imposition of withholding responsibilities on ICE Clear Europe would potentially interfere with the current ICE Clear Europe daily settlement process for equity contracts, and introduce new complications and risks for that process. The proposed rule change would eliminate such potential complications and risks, and permit ICE Clear Europe to continue its current settlement procedures for equity contracts, without need for ICE Clear Europe to withhold on payments made to Clearing Members. Thus, ICE Clear Europe believes the proposed rule change will promote the prompt and accurate clearance and settlement of securities and derivatives transactions and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[15]

Moreover, ICE Clear Europe believes that proposed paragraph 6.1(k) does not unfairly discriminate among participants in the use of the clearing agency, within the meaning of Section 17A(b)(3)(F).[16] Although the proposed rule change would impose additional requirements and/or restrictions on non-U.S. Clearing Members that would not apply to Clearing Members that are U.S. entities for U.S. federal income tax purposes (''U.S. Clearing Members''), ICE Clear Europe believes that this approach reflects the nature of the requirements of Section 871(m) (as the additional withholding requirements under Section 871(m) would not apply with respect to payments by the Clearing House to U.S. Clearing Members). Moreover, ICE Clear Europe believes it is preferable for the clearing system as a whole to place compliance costs with respect to Section 871(m) Transactions on the relevant Clearing Member, rather than on the Clearing House itself, given that withholding can be avoided at the Clearing House level if the relevant Clearing Member has entered into the requisite agreements with the IRS complies with certain other conditions. Therefore, ICE Clear Europe believes that the proposed rule change is not unfairly discriminatory among participants in the use of the clearing agency and is consistent with Section 17A(b)(3)(F) of the Act.[17]

The amendments are additionally consistent with Section 17A(b)(3)(G) of the Act which requires that the rules of a clearing agency provide that its participants be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.[18] The amendments are also similarly consistent with Section 17A(b)(3)(H) of the Act which requires that the rules of a clearing agency in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any persons seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.[19] The various changes proposed to Part 10 of the Rules to streamline and improve ICE Clear Europe's disciplinary processes are consistent with these requirements of the Act. The drafting improvements would clarify the process of investigating rule breaches, clarify that non-compliance with an investigation could lead to additional disciplinary action against a Clearing Member, clarify the conditions surrounding the use of the Summary Procedure, and address the interaction between ICE Clear Europe's disciplinary procedures

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 240.17Ad–22.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 15 U.S.C. 78q–1(b)(3)(G).

[19] 15 U.S.C. 78q–1(b)(3)(H).

under the Rules and any similar procedures under Market Rules to ensure that parallel disciplinary procedures under Market Rules would not preclude disciplinary procedures ICE Clear Europe's own rules. ICE Clear Europe believes that the clarity relating to disciplinary processes will better ensure appropriate disciplinary actions are taken with respect to rule violations, consistent with the requirements of Section 17A(b)(3)(G) of the Act[20] and Section 17A(b)(3)(H) of the Act.[21]

The amendments are also consistent with the relevant specific requirements of Rule 17Ad–22,[22] as set forth in the following discussion:

(i) Legal Framework

Rule 17Ad–22(e)(1)[23] requires that clearing agencies establish policies and procedures that provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. Various amendments have been proposed to strengthen the legal foundations for the customer documentation framework, through the Standard Terms, in particular. Amendments would be made to the Rules to confirm Customers' and non-FCM/BD Clearing Members' acceptance of the Standard Terms, and to limit the effect of conflicting automatic early termination provisions in customer documentation. These changes would reduce legal uncertainties in default management. The definitions of Bankruptcy, Insolvency and Insolvency Practitioner would be amended to better capture all relevant proceedings in relevant jurisdictions. The Rules would also be amended to improve the provisions relating to confidentiality and the disclosure of information by clarifying and extending the circumstances in which ICE Clear Europe would be permitted to disclose confidential information to allow it to facilitate compliance with regulatory requests.

Other changes would enhance legal certainty and settlement finality. Amendments would enhance representations as to transfer of Permitted Cover, including that a ''transfer of Permitted Cover'' is not contrary to or in breach of a requirement of Applicable Law, third party right or other contractual obligation. A further Rule change would enhance the enforceability of Transfer Orders in default scenarios and take advantage of protections from the application of insolvency law under EMIR and the UK Companies Act 1989. Another Rule amendment would include an additional circumstance in which a Securities Transfer Order would be deemed to arise under the designated system operated by ICE Clear Europe for the purposes of settlement finality legislation. (These amendments are also consistent with the settlement finality requirements under SEC Rule 17Ad–22(e)(8).[24])

Finally, certain changes will also facilitate compliance with U.S. tax requirements under Section 871(m), to facilitate the ability of ICE Clear Europe to make payments of dividend equivalents to Clearing Members free of US withholding taxes, in compliance with US tax laws.

The amendments also generally update and clarify the drafting of various provisions of the Rules and Procedures, with the goal of enhancing the clarity of the overall legal and documentation framework. In totality, the amendments largely act so as to align the rules with existing operational practice, to correct errors, to promote legal certainty and to provide transparency.

For the foregoing reasons, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(1).[25]

(ii) Physical Settlement

Pursuant to Rule 17Ad(e)(10),[26] clearing agencies are required to establish and maintain written standards stating their obligations with respect to the delivery of physical instruments and manage the associated risks. Multiple changes have been made to the Amended Documents to clarify and update delivery arrangements and better align them with operational practice. As discussed herein, clarifications have been made to the Rules and Procedures relating to the determination of the Exchange Delivery Settlement Price for Futures, settlement of Futures and Options, representations and warranties as to title and other matters on physical settlement, the role of Markets in the settlement process and various other processes for physical settlement, including the delivery of securities, among others. The Delivery Procedures in particular have also been updated to reflect operational systems and practices, including as to delivery timetables and documentation. Through enhancing and clarifying ICE Clear Europe processes and arrangements with respect to physical deliveries, and better aligning their descriptions in the Amended Documents with operational practice, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad(e)(10).[27]

(iii) Margin

Rules 17Ad–22(b)(2)[28] and (e)(6)[29] require clearing agencies to use margin requirements to limit their credit exposures and have the operational capacity to make intraday margin calls. The amendments enhance ICE Clear Europe's approach to managing margin, particularly with respect to variation

[20] 15 U.S.C. 78q–1(b)(3)(G).

[21] 15 U.S.C. 78q–1(b)(3)(H).

[22] 17 CFR 240.17Ad–22.

[23] 17 CFR 240.17Ad–22(e)(10). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.''

[24] 17 CFR 240.17Ad–22(e)(8). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . (8) Define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.''

[25] 17 CFR 240.17Ad–22(e)(1).

[26] 17 CFR 240.17Ad–22(e)(10). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(10) Establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.''

[27] 17 CFR 240.17Ad–22(e)(10).

[28] 17 CFR 240.17Ad–22(b)(2) The rule states the following: ''A registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to: . . .

(2) Use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.''

[29] 17 CFR 240.17Ad–22(e)(6) The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum:

i. Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market;

ii. Marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances;

iii. Calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;''

margin and mark-to-market margin. The Amended Documents would introduce a new ''Externalised Payments Mechanism'' to permit variation margin cash payments to be settled through separate cash flows, without being netted with other payment obligations, where Clearing Members so elect. The amendments would also clarify margin calculations for Options, taking into account the calculation of NLV. The amendments would facilitate the characterization of variation and mark-to-market margin as settlement payments (and not as collateral) for purposes of settlement to market treatment under Article 274(2)(c) of the CRR.

The Finance Procedures would be amended to clarify certain provisions relating to settlement of margin payments in relevant currencies and haircuts for cross-currency payments.

As the amendments clarify and strengthen ICE Clear Europe's approach to treatment of margin and better align description in the Amended Documents with operational practice, in ICE Clear Europe's view, the amendments meet the requirements of Rules 17Ad–22(b)(2) [30] and (e)(6) [31] to appropriately cover its credit exposures with a risk-based margin system.

(iv) Segregation and Portability

Rule 17Ad–22(e)(14) [32] requires that clearing agencies enable the segregation and portability of positions of a participant's customers and the collateral provided to the clearing agency with respect to those positions. In general, a number of changes proposed to the customer clearing documentation in the Rules and Standard Terms are intended to promote porting. Specifically, as described above, amendments to the Standard Terms are intended to, among other things, prevent possible Customer claims that could interfere with ICE Clear Europe's ability to offer porting, which would enhance the feasibility of relying on the Standard Terms to effect post-default porting. Changes are further being proposed to confirm the parameters around ICE Clear Europe's discretion to determine timing of the price at which positions are ported from a defaulting Clearing Member to a non-defaulting Clearing Member and the reference time for the determination of such price. Further proposed changes address rights, liabilities and obligations of Clearing Members being transferred or assigned to ensure that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another. As a result, ICE Clear Europe believes the amendments are in compliance with the segregation and portability requirements of Rule 17Ad–22(e)(14).[33]

(v) Default Management

Rule 17Ad–22(e)(13) [34] requires the covered clearing agency to ensure that it ''has the authority and operational capacity to take timely action to contain losses and liquidity demands'' in the case of default.

As described above, amendments to Rule 905 would clarify ICE Clear Europe's ability to determine Contract liquidation prices in the default management process and provide the Clearing House with additional flexibility in this regard. The amendments would clarify ICE Clear Europe's obligation to apply excess assets on the defaulter's Proprietary Account to meet a shortfall on one or more of its Customer Accounts. The proposed amendments would also clarify concepts relating to guaranty fund contributions adjustments and the application of such contributions to the net sum payable calculation set out in Rule 906. ICE Clear Europe believes that these amendments would strengthen the Clearing House's ability to efficiently and effectively manage extreme default events. As a result, in ICE Clear Europe's view, the amendments would allow it to take timely action to contain losses and liquidity pressures, within the meaning of Rule 17Ad–22(e)(13).[35]

(vi) Governance

Rule 17Ad–22(e)(2) [36] requires that a covered clearing agency provide for governance arrangements that, among other matters, are clear and transparent. The amendments more accurately define terms related to ICE Clear Europe governance in the Rules by expanding the definition of ''Board'' to include other similar bodies and committees and making similar clarifications throughout the Rules. ICE Clear Europe believes that the amendments would thus provide greater clarity relating to governance arrangements, in furtherance of the safety and efficiency of ICE Clear Europe in a default scenario and consistent with the requirements of Rule 17Ad–22(e)(2).[37]

(vii) Business Continuity

Pursuant to Rule 17Ad–22(e)(17)(ii) [38] clearing agencies must establish and maintain a business continuity plan. Proposed amendments to the Business Continuity Procedures would clarify that ICE Clear Europe's discretionary powers to amend or waive requirements or deadlines only apply in the event of a Business Continuity Event affecting a Clearing Member or ICE Clear Europe, and that such amended requirements only apply to the relevant affected Clearing Member(s). ICE Clear Europe believes that providing this clarity would further strengthen its ability to deal with business interruptions while minimizing impact on unaffected Clearing Members, consistent with the requirements of Rule 17Ad–22(e)(17)(ii).[39]

(viii) Membership Criteria

Rule 17Ad–22(e)(18) [40] requires clearing agencies to establish criteria for

[30] 17 CFR 240.17Ad–22(b)(2).

[31] 17 CFR 240.17Ad–22(e)(6).

[32] 17 CFR 240.17Ad–22(e)(14). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(14) Enable, when the covered clearing agency provides central counterparty services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant.''

[33] 17 CFR 240.17Ad–22(e)(14).

[34] 17 CFR 240.17Ad–22(e)(13). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . (13) Ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.''

[35] 17 CFR 240.17Ad–22(e)(13).

[36] 17 CFR 240.17Ad–22(e)(2). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(2) Provide for governance arrangements that:

(i) Are clear and transparent;''

[37] 17 CFR 240.17Ad–22(e)(2).

[38] 17 CFR 240.17Ad–22(e)(17)(iii). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(17) Manage the covered clearing agency's operational risks by: . . .

(iii) Establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.''

[39] 17 CFR 240.17Ad–22(e)(17)(iii).

[40] 17 CFR 240.17Ad–22(e)(18). ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(18) Establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant,

participation which ensures participants have sufficient financial resources and robust operational capacity to meet obligations arising from participation and to monitor compliance. The amendments include various enhancements to clearing membership requirements to ensure that Clearing Members meet appropriate initial and ongoing standards concerning their operational, managerial, back office, systems, controls, business continuity and banking arrangements. The amendments would also clarify Clearing Members' obligations to maintain financial resources requirements (in addition to Capital) and provide documentation supporting calculations of financial resources requirements upon ICE Clear Europe's request. By further ensuring that Clearing Members have sufficient financial resources and robust operational capacity, the amendments are consistent with Rule 17Ad–22(e)(18).[41]

(ix) Financial Resources and Guaranty Fund

Pursuant to Rule 17Ad–22(e)(4)(v),[42] clearing agencies must maintain required financial resources, including through a guaranty fund. The amendments to the Finance Procedures clarify ICE Clear Europe's approach to guaranty fund contributions while maintaining compliance with this regulatory requirement. Proposed amendments to the Finance Procedures would apply the effective date for adjustments to guaranty fund contributions for all contract categories to be 5 Business Days after the date of notification by circular. ICE Clear Europe believes this is an appropriate period, and that having a harmonized approach for all guaranty fund segments will facilitate its ongoing maintenance of financial resources and ability to manage risk. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(4)(v).[43]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments are intended to enhance clearing operations, including through better customer documentation, default management, updated settlement procedures and general clarifications and updates. The amendments would add a new option for settlement of variation and mark-to-market margin (and certain other payments), the Externalised Payments Mechanism, which Clearing Members could choose to use. The amendments would also facilitate the capital treatment of mark-to-market and variation margin as settlement payments, rather than as collateral, for purposes of the CRR, which generally should enhance Clearing Member capital treatment. Certain changes relating to the customer documentation model would only apply to Non-FCM/BD Clearing Members (as the model only applies to such members). While those changes may impose some additional requirements on Non-FCM/BD Clearing Members, those requirements will facilitate default management and porting by the Clearing House, in furtherance of the overall clearing system and the requirements and goals of applicable law. Certain other changes relating to Section 871(m) would impose certain additional obligations on non-U.S. Clearing Members that clear equity derivatives, but these generally reflect the requirements of Section 871(m) itself, and are intended to facilitate the ability of the Clearing House to make payments to such non-U.S. Clearing Members free of U.S. withholding taxes.

Overall, ICE Clear Europe does not believe the amendments would adversely affect the ability of Clearing Members or other market Clearing Members to continue to clear contracts. ICE Clear Europe also does not believe the amendments would cause Clearing Members to cease clearing activities, limit the availability of clearing for Clearing Members or their customers or otherwise limit market Clearing Members' choices for selecting clearing members. As a result, ICE Clear Europe does not believe that the proposed amendments impose any burden on competition that is not appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe has conducted a public consultation on amendments to its Rules that included the rule changes set forth herein. ICE Clear Europe received three detailed and written responses to the overall consultation, which included a number of comments relating to the amendments described in this filing. Relevant comments are discussed below, together with a summary of the action taken by ICE Clear Europe to address these comments. In a small number of cases, ICE Clear Europe has decided not to proceed with the change at this time. In some cases, ICE Clear Europe agreed to a drafting change in the Rules to address the concerns of the respondent Clearing Member. In other cases, it discussed aspects of the Rule changes, as were presented in such consultation, with those interested Clearing Members who responded.

Within the definitions in Rule 101, one Clearing Member commented on proposed changes to the definition of ''Margin'', suggesting alternative language to that proposed as part of the draft changes annexed to this submission. It appeared to ICE Clear Europe that the Clearing Member in question was querying the inclusion of variation margin within the definition of ''Margin''. ICE Clear Europe explained to the Clearing Member that the inclusion of variation margin within this definition is necessary to ensure that the settlement-to-market changes discussed earlier in this submission operate as intended. The removal of variation margin from the defined term ''Margin'' would require a major overhaul to the Rules. ICE Clear Europe determined that this explanation was sufficient to address the Clearing Member's comment.

One Clearing Member commented on proposed amendments to Rule 106(b), which set out a list of different types of information received or held by ICE

indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.''

[41] 17 CFR 240.17Ad–22(e)(18).

[42] 17 CFR 240.17Ad–22(e)(4)(v). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(4) Effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:

(i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions; . . .

(v) Maintaining the financial resources required under paragraphs (e)(4)(ii) and (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds;''

[43] 17 CFR 240.17Ad–22(e)(4)(v).

Clear Europe that will be treated as confidential. The Clearing Member suggested that any non-public information passed by a Clearing Member to ICE Clear Europe should be subject to confidentiality. ICE Clear Europe discussed this rule change with the Clearing Member in question, and explained that the list contained in Rule 106(b) is very broad and that all relevant information should be covered. ICE Clear Europe subsequently determined that the Clearing Member's comment was adequately addressed by those discussions and that no material changes to the amended Rules were required. No further issues were raised by the Clearing Member following discussion.

One Clearing Member commented on proposed amendments to Rule 106(c)(i), which are intended to ensure that disclosures of confidential information are permitted where the disclosure is ''necessary for the making of a complaint or report under Applicable Laws for an offence alleged or suspected to have been committed under Applicable Laws''. The Clearing Member in question was of the view that the disclosure of confidential information in order to make a report or complaint under Applicable Laws was already covered by the existing drafting. ICE Clear Europe discussed this rule change with the Clearing Member in question, and explained that the additional drafting was introduced to cover reporting under the UK Proceeds of Crime Act 2002, suspicious transaction reporting under the EU Market Abuse Regulation and other regulatory reporting regimes, and is necessary to ensure that such reporting is covered by confidentiality carve-outs under the Rules. ICE Clear Europe subsequently determined that the Clearing Member's comment was adequately addressed by these explanations and discussions and that no material changes to the amended Rules were required.

One respondent provided two comments on proposed changes to Rule 111(a). The Clearing Member stated that, as a result of the proposed changes, Clearing Members would need to indemnify members of committees and that this broadening of scope should be dropped. ICE Clear Europe discussed this comment with the Clearing Member in question and agreed that the proposed language could potentially cover members of committees outside of their committee function. ICE Clear Europe accepted that the proposed change was not intended to cover committee members acting in a proprietary capacity and proposed a drafting change to limit the indemnity to ''any individual committee member, but only in so far as that Person is acting in the capacity of a committee member''. To ICE Clear Europe's knowledge, this drafting change adequately addressed the Clearing Member's concerns. The Clearing Member also commented separately on the definition of ''Director'' in the Rules in the context of its comments on Rule 111(a), arguing that the definition should be limited to persons who are listed as directors on the UK company registry (Companies House). ICE Clear Europe discussed this comment with the Clearing Member in question, explaining that the correct interpretation of the lower case term ''director'' in this context was only to capture actual directors and not staff members that may have the title ''director'' in their job role. On the basis of this explanation and the fact that this comment did not strictly relate to the changes proposed to the Rules, ICE Clear Europe determined it did not need to make any drafting changes in response to the comment.

Two Clearing Members queried the insertion of new Rule 114(d), which would allow ICE Clear Europe to ''take any measure it deems reasonably necessary in relation to the organization and the operation of the Clearing House taking all relevant circumstances into account, whether or not these measures are set out in these Rules''. Both Clearing Members were concerned about the breadth of this power and the potential for ICE Clear Europe to take any action it wishes, whether or not such action is in line with the provisions of the Rules. ICE Clear Europe discussed the proposed provision with the two respondents and explained that it was aimed at ensuring that ICE Clear Europe is not prevented from taking necessary action because there is no provision in the Rules explicitly empowering it to do so. However, ICE Clear Europe agreed that some additional language would be beneficial in the new provision to clarify that it may not take action in contravention of the Rules or to modify the Rules under the new provision. This language would be included in the proposed rule changes annexed to this submission.

One Clearing Member queried the following additional language in the clearing membership criterion in Rule 201(a)(xxvii): ''and satisfy the Clearing House of the adequacy of its contingency banking arrangements in the event of an Insolvency or failure to pay or default of an Approved Financial Institution which affects the operation of a Nominated Bank Account or Accounts or a Clearing House Account''. Specifically, the respondent asked what the additional language means and how ICE Clear Europe would expect Clearing Members to satisfy the requirement. ICE Clear Europe discussed the proposed change with the Clearing Member in question, and explained that the criterion was required in order to meet current back-up arrangements being implemented. These arrangements would essentially require the Clearing Member to have a back-up approved payment bank or to establish means of direct payments via a back-up procedure. ICE Clear Europe subsequently determined that the Clearing Member's comment was adequately addressed by these explanations and discussions.

All three respondents provided comments on proposed changes to the ongoing requirements for Clearing Members in Rule 202(a). Two Clearing Members commented on amendments to Rule 202(a)(xiv)(A), one Clearing Member commented on a proposed new Rule 202(a)(xxii) and all three Clearing Members commented on a proposed new Rule 202(a)(xxiii). With respect to Rule 202(a)(xiv)(A), Clearing Members were unsure of what was required by the new drafting. ICE Clear Europe explained in discussions with the relevant Clearing Members that the proposed language entails compliance by Clearing Members with general conduct of business and threshold condition type business organization rules, and would unlikely go so far as to require Clearing Members to go beyond what is required by applicable law, although that would depend on the legal regime of the Clearing Member. As regards the proposed new Rule 202(a)(xxii), one respondent challenged the provision on the basis that it would require employees to be available for longer hours. ICE Clear Europe discussed this new provision with the Clearing Member concerned and explained the importance of having Clearing Member personnel available to deal with issues that arise after the closing of the markets and that this requirement was effectively already in place as an operational matter. ICE Clear Europe understands that this explanation was sufficient to address the Clearing Member's comment and no rules changes were necessary. The comments on the proposed Rule 202(a)(xxiii) conveyed a general reluctance to accept ICE Clear Europe having a broad power to access Clearing Member premises, records and personnel and copy any required documentation. ICE Clear Europe

discussed this proposed requirement with all three Clearing Members and pointed out that the provision is restricted to action required to ''facilitate discharge of the Clearing House's regulatory obligations under Applicable Laws''. Having explained the limitations to the new requirement, ICE Clear Europe felt that the Clearing Members' concerns were adequately addressed and changes to the proposed rule amendments were made. ICE Clear Europe did not receive further objection to the provision following this discussion.

One Clearing Member asked why ICE Clear Europe had included the words ''(or any non-frivolous or non-vexatious investigation or allegation of a breach by it)'' in Rule 204(a)(xii). ICE Clear Europe discussed this comment with the respondent in question and explained that the test for a ''non-frivolous'' and ''non-vexatious'' investigation is intentionally objective, to ensure that Clearing Members would not need to inform ICE Clear Europe of frivolous or vexatious investigations. ICE Clear Europe determined that the Clearing Member's comment was adequately addressed by this explanation and that changes were necessary.

One Clearing Member suggested a small, uncontroversial drafting amendment to Rule 204(b)(i), which ICE Clear Europe accepted and which is reflected in the rule changes annexed to this submission.

One Clearing Member asked for clarification of the meaning of the term ''settlement payment'' in additional language proposed to be added to Rule 505. ICE Clear Europe reviewed the proposed language as a result of the comment and decided to make some amendments to ensure that the new language read more clearly. The proposed language now refers to ''a payment of Variation Margin, Mark-to-Market Margin, or FX Mark-to-Market Margin or a settlement or delivery payment'', rather than just a ''settlement payment'', to make it clear which sorts of payments are intended to be referred to in that provision. This change is included in the rule amendments annexed to this submission. As a result of this rule change, ICE Clear Europe considered that the Clearing Member's comment was adequately addressed.

One respondent commented that proposed changes to Rule 703(h) appeared to entail an expansion of powers for ICE Clear Europe, in that ICE Clear Europe would be able to replace a delivery obligation under a contract with a non-defaulting Clearing Member with a cash settlement sum. ICE Clear Europe discussed this proposed change with the respondent and agreed that the change would allow a contract between ICE Clear Europe and a non-defaulting Clearing Member to be terminated, allowing ICE Clear Europe to pay a cash settlement sum rather than make physical delivery. However, ICE Clear Europe explained that the existing rules already provide for this power, albeit less explicitly, and that its experience of handling defaults (including the MF Global default) indicated that this is what Clearing Members and their clients prefer in practice as opposed to waiting for ICE Clear Europe to arrange for an alternative means of delivery. ICE Clear Europe determined that the Clearing Member's comment was adequately addressed by this explanation and that changes to the proposed rules were necessary.

One Clearing Member asked why language had been added in a new Rule 902(d) to indicate that Transfer Orders shall be legally enforceable. ICE Clear Europe explained that the wording buttressed the position that Part 12 is a ''default rule'' for purposes of the UK Companies Act 1989, as discussed above. No changes to the proposed rules were made as a result of this comment.

All three Clearing Members commented on proposed changes to the methodology for determining the price of a Contract for porting and close-out purposes in Rule 904(b), 905(b) and 905(g). Clearing Members generally objected to the Clearing House having discretion to set the price of a Contract. ICE Clear Europe discussed the proposed changes with Clearing Members, explaining that the discretion here is important to cover matters like option pricing and time of insolvency versus time of porting issues. It further explained that porting is likely to be problematic from an operational perspective without these changes and that the price of ported contracts may vary depending upon Clearing Member jurisdiction, the existence or absence of mandatory early termination under applicable insolvency laws, the terms of relevant Court orders supporting porting and other factors, such that these changes are important to ensuring the default management process operates smoothly. It was also highlighted that these changes provide additional clarity to Clearing Members and consistency between provisions addressing the issue of default pricing. Having explained this, ICE Clear Europe felt that the Clearing Members' comments were adequately addressed and that changes to the proposed rules were necessary. ICE Clear Europe did not receive any further objection to the changes following this discussion.

One Clearing Member asked why the words ''and severally'' had been added in Rule 912(b)(iv)(A). ICE Clear Europe explained to the respondent that this change was raised by external legal counsel to an industry association concerning the sponsored principal model at ICE Clear Europe. The change fixes a drafting error, to ensure that the liabilities and assets on sponsored accounts have mutuality. It pointed out that the wording is included elsewhere in Part 19 and is unintentionally omitted in Rule 912(b)(iv)(A). No changes to the proposed rules were made as a result of this comment.

Various comments were received on proposed changes to Part 10 of the Rules to improve ICE Clear Europe's disciplinary procedures. In most cases, these comments asked for clarification as to the intent or effect of a rule change. ICE Clear Europe addressed all of the Clearing Members' comments on Part 10 amendments with one exception through oral discussions and explanations with the relevant respondents. The one exception involved a proposed drafting change to replace the word ''days'' with the term ''calendar days'', which ICE Clear Europe accepted as this ensured consistency with other parts of the Rules and greater precision of meaning. This change is included in the rule amendments annexed to this submission. As a result of this rule change, and the various explanations provided in relation to the other Part 10 amendments, ICE Clear Europe considered that the Clearing Members' comments were adequately addressed, and ICE Clear Europe has received no further objections on these provisions.

One Clearing Member objected to proposed amendments to paragraph 2 of the CDS, FX and F&O Standard Terms (in the Exhibits to the Rules), commenting that the amendments would override agreements between Clearing Members and their clients. ICE Clear Europe discussed the proposed amendments with the Clearing Member, explaining that the amendments are intended to override clearing agreements between Clearing Members and Customers (as required by Part 2 of the Rules and ICE Clear Europe Customer documentation Circular C14/055 of 2 May 2014) and that this should already be the case anyway due to the ''Mandatory CCP Provisions'' mechanic in industry standard documentation. This means that proposed changes are in line with market practice. Having explained this to the Clearing Member in question, ICE Clear Europe determined that the Clearing Member's comments were adequately addressed.

Two Clearing Members commented on proposed amendments to paragraph 4(b) of the CDS, F&O and FX Standard Terms. One of these comments was based on a misunderstanding of the intention behind certain drafting amendments concerning notices of Encumbrances and ICE Clear Europe amended the relevant drafting to provide additional clarification that Customers must not ''create or give notice'' of any Encumbrance. The other comment requested clarification as to the intention behind the paragraph 4(b) amendments more generally, which would require Customers to provide certain representations to ICE Clear Europe as regards the provision of Customer collateral. ICE Clear Europe discussed the proposed amendments to paragraph 4(b) with the Clearing Member in question, explaining that ICE Clear Europe requires such representations to be made to provide ICE Clear Europe with comfort that it can handle Customer collateral in accordance with the Rules without risk of legal intervention. Given that ICE Clear Europe has no sight of documentation between Clearing Members and Customers, which may or may not include this or similar wording, it is necessary to include the relevant wording in the Standard Terms. ICE Clear Europe considered that the drafting change referred to above and the explanations provided adequately addressed the two Clearing Members' comments.

Two Clearing Members commented on the proposed new paragraph 5(c) of the CDS, FX and F&O Standard Terms. One of these comments generally queried the rationale for the new provision, which overrides the termination mechanism in clearing agreements between Clearing Members and Customers. ICE Clear Europe explained that this language has been proposed because it has come to ICE Clear Europe's attention that some Clearing Member-Customer clearing agreements may not adequately support porting to the extent legally possible. It would, for example, appear to be the case, based on feedback from some Clearing Members, that some such agreements have been negotiated so as to provide for a contractual right to automatic or early termination upon a default before porting can take place. In particular, EMIR, the Companies Act 1989 and some other legislation, on some interpretations, would appear to require there to actually be a contract in place in order for that contract to be ported following a default. This means that automatic or early termination provisions may frustrate porting or increase the risks of legal claims against clearing houses such as ICE Clear Europe. Although the Rules provide for ICE Clear Europe still to be able to port where the contracts have already terminated, and ICE Clear Europe believes the better view is that such terminated contracts are still portable, the proposed rules changes promote legal certainty by reducing risks associated with porting. ICE Clear Europe further explained that such automatic or early termination provisions are currently in breach of Rule 202 and that this raises enforcement and disciplinary issues for some Clearing Members. The proposed new provision would bring affected Clearing Members back into compliance with the Rules and promote porting by ensuring that automatic or early termination provisions are overridden.

A second comment suggested a small drafting change to the tense of a verb in paragraph 5(c)(i)(B), which ICE Clear Europe accepted (such drafting change being included in the final amendments annexed to this submission). Finally, one Clearing Member queried why there is an exception from paragraph 5(c)(ii) where one of the parties to a Customer-CM Transaction is incorporated in Switzerland. ICE Clear Europe discussed this provision with the Clearing Member in question, clarifying that Switzerland is the only Clearing Member jurisdiction for which automatic or early termination is recommended by the International Swaps and Derivatives Association (''ISDA''). ICE Clear Europe determined that as a result of these explanations, the Clearing Members' comments were adequately addressed and no drafting changes were needed.

Finally, one Clearing Member asked why Customers are required to provide an intellectual property representation to ICE Clear Europe in new paragraph 12(d) of the CDS, FX and F&O Standard Terms. ICE Clear Europe explained that the representation in question supports the position in relation to IP rights provided for in the Rules. ICE Clear Europe has added this provision to ensure that it has the same contractual representation from Customers as regards IP rights as it does from Clearing Members, and the Standard Terms is the appropriate place for this provision to be added. ICE Clear Europe considered that this explanation was sufficient to address the Clearing Member's query and no rules changes were made. No further issues were raised by the Clearing Member following discussion with the Clearing Member.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice 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 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance

with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2020–003 and should be submitted on or before March 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04574 Filed 3–5–20; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. IC–33809; File No. S7–04–20]

RIN 3235–AM72

Request for Comments on Fund Names

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission is seeking public comment on the framework for addressing names of registered investment companies and business development companies that are likely to mislead investors about a fund's investments and risks pursuant to section 35(d) of the Investment Company Act of 1940, rule 35d–1 thereunder, and the antifraud provisions of the Federal securities laws. The Commission is seeking public comment particularly in light of market and other developments since the adoption of rule 35d–1 in 2001.

DATES: Comments should be received by May 5, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form *(https://www.sec.gov/rules/submitcomments.htm)*; or
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–04–20 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–04–20. 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 of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov*). Comments are also 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 a.m. and 3 p.m. 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 publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this request for comment. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Sally Samuel, Branch Chief; Michael Kosoff, Senior Special Counsel; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6721, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment from funds, their advisers, investors, and other market participants on the current approach to addressing misleading fund names.

I. Introduction

As part of the Commission's ongoing efforts to improve the investor experience and modernize current regulatory approaches,[1] we are publishing this request for comment on 17 CFR 270.35d–1 (''rule 35d–1'' or the ''Names Rule'') under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''). The name of a registered investment company or a business development company (a ''fund'') is a tool for communicating with investors. It is often the first piece of fund information investors see and, while investors should look closely at a fund's underlying disclosures, a fund's name can have a significant impact on their investment decision. The Names Rule was adopted by the Commission as an investor protection measure designed to help ensure that investors are not misled or deceived by a fund's name.[2]

Because of the importance of fund names to investors and certain challenges regarding the application of the Names Rule, we are assessing whether the existing rule is effective in prohibiting funds from using names that are materially deceptive or misleading, and whether there are alternatives that the Commission should consider. We welcome engagement from funds, their advisers, investors, and other market participants on these and related issues.

II. Background

The regulation of fund names is intended to address concerns that certain fund names may mislead investors about a fund's investments. Fund names are subject to both the antifraud provisions of the Federal securities laws,[3] and section 35(d) of the Investment Company Act [4] and the Names Rule.[5] Section 35(d) prohibits any fund from adopting as part of its name ''any word or words that the

[1] *See* Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891 (June 11, 2018)], *available at https://www.sec.gov/rules/other/2018/33–10503.pdf.*

[2] The Commission stated in the adopting release for the Names Rule that Congress ''recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading investment company names.'' *See* Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)] (''Names Rule Adopting Release''), *available at https://www.sec.gov/rules/final/ic-24828.htm.*

[3] *See, e.g.,* section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)], section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and rule 10b–5 [17 CFR 240.10b–5] thereunder, and section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)].

[4] 15 U.S.C. 80a–34(d) (''section 35(d)'').

[5] Section 35(d) and the Names Rule are applicable to registered investment companies and business development companies. Business development companies (which are not registered investment companies) are subject to the requirements of section 35(d) and the Names Rule pursuant to section 59 of the Investment Company Act [15 U.S.C. 80a–58].

Commission finds are materially deceptive or misleading.'' [6]

Before section 35(d) was amended in 1996, enforcing this provision of the Act as originally enacted would have required the Commission to declare by order that a particular name was misleading and, if necessary, request a Federal court to grant an injunction with respect to the use of such name.[7] Prior to the adoption of the Names Rule, the views of the staff in the Commission's Division of Investment Management (''Division'') regarding fund names changed over time and were expressed primarily in staff guidelines [8] and generic ''Dear Registrant'' comment letters stating, among other things, staff's views with respect to particular terms used in fund names.[9] In addition, in the context of reviewing fund registration statements, staff in the Division provided comments on fund names when in the staff's view it appeared that a name could be potentially misleading. In 1996, Congress passed NSMIA, which amended section 35(d) of the Act to provide the Commission specific rulemaking authority to define names that are materially deceptive and misleading.[10] Using this authority, the Commission proposed the Names Rule in February 1997 and adopted it in January 2001.[11]

In adopting the Names Rule, the Commission cautioned against investors relying on a fund's name as the sole source of information about the fund's investments and risks, but recognized that ''the name of an investment company may communicate a great deal to an investor.'' [12] The final rule requires a fund to invest at least 80 percent of its assets in the manner suggested by its name, whereas previously funds considering then-current staff guidance would typically select fund names based on a 65 percent threshold.[13]

III. Names Rule

The Names Rule generally requires that if a fund's name suggests a particular type of investment (*e.g.,* ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund), industry (*e.g.,* the ABC Utilities Fund or the XYZ Health Care Fund), or geographic focus (*e.g.,* the ABC Japan Fund or XYZ Latin America Fund), the fund must invest at least 80 percent of its assets in the type of investment, industry, country, or geographic region suggested by its name.[14] The Names Rule also imposes special requirements for funds that have names suggesting that a fund's distributions are exempt from Federal income tax or from both Federal and state income tax.[15] Under the rule, a fund may elect to make its 80 percent policy a fundamental policy (*i.e.,* a policy that may not be changed without shareholder approval) or instead provide shareholders notice at least 60 days prior to any change in the 80 percent investment policy.[16]

The Names Rule does not apply to fund names that describe a fund's investment objective, strategy, or policies.[17] In addition, the Names Rule is not a safe harbor, and the Commission could find that a name is materially deceptive or misleading under section 35(d) or other antifraud provisions of the Federal securities laws even if a fund complies with the Names Rule.

Since the adoption of the Names Rule, the staff has stated its views regarding fund names that may be misleading during the review of fund registration statements [18] and in other statements. For example, shortly after adoption of the Names Rule, the staff issued frequently asked questions addressing a number of issues under the rule, including whether the rule applies to names containing particular terms.[19] In 2013, the staff stated its view that fund names suggesting safety or protection from loss may contribute to investor misunderstanding of investment risks and, in some circumstances, could be misleading.[20] Today, fund names remain a common area for staff comment as part of the disclosure review process.

IV. Current Challenges

The Names Rule has not been amended since its adoption in 2001. Since that time, the staff and the industry have identified a number of challenges regarding the application of the Names Rule. Several factors contribute to these challenges, including:

- Funds are increasingly using derivatives and other financial instruments that provide leverage.[21]

[6] *See supra* footnote 4.

[7] 15 U.S.C. 80a–34(d) (1940), *amended by* National Securities Markets Improvement Act (''NSMIA''), Pub. L. 104–290, 208 (1996). *See also* S. Rep. No. 104–293, at 8 (June 26, 1996) (''NSMIA Committee Report'') (''Enforcing the Act entails a cumbersome process—the Commission must first find, and declare by order, that a fund's name is deceptive or misleading, and then bring an action in federal court to enjoin the use of the name.'').

[8] *See* Guidelines accompanying Form N–8B–1 (Investment Company Act Release No. 7221 (June 9, 1972) (requiring a fund to invest at least 80 percent of its assets in the type of investment indicated by its name, exclusive of cash, government securities, and short-term commercial paper), which was replaced in 1983 by guidelines to Form N–1A (Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928 (Aug. 22, 1983)] (lowering the standard from 80 percent to 65 percent to permit greater investment flexibility). The Commission rescinded the guidelines to Form N–1A in 1998 as part of an overhaul of Form N–1A. *See* Names Rule Adopting Release, *supra* footnote 2, at n.6. Any staff guidance or no-action letters discussed in this release represent the views of the staff of the Division of Investment Management. They are not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved their content. Staff guidance has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

[9] *See* Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC (Feb. 25, 1994) at II.D. (rescinded by 1998 N–1A Amendments) (''small, medium, and large capitalization''); Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993) (funds whose names include the name of a bank); Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC (Jan. 17, 1992) at II.A. (rescinded by 1998 N–1A Amendments) (''index''); and Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC (Jan. 3, 1991) at II.A. (rescinded by 1998 N–1A Amendments) (''guaranteed'', ''insured'', ''international'', and ''global'').

[10] *See supra* footnote 7. Congress determined that the procedural requirements for enforcing Section 35(d) were ''cumbersome'' and that ''investor protection merits a more streamlined approach to making sure mutual funds do not name their funds in a misleading manner.'' *See* NSMIA Committee Report, *supra* note 7, at 8.

[11] *See* Investment Company Act Rel. No. 22530 (Feb. 27, 1997) [62 FR 10955 (Mar. 10, 1997), correction 62 FR 24161 (May 2, 1997)], *available at https://www.sec.gov/rules/proposed/ic-22530.txt;* Names Rule Adopting Release, *supra* footnote 2.

[12] *See id.* at I.

[13] *See* rule 35d–1(a)(2) and (3).

[14] *See* rule 35d–1(a)(2), and (a)(3). ''Assets'' is defined as net assets, plus the amount of any borrowings for investment purposes. *See* Rule 35d–1(d)(2).

[15] *See* rule 35d–1a(4).

[16] *See* rule 35d–1(a)(2)(ii), and (a)(3)(iii). As part of its review of fund filings, the staff has observed that most funds (other than tax-exempt funds that are required to have a fundamental policy) adopt a policy to provide shareholders notice at least 60 days prior to any change to a fund's 80 percent investment policy.

[17] However, names describing a fund's objective, strategy, or policies are still subject to the general prohibition on misleading names in Section 35(d), as well as other antifraud provisions of the Federal securities laws.

[18] The Division's Disclosure Review and Accounting Office is responsible for reviewing fund registration statements, proxy statements, and shareholder reports. The disclosure review process seeks to achieve accurate, clear, and concise disclosures and help ensure that funds comply with the Federal securities laws. *See* Division of Investment Management Accounting and Disclosure Information 2018–06, Requests for Selective Review, *available at https://www.sec.gov/investment/adi-2018-06-requests-selective-review.*

[19] *See* Frequently Asked Questions about Rule 35d–1 (Investment Company Names) (''Names Rule FAQ''), *available at https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm.*

[20] Fund Names Suggesting Protection from Loss, IM Guidance Update 2013–12 (Nov. 2013), *available at https://www.sec.gov/divisions/investment/guidance/im-guidance-2013-12.pdf.*

[21] Based on a staff analysis of the latest N–PORT filings as of September 23, 2019, it appears that

Because the Names Rule is an asset-based test, it may not be well-suited to derivatives investments that provide significant exposure to a ''type of investment'' (as specified in the Names Rule). For example, the asset test may not provide an appropriate framework when the market values of derivative investments held by funds are relatively small but the potential exposure is significant.

- Funds are increasingly using certain hybrid financial instruments that have some, but not all, of the characteristics of more common asset types that are used in a fund's name. For example, convertible securities may have characteristics of both debt and equity securities, and they may behave more like debt or more like equity depending on market conditions. The staff has observed that both debt and equity funds include convertible securities as part of their 80 percent investment policies.
- The number of index-based funds is growing.[22] While funds are subject to the Names Rule, indices are not investment companies and not subject to the Names Rule. The staff has observed that index constituents may not always be closely tied to the type of investment suggested by the index's name. This raises questions under the Names Rule when the fund name includes the name of the index.
- The number of funds with investment mandates that include criteria that require some degree of qualitative assessment or judgment of certain characteristics (such as funds that include one or more environmental, social, and governance-oriented assessments or judgments in their investment mandates (*e.g.,* ''ESG'' investment mandates)) is growing.[23] These funds often include these parameters in the fund name. The staff has observed that some funds appear to treat terms such as ''ESG'' as an investment strategy (to which the Names Rule does not apply) and accordingly do not impose an 80 percent investment policy, while others appear to treat ''ESG'' as a type of investment (which is subject to the Names Rule).
- In an increasingly competitive market environment, asset managers may have an incentive to use fund names as a way of differentiating new funds.[24] This incentive may drive managers to select fund names that are more likely to attract assets (such as names suggesting various emerging technologies), but may not be consistent with the purpose of the Names Rule.

The Commission is evaluating the effectiveness of the Names Rule in protecting investors in light of these challenges to determine whether additional action in this area is necessary or appropriate.

V. Questions

To inform potential future steps, the Commission is seeking input on the challenges that the Names Rule may present, particularly in light of market changes since 2001, as well as potential alternatives to the current framework for prohibiting the use of deceptive and misleading fund names. We welcome input from all interested parties on the following:

- How do funds select their names? Do funds use their names to market themselves to investors or convey information about their investments and risks? Are there studies or other data on the extent to which investors rely on a fund's name to determine the fund's investment strategy and risks? If so, are these determinations reasonably accurate?
- Is the Names Rule effective at preventing funds from using deceptive or misleading names? If not, why not? If it is not effective, should it be changed, and if so how?
- Should the Names Rule be repealed? If so, why? Please specifically address how repealing the Names Rule and relying solely on Section 35(d) and the general antifraud provisions of the Federal securities laws would satisfy our investor protection objectives.
- The Names Rule requires a fund to invest at least 80 percent of its assets in the type of investment suggested by its name.[25]

○ Does this threshold continue to be appropriate? If not, what is a more appropriate threshold and why? For example, should it be lower (*e.g.,* 65 percent) or higher (*e.g.,* 95 percent)? Should the threshold apply only at the time of investment—as is the case in the current Names Rule [26]—or should a fund be required to maintain that level of investment?

○ Is an asset-based test appropriate for determining whether the use of a particular name is misleading? What are some of the current challenges with the use of an asset-based test? Are there other tests that would be more appropriate and if so, what are these tests and why would they be more appropriate? For example, should we consider a test that requires that the type of investment suggested by a fund's name contribute at least a minimum amount (*e.g.,* 80 percent) to a fund's returns (*e.g.,* The ABC Bond Fund would be expected to derive at least 80 percent of its returns from investments in bonds.).

▪ Complying with the Names Rule (and its asset-based test) may raise particular challenges for funds that gain exposure to a ''type of investment'' (as specified in the Names Rule) through the use of derivatives. We understand that, although many funds have asserted that a derivative's notional value would be more appropriate than its market value for purposes of complying with the 80 percent investment policy, funds generally use market value on account of the Names Rule's asset-based test.[27] Should the Commission address this type of Names Rule-related challenge for funds that invest in derivatives? If so, how? For example, should the approach take derivatives' notional value into account, and if so, how? Would there be any operational or interpretive challenges associated with this approach, and if so, what would they be and how should the Commission's rules and guidance address these challenges?

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approximately 41 percent of funds reported derivatives holdings. This analysis covered 11,363 funds with a total net assets of approximately $23.5 trillion. This analysis excluded business development companies, unit investment trusts, money market funds, and certain smaller funds that are not yet required to report their portfolio holdings on Form N–PORT. *See also* Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers' Transactions in Certain Leveraged/Inverse Investment Vehicles, Investment Company Act Release No. 33704 (Nov. 25, 2019) [85 FR 4446 (Jan. 24, 2020)], *available at https://www.sec.gov/rules/proposed/2019/34-87607.pdf.*

The Names Rule Adopting Release states that in appropriate circumstances, a fund is permitted to count a synthetic instrument (such as a derivative) toward its 80 percent investment policy if the instrument has economic characteristics similar to the securities included in the policy. However, the release did not prescribe how to account for the value of these instruments for purposes of complying with the fund's 80 percent policy. *See* Names Rule Adopting Release, *supra* footnote 2, at n. 13.

[22] Based on data obtained from Morningstar Direct, in 2001 there were approximately 432 mutual fund and ETF index funds. As of the end of 2019, there were approximately 2,311 index funds.

[23] Based on EDGAR data, approximately 65 funds (excluding unit investment trusts) included the terms ''ESG'', ''Clean'', ''Environmental'', ''Impact'', ''Responsible'', ''Social'', or ''Sustainable'' in their names as of December 31, 2007. The number of funds increased to 291 as of December 31, 2019.

[24] The number of registered investment companies has increased by 300 percent since the adoption of the Names Rule. *See* 2019 Investment Company Fact Book (ICI, 59th ed. 2019), *available at https://www.icifactbook.org/deployedfiles/FactBook/Site%20Properties/pdf/2019/2019_factbook.pdf.*

[25] *See* Rule 35d–1(a)(2).

[26] *See* Names Rule Adopting Release, *supra* footnote 2, at section II.A.4.

[27] *See, e.g., supra* footnote 14.

Should an approach based on notional values permit or require a fund to make any adjustments to derivatives' notional values (*e.g.,* should a fund be permitted or required to delta adjust options contracts, or present interest rate derivatives as 10-year bond equivalents)? Should funds account for derivatives holdings using a methodology other than market value or notional value? If so, what methodology should be used and why? Should we, for example, focus on measures of risk? If so, which risk measure(s) would be most effective for this purpose?

▪ Under the Names Rule, most funds elect to provide investors with 60 days' notice prior to changing their 80 percent investment policy.[28] Is the information provided in these notices useful for investors? Does the Names Rule's notice requirement provide meaningful investor protection? If not, why not? Should the rule impose different or more specific requirements in certain cases, such as when a change in name is accompanied by significantly different investment strategies and exposures? If so, when and what type of requirements? Should a fund be required to obtain shareholder approval prior to changing its 80 percent policy?

• How do funds determine whether a portfolio investment is part of a particular industry? For example, do funds rely on third-party industry classifications or indices, a minimum level of assets, revenues, or profits tied to an industry, a company's market share of an industry, or text analytics (such as frequency of certain words and/or phrases in company filings) to determine how to assign an investment to a particular industry? Should the Names Rule provide flexibility to funds (including index funds) that intend to focus their investments in nascent industries, or industries that rely on certain emerging technologies (*e.g.,* 5G technology, artificial intelligence, or blockchain)? Are there circumstances where a company should reasonably be considered part of an industry when its revenues or assets attributable to that industry are less than a certain percentage (*e.g.,* less than 50 percent), are not quantifiable, or may be classified in more than one industry (*e.g.,* a software company that focuses on decision tools that add efficiency to the alternative energy space)? Should we consider a test that requires a minimum level of revenues or assets that are attributable to the industry suggested by the fund's name? If so, what should that minimum threshold be (*e.g.,* 25, 50, or 75 percent)?

• The Names Rule does not apply to the use of terms that suggest an investment strategy (such as ''growth'' or ''value''), rather than a type of investment.[29] Often, funds assert that a name connotes a ''strategy'' not subject to the Names Rule when the term may appear to others as indicative of a type of investment. Should a strategy be differentiated from a type of investment and, if so, how? Should we amend the Names Rule to apply specifically to investment strategies (such as tax-sensitive, income, growth or value) and, if so, how? If a fund's investment strategy is not designed to maximize returns to investors, should that be noted in the name?

• The staff has observed a number of challenges that funds face in applying the Names Rule and assessing whether certain terms in fund names comply with the rule. For example:

○ Should the Names Rule apply to terms such as ''ESG'' or ''sustainable'' that reflect certain qualitative characteristics of an investment? Are investors relying on these terms as indications of the types of assets in which a fund invests or does not invest (*e.g.,* investing only in companies that are carbon-neutral, or not investing in oil and gas companies or companies that provide substantial services to oil and gas companies)? Or are investors relying on these terms as indications of a strategy (*e.g.,* investing with the objective of bringing value-enhancing governance, asset allocation or other changes to the operations of the underlying companies)? Or are investors relying on these terms as indications that the funds' objectives include non-economic objectives? Or are investor perceptions mixed among these alternatives or otherwise indeterminate? If investor perceptions are mixed or indeterminate, should the Names Rule impose specific requirements on when a particular investment may be characterized as ESG or sustainable and, if so, what should those requirements be? Should there be other limits on a fund's ability to characterize its investments as ESG or sustainable? For example, ESG (environment, social, and governance) relates to three broad factors: Must a fund select investments that satisfy all three factors to use the ''ESG'' term? For funds that currently treat ''ESG'' as a type of investment subject to the Names Rule, how do such funds determine whether a particular investment satisfies one or more ''ESG'' factors? Are these determinations reasonably consistent across funds that use similar names? Instead of tying terms such as ''ESG'' in a fund's name to any particular investments or investment strategies, should we instead require funds using these terms to explain to investors what they mean by the use of these terms?

○ The Names Rule does not apply to the use of the terms ''global'' or ''international.''[30] Should the Names Rule apply to these terms? What factors should be used to determine whether the term ''global'' or ''international'' is not misleading? Should a fund that uses these or similar terms in its name be required to invest a certain percentage of assets in a minimum number of countries or invest a minimum percentage of assets outside of the United States? If the Names Rule were to apply to terms such as ''global'' or ''international'', how should funds treat multinational companies with a significant presence (*e.g.,* revenues or assets) in more than one country or region? For example, should a fund invested in a diversified set of 30 or more U.S-incorporated and U.S.-headquartered companies, where each company derives a certain level of its revenues (*e.g.,* 25 percent) from outside the United States, be able to call itself a ''global'' or ''international'' fund without running afoul the Names Rule?

○ The Names Rule does not apply to the use of the terms ''actively managed'', ''tax managed'', ''long-term'', and ''short-term''. Should the Names Rule apply to these terms? If so, how?

○ Do fund names identifying well-known organizations, particular affinity groups, or a specific population of investors (*e.g.,* ''veterans'' or ''municipal employees'') raise concerns of potentially misleading investors (*e.g.,* by suggesting the investments are tailored to these investors, only available to these investors, or that these investors may receive better terms than other investors)? If so, how should we address these concerns?

○ Funds may select ticker symbols that are intended to convey information about how a fund invests. Should the Names Rule apply to fund tickers and, if so, how?

• Are there other concerns or challenges regarding fund names or the Names Rule that the Commission should consider? Are there particular terms used in fund names that are especially prone to mislead investors?

• Should registered closed-end funds or business development companies be treated differently than open-end funds

[28] *See supra* footnote 16 and accompanying text.

[29] *See* Names Rule Adopting Release, *supra* footnote 2, at section II.C.1.

[30] *See* Names Rule Adopting Release, *supra* footnote 2, at fn. 42. *See also* Names Rule FAQ, *supra* footnote 19, at Question 10.

under the Names Rule? If so, how should each fund type be treated and why? For example, because the securities of closed-end funds and business development companies are not redeemable and may not be publicly-traded, does the 60 day notice requirement for changes to a fund's 80 percent policy provide meaningful protections to investors in such funds? If not, what changes are appropriate? Are there any other types of funds or other vehicles that should be treated differently under the Names Rule or under the general antifraud provisions of the Federal securities laws? [31]

• Are there other ways in which the Names Rule should be modified to provide greater investment flexibility while still requiring that fund names suggesting a certain focus effectively convey the nature of a fund's investments? Are there alternative ways in which fund names should be regulated or addressed that would more effectively protect investors? For example, through hyperlinks or other technology, should funds be required to connect their names to a more detailed discussion of the fund's investment strategy in a manner that is immediately accessible to investors in a variety of contexts? Are there approaches other jurisdictions or other regulated industries use that may work well for U.S. investors? Would a principles-based approach be better? If so, what should the principles be?

VI. General Request for Comment

This request for comment is not intended to limit the scope of comments, views, issues, or approaches to be considered. In addition to investors and funds, we welcome comment from other market participants and particularly welcome statistical, empirical, and other data from commenters that may support their views or support or refute the views or issues raised by other commenters.

By the Commission.

Dated: March 2, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–04573 Filed 3–5–20; 8:45 am]

BILLING CODE 8011–01–P

[31] *See, e.g.,* Fixed Income Market Structure Advisory Committee (FIMSAC) Recommendation for an Exchange-Traded Product Classification Scheme (Oct. 29, 2018) (recommending that ETPs meeting certain criteria include the identifier ''ETF'' in their names), *available at: https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-etp-naming-convention-recommendation.pdf.*

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 12633, March 3, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, March 4, 2020 at 11:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, March 4, 2020 at 11:00 a.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: March 3, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–04717 Filed 3–4–20; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 16253 and # 16254; Puerto Rico Disaster Number PR–00034]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of (FEMA–4473–DR), dated 01/16/2020.

Incident: Earthquakes.

Incident Period: 12/28/2019 through 02/04/2020.

DATES: Issued on 02/27/2020.

Physical Loan Application Deadline Date: 03/16/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 10/16/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of PUERTO RICO, dated 01/16/2020, is hereby amended to establish the incident period for this disaster as beginning 12/28/2019 through 02/04/2020.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2020–04611 Filed 3–5–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11065]

30-Day Notice of Proposed Information Collection: Evaluation of the Professional Fellows Program

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 April 6, 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 Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, who may be reached on (202) 632-6193 or at *DonahueNR@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Evaluation of the Professional Fellows Program (PFP)
- *OMB Control Number:* None
- *Type of Request:* New collection
- *Originating Office:* Educational and Cultural Affairs (ECA/P/V)

- *Form Number:* No form
- *Respondents:* Contacts at institutions and organizations that hosted and interacted with foreign Fellows; families that hosted PFP fellows in their homes
- *Estimated Number of Professional Contact Survey Respondents:* 1,526
- *Estimated Number of Professional Contact Survey Responses:* 300
- *Average Time per Professional Contact Survey Response:* 20 minutes
- *Total Estimated Burden Time for Professional Contact Survey:* 100 hours
- *Estimated Number of Professional Contact Interviews:* 40
- *Estimated Number of Professional Contact Interview Responses:* 40
- *Average Time per Professional Contact Interview:* 40 minutes
- *Total Estimated Burden Time for Professional Contact Interviews:* 26.7 hours
- *Estimated Number of Host Family Survey Respondents:* 855
- *Estimated Number of Host Family Survey Responses:* 86
- *Average Time per Host Family Survey Response:* 15 minutes
- *Total Estimated Burden Time for Host Family Survey Response:* 21.5 hours
- *Estimated Number of Homestay Host Interviews:* 40
- *Estimated Number of Homestay Host Interview Responses:* 40
- *Average Time per Homestay Host Interview:* 30 minutes
- *Total Estimated Burden Time for Homestay Host Interviews:* 20 hours
- *Total Estimated Burden Time (All Instruments for U.S. Audiences):* 168 hours
- *Frequency:* Once
- *Obligation to Respond:* Voluntary

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 PFP is a two-way, global exchange program for mid-level emerging leaders from select foreign countries. The PFP is managed by the Professional Fellows Division of the Bureau of Educational and Cultural Affairs. Foreign fellows come to the United States for a five- to six-week fellowship, including a minimum four-week tailored placement in a relevant professional organization (NGO's, business, government, etc.) and an end of program conference in Washington, DC. While in the Unites States, the foreign fellows volunteer in their local community, stay with local families, and create follow-on project plans to implement back in their home country. A select number of U.S. counterparts travel overseas on an outbound program that is approximately two weeks in length to directly support foreign fellows' follow-on projects. This program is funded pursuant to the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 24512464).

To fully evaluate the effectiveness and impacts of the program, the U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) intends to collect data to include the perspectives of:

- The foreign and U.S. fellows who participated in the PFP between 2013 and 2018;
- U.S. professionals who interacted the foreign fellows during their exchange in the United States; and
- U.S. families who hosted the foreign fellows during their stay.

In order to do so, ECA contracted with GDIT to administer surveys and conduct face-to-face interviews with the stakeholders listed above.

Methodology

Data will be collected with a focus on answering how the program is advancing DoS strategic policy priorities, how well the program is meeting its goals and how alumni have operationalized skills and knowledge learned during their exchange experience to promote mutual understanding, create positive change, and build collaborative networks.

The evaluation will employ a mixed-methods data collection strategy, including face-to face interviews and online surveys. Online surveys will be administered to all foreign fellows, U.S. reciprocal fellows, U.S. professionals and U.S. homestay hosts. To collect more in depth responses, face-to-face interviews will be conducted with a subset of foreign fellows, foreign colleagues, U.S. reciprocal fellows, U.S. professional contacts and U.S. homestay hosts. The combination of methods will allow GDIT to generate a quantitative profile of the program and at the same time, capture rich qualitative data.

Aleisha Woodward,

Deputy Assistant Secretary.

[FR Doc. 2020–04599 Filed 3–5–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Indianapolis Metropolitan Airport, Indianapolis, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 210.253 acres of airport land from aeronautical use to non-aeronautical use of airport property located at Indianapolis Metropolitan Airport, Indianapolis, Indiana. The aforementioned land is not needed for aeronautical use. The land is made up of four parcels. South Parcel—East, 38.606 acres, and South Parcel—West, 25.126 acres, are located south of the airport along 96th Street. Center Parcel, 99.096 acres, is located east of the airport along Hague Road and North Parcel, 47.425 acres, is located north of the airport along 106th Street. This is all vacant land with no aeronautical use. The Sponsor is proposing the land be made available for future commercial non-aeronautical use.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Melanie Myers, Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046 and Eric Anderson, Director of Properties, Indianapolis Airport Authority, 7800 Col. H. Weir Cook Memorial Drive, Indianapolis, IN 46241 Telephone: 317–487–5135.

Written comments on the Sponsor's request must be delivered or mailed to: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The land consists of 21 original airport acquired parcels. The parcels were acquired under Airport Improvement Program grants 3–18–0040–02, 3–18–0040–03, 3–18–0040–05, 3–18–0040–07, 3–18–0040–09, 3–18–0040–10, 3–18–0040–11, 3–18–0040–12 and local funding. The Sponsor is seeking FAA approval to release the land from aeronautical to non-aeronautical use and make the land available for non-aeronautical commercial use. The land is vacant and is not needed for aeronautical purposes. The Sponsor will receive fair market value for any non-aeronautical use of the property.

The disposition of proceeds from any future use of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Indianapolis Metropolitan Airport, Indianapolis, Indiana from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Land Description

South Parcel—East

Part of the Southwest Quarter and the Southeast Quarter of Section 11, Township 17 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at a Harrison marker at the southwest corner of the Southwest Quarter of Section 11, Township 17 North, Range 4 East; thence South 89 degrees 52 minutes 56 seconds East along the south line of said Southwest Quarter a distance of 1234.22 feet to the southeast corner of the Southwest Quarter of said Southwest Quarter, being marked by a Harrison marker; thence North 00 degrees 19 minutes 29 seconds East along the East line of said Southwest Quarter-Quarter a distance of 65.00 feet to the North right of way line of 96th Street per Instrument number 9609622732; thence South 89 degrees 52 minutes 56 seconds East along said North right of way line 25.00 feet to the Point of Beginning; thence North 00 degrees 19 minutes 29 seconds East 49.94 feet to the beginning of a curve to the left having a radius of 425.00 feet; thence Northerly along said curve to the left an arc distance of 302.05 feet, said curve being subtended by a chord North 20 degrees 02 minutes 08 seconds West 295.73 feet; thence North 40 degrees 23 minutes 45 seconds West 716.33 feet; thence North 55 degrees 12 minutes 14 seconds East 193.02 feet; thence North 37 degrees 53 minutes 40 seconds East 87.51 feet; thence South 89 degrees 50 minutes 55 seconds East 1300.16 feet; thence South 37 degrees 01 minutes 12 seconds East 1324.29 feet to the North right of way of 96th Street (the remaining nine calls being along said North right of way); (1) thence North 89 degrees 55 minutes 05 seconds West 304.46 feet; (2) thence North 83 degrees 34 minutes 40 seconds West 90.55 feet; (3) thence North 89 degrees 55 minutes 05 seconds West 20.00 feet; (4) thence South 83 degrees 44 minutes 30 seconds West 90.55 feet; (5) thence North 89 degrees 55 minutes 05 seconds West 23.56 feet; (6) thence North 89 degrees 52 minutes 56 seconds West 226.46 feet; (7) thence North 85 degrees 18 minutes 30 seconds West 250.80 feet; (8) thence South 87 degrees 39 minutes 49 seconds West 350.32 feet; (9) thence North 89 degrees 52 minutes 56 seconds West 390.04 feet to the Point of Beginning.

Containing 38.606 acres, more or less.

South Parcel—West

Part of the Southwest Quarter of Section 11, Township 17 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at a Harrison marker at the southwest corner of the Southwest Quarter of Section 11, Township 17 North, Range 4 East; thence South 89 degrees 52 minutes 56 seconds East along the south line of said Southwest Quarter a distance of 1234.22 feet to the southeast corner of the Southwest Quarter of said Southwest Quarter, being marked by a Harrison marker; thence North 00 degrees 19 minutes 29 seconds East along the East line of said Southwest Quarter-Quarter a distance of 65.00 feet to the North right of way line of 96th Street per Instrument number 9609622732 (the following six calls being along the north lines of said right of way); (1) thence North 89 degrees 52 minutes 56 seconds West 25.00 feet to the Point of Beginning; (2) thence North 89 degrees 52 minutes 56 seconds West 259.96 feet; (3) thence North 00 degrees 07 minutes 03 seconds East 15.00 feet; (4) thence North 89 degrees 52 minutes 56 seconds West 200.00 feet; (5) thence South 84 degrees 24 minutes 26 seconds West 150.75 feet; (6) thence North 89 degrees 52 minutes 56 seconds West 599.45 feet to the West line of said Southwest Quarter; thence North 00 degrees 09 minutes 27 seconds East along said West line a distance of 1576.00 feet; thence South 89 degrees 50 minutes 33 seconds East 7.77 feet to the beginning of a curve to the right having a radius of 175.00 feet; thence Southeasterly along said curve to the right an arc distance of 169.26 feet, said curve being subtended by a chord South 62 degrees 08 minutes 06 seconds East 162.74 feet; thence South 34 degrees 25 minutes 39 seconds East 328.86 feet to the beginning of a curve to the left having a radius of 2,525.00 feet; thence Southeasterly along said curve to the left an arc distance of 263.02 feet, said curve being subtended by a chord South 37 degrees 24 minutes 42 seconds East 262.90 feet; thence South 40 degrees 23 minutes 45 seconds East 954.64 feet to the beginning of a curve to the right having a radius of 375.00 feet; thence Southerly along said curve to the right an arc distance of 266.52 feet, said curve being subtended by a chord bearing South 20 degrees 02 minutes 08 seconds East 260.94 feet; thence South 00 degrees 19 minutes 29 seconds West 50.12 feet to the Point of Beginning.

Containing 25.126 acres, more or less.

North Parcel

Part of the Northwest Quarter and the Southwest Quarter of Section 11, Township 17 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Beginning at a Harrison marker at the northeast corner of the Northwest Quarter of Section 11, Township 17 North, Range 4 East; thence South 00 degrees 10 minutes 10 seconds West along the east line of said Northwest Quarter 2657.16 feet to the southeast corner of said Northwest Quarter; thence South 00 degrees 10 minutes 10 seconds West along the east line of the Southwest Quarter 94.68 feet; thence North 34 degrees 08 minutes 14 seconds West 2400.35 feet to the south line of the land tract conveyed to Whirlwind Enterprises, L.L.C. recorded as Instrument number 9909912887 in the Office of the Recorder of Hamilton County, Indiana; thence South 86 degrees 39 minutes 41 seconds East

along the south line of said Land tract 236.19 feet; thence North 00 degrees 10 minutes 10 seconds East along the east line of said land tract 778.04 feet to the North line of said Northwest Quarter; thence North 89 degrees 57 minutes 36 seconds East along the North line of said Northwest Quarter 679.30 feet to the northwest corner of a land tract conveyed to Cheeney Creek Real Estate Group recorded as Instrument number 2007016058; thence South 00 degrees 10 minutes 10 seconds West along the west line of said land tract 337.00 feet; thence North 89 degrees 57 minutes 36 seconds East along the south line of said land tract 387.77 feet; thence North 00 degrees 10 minutes 10 seconds East along the east line of said land tract 337.00 feet to the North line of said Northwest Quarter; thence North 89 degrees 57 minutes 36 seconds East along the North line of said Northwest Quarter 50.00 feet to the Point of Beginning. Containing 47.425 acres, more or less.

Center Parcel

Part of the Northeast Quarter and the Southeast Quarter of Section 11, Township 17 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Beginning at a Harrison marker at the northeast corner of the Southeast Quarter of Section 11, Township 17 North, Range 4 East; thence South 00 degrees 11 minutes 46 seconds West along the East line of said Southeast Quarter 676.13 feet to the Northwest right of way of the Indiana Hoosier Port Authority Railroad, located 20 feet offset of the centerline of the rails; thence South 27 degrees 45 minutes 03 seconds West along said Northwest right of way 1950.95 feet; thence North 34 degrees 08 minutes 14 seconds West 2793.29 feet to the West line of the said Southeast Quarter; thence North 00 degrees 10 minutes 10 seconds East along the West line of said Southeast Quarter 94.68 feet to the northwest corner of said Southeast Quarter; thence North 00 degrees 10 minutes 10 seconds East along the West line of said Northeast Quarter 386.70 feet; thence South 89 degrees 54 minutes 27 seconds East parallel with the South line of said Northeast Quarter 2478.19 feet to the East line of said Northeast Quarter; thence South 00 degrees 11 minutes 56 seconds West along the East line of said Northeast Quarter 386.70 feet to the Point of Beginning.

Containing 99.096 acres, more or less.

Issued in Des Plaines, Illinois on February 25, 2020.

Deb Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2020–04653 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0237]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Aviation Safety Team Safety Enhancement Questionnaires

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the collection of data for the Commercial Aviation Safety Team (CAST) to demonstrate voluntary participation with safety enhancements (SE). The CAST SEs are recommended best practices and implementation of the SEs is voluntary. It is vital for CAST to know the level of implantation of the SEs in order to determine the level of risk reduction in commercial aviation. To support this assessment CAST decided to gather information regarding the extent to which these SEs have been implemented by air carriers so it can determine if further action is required.

To facilitate this data collection for CAST, the FAA has developed an information collection (questionnaire) for key SEs that air carriers and operators are asked to complete using the FAA's existing web-based system, Web-based Operations Safety System (WebOPSS). Completion of the questionnaires is voluntary, and is requested of all current, now 61, part 121 certificate holders that the FAA oversees.

DATES: Written comments should be submitted by May 5, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, Policy Integration Branch AFS–270, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Sandra Ray by email at: *Sandra.ray@faa.gov;* phone: 412–329–3088

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0757.

Title: Commercial Aviation Safety Team Safety Enhancement Questionnaires.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The FAA is collecting safety related data regarding the voluntary implementation of Commercial Aviation Safety Team safety enhancements from certificate holders conducting operations under 14 CFR part 121. Certificate holder participation in this data collection will be voluntary and is not required by regulation. As CAST SEs are finalized, the FAA will determine the details of individual information collections in consultation with CAST and certificate holders.

Respondents: 61 Part 121 Certificate Holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 40 minutes per response; estimated that each certificate holder will have 6 responses per year.

Estimated Total Annual Burden: 245 Hours.

Issued in Washington, DC, on March 3, 2020.

Sandra L. Ray,

Aviation Safety Inspector, FAA, Policy Integration Branch, AFS–270.

[FR Doc. 2020–04627 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0101]

Controlled Substances and Alcohol Use and Testing: Motion Picture Compliance Solutions Application for Exemption From the Drug and Alcohol Clearinghouse Pre-Employment Full-Query

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Motion Picture Compliance Solutions (MPCS) has applied for an exemption on behalf of its members that employ commercial driver's license (CDL) holders subject to drug and alcohol testing. Specifically, MPCS requests an exemption from the requirement that an employer must not employ a driver who is subject to drug and alcohol testing to perform safety-sensitive functions prior to conducting a full query of the Drug and Alcohol Clearinghouse (Clearinghouse). Under the requested exemption, MPCS would conduct a limited query of the Clearinghouse before one of its member employers hires a driver for a project. If the limited query indicates that information about the driver exists in the Clearinghouse, the driver would not be permitted to perform safety-sensitive functions unless and until a full query subsequently shows that the driver is not prohibited from operating a commercial motor vehicle (CMV). FMCSA requests public comment on MPCS's application for an exemption.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2020–0101 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., 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, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4325; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (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–2020–0101), 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 comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2020–0101'' 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. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the 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 also 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(a)). The decision of the Agency must be published 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 also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulations

Currently, 49 CFR 382.701(a)(2) requires that employers of CDL holders must not employ a driver subject to the testing requirements of 49 CFR part 382 without first conducting a pre-employment full query of the Clearinghouse. A full query allows the employer to see any information that exists about a driver in the Clearinghouse. An employer must obtain the driver's specific consent,

provided electronically through the Clearinghouse, prior to the release of detailed information provided in response to the full query.

By contrast, a limited query allows an employer to determine whether the Clearinghouse contains any information about the driver. However, a limited query does not release any specific information about the driver. Limited queries require only a driver's general consent, which is obtained and retained outside the Clearinghouse and may be in written or electronic form. If the response to a limited query indicates there is information about the driver in the Clearinghouse, the employer must conduct a full query, after obtaining the driver's specific consent, within 24 hours, as required by 49 CFR 382.701(b)(3).

MPCS Exemption Application

MPCS requests the exemption from 49 CFR 701(a)(2) on behalf of its members that employ CDL holders subject to drug and alcohol testing under 49 CFR part 382. MPCS's members employ drivers providing transportation services to or from theatrical, commercial, television, or motion picture production sites. MPCS would conduct a limited query of the Clearinghouse before one of its member employers hires a driver for a project. If the limited query indicates that information about the driver exists in the Clearinghouse, the driver would not be permitted to perform safety-sensitive functions unless and until a full query subsequently shows that the driver is not prohibited from operating a CMV. MPCS, serving as a Consortium/Third-party Administrator (C/TPA) for its member employers, requests, obtains, and retains limited query general consent forms from drivers. A copy of the exemption application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on MPCS's application for an exemption from § 382.701(a)(2). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: March 3, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–04649 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0013]

Program Approval: CSX Transportation

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of approval.

SUMMARY: FRA is issuing this notice to explain its rationale for approving a CSX Transportation (CSX) Test Program designed to test track inspection technologies (*i.e.,* an autonomous track geometry measurement system) and new operational approaches to track inspections, as well as its rationale for granting a limited, temporary suspension of a substantive FRA rule that is necessary to facilitate the conduct of the Test Program.

FOR FURTHER INFORMATION CONTACT: Yu-Jiang Zhang, Staff Director, Track Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493–6460 or email *yujiang.zhang@dot.gov;* Aaron Moore, Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493–7009 or email *aaron.moore@dot.gov.*

SUPPLEMENTARY INFORMATION: On November 25, 2019, CSX petitioned FRA under Title 49 Code of Federal Regulations (CFR) Section 211.51 to suspend certain requirements of FRA's track safety regulations to conduct a program to test new track inspection technologies (*i.e.,* an autonomous track geometry measurement system) and new operational approaches to track inspections. CSX also submitted a written Test Program providing a description of the proposed tests and the geographic scope of the testing territory.

The Test Program specifies that the tests will be conducted on two separate segments totaling approximately 1,818 miles of main and siding tracks in 13 subdivisions of CSX's Chicago, Great Lakes, Northern, and Jacksonville Zones.

The Test Program is designed to test autonomous track geometry measurement systems and gradually decreased manual visual inspections as an alternative to FRA's inspection frequency requirements. CSX indicates that it will continue to use other inspection technologies during the Test Program, including: (1) Vehicle Track Interaction monitoring systems; (2) Sperry joint bar crack detection systems; (3) Georgetown Rail's Aurora Tie Inspection technology; (4) ground penetrating radar; (5) lidar; and (6) laser rail profiling and cant measurements. The Test Program will be carried out in three separate phases over the course of 18 months as detailed in Exhibit C of the Test Program (available for review at *www.regulations.gov* (docket number FRA–2020–0013)).

After review and analysis of CSX's petition for approval of its Test Program, subject to certain conditions designed to ensure safety, FRA approved CSX's Test Program and suspended the requirements of 49 CFR 213.233(c) as necessary to carry out the Test Program. A copy of FRA's letter approving CSX's Test Program and granting the requested limited temporary suspension of 49 CFR 213.233(c), as well as a complete copy of the Test Program, is available in docket number FRA–2020–0013 at *www.regulations.gov.* FRA's letter approving CSX's Test Program and granting the requested limited temporary suspension of certain regulations specifically details the conditions CSX will need to undertake during the Test Program. As required by 49 CFR 211.51(c), FRA is providing this explanatory statement describing the Test Program.

As explained more fully in its approval letter, FRA finds that the temporary, limited suspension of 49 CFR 213.233(c) is necessary to the conduct of the approved Test Program, which is specifically designed to evaluate the effectiveness of new automated track inspection technologies and operational methods. Furthermore, FRA also finds that the scope and application of the granted suspension of 49 CFR 213.233(c) as applied to the Test Program are limited to that necessary to conduct the Test Program. Finally, FRA's approval letter outlines the conditions of the Test Program that will

ensure standards sufficient to assure safety.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–04655 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2018–0088]

Final Policy: Centers of Excellence for Domestic Maritime Workforce Training and Education Designation Program Guidance; Information Collection Request for Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final policy and information collection request for comments.

SUMMARY: This notice serves to inform interested parties and the public of the Maritime Administration's (MARAD) new program designating eligible and qualified training entities as Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE). The National Defense Authorization Act of 2018 (the Act), provided the Secretary of Transportation with the discretionary authority to designate eligible and qualified entities as CoEs. CoE designations will serve to assist the maritime industry in obtaining and maintaining the highest quality workforce. On July 19, 2019, the agency published a notice in the **Federal Register** seeking public comments on a draft policy under which designations would be carried out. Below, MARAD provides its responses to all comments received. The agency is now announcing its voluntary program to identify and recommend qualified training providers for CoE designation.

DATES: This policy will become effective once the Office of Management and Budget (OMB) approves a current information collection control number. Comments regarding the information collection should be submitted following guidance in the **ADDRESSES** section immediately below on or before April 6, 2020. (See also Paperwork Reduction Act section.)

ADDRESSES: The complete file for this policy is available for inspection with the Docket Clerk, Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. You may also view the comments submitted to the docket via the Federal eRulemaking Portal at *http://www.regulations.gov* by following search instructions using DOT Docket Number MARAD–2018–0088.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC 20503, Attention: MARAD Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Nuns Jain, Maritime Administration, at 757–322–5801 or by electronic mail at *Nuns.Jain@dot.gov.* You may send mail to Nuns Jain at Maritime Administration, Building 19, Suite 300, 7737 Hampton Boulevard, Norfolk, VA 23505. If you have questions on viewing the Docket, call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

SUPPLEMENTARY INFORMATION: Following the enactment of the National Defense Authorization Act of 2018, Public Law 115–91 (the ''Act''), codified at 46 U.S.C. 54102, MARAD developed a procedure to recommend to the Secretary the designation of eligible institutions as Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE). Pursuant to the Act, the Secretary of Transportation may designate certain eligible and qualified training entities as CoEs and may subsequently execute Cooperative Agreements with CoE designees. Authority to administer the CoE program is delegated to MARAD in 49 CFR 1.93(a).

Qualified training entities seeking to be designated as a CoE need to apply to MARAD. MARAD has developed this policy to provide interested parties with comprehensive agency guidance on how to apply for CoE designation and how the CoE program will be administered. Applications should include information to demonstrate that the applicant institution meets certain eligibility requirements, selection criteria, and qualitative attributes consistent with Section 3507 of the Act.

The MARAD application procedure and program details will be available to the public on its website *https://www.maritime.dot.gov/education/maritime-centers-excellence.*

Prior Federal Action

As the first step in developing a CoE policy, MARAD issued a notice requesting comments on its proposed application process entitled Centers of Excellence for Domestic Maritime Workforce Training and Education, 83 FR 25109 (May 31, 2018). In response to the notice, we received 18 written comments. Then on July 19, 2019, MARAD published another notice in the **Federal Register** (84 FR 34994) in which we responded to comments received and sought new comments on the proposed policy to which five more comments were received. Responses to the five comments received from the July notice are summarized immediately below. All the unabridged comments are available for review electronically at *www.regulations.gov* by searching DOT Docket Id ''MARAD–2018–0088'' or by visiting the DOT Docket, Room PL–401, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal Holidays.

Response to Comments on the July 19, 2019 Notice

MARAD received comments from five different commenters.

The North Carolina Ferry Division recommended that MARAD include provisions to ensure geographic diversity, with a special focus on rural areas. We agree that geographical diversity including rural representation would be beneficial. However, this is dependent upon the receipt of acceptable applications from qualified entities in geographically diverse and rural areas. The statute does not establish any quotas and we intend to designate all qualified entities. The government's designation decision will be based upon our evaluation of the information submitted in each application to demonstrate compliance with the designation criteria.

The North Carolina Ferry Division suggested that another possible benefit for these CoE facilities could be support with curriculum development and growth. Certainly, knowledge sharing on industry trends, job needs, and career progression would benefit these centers. We agree.

The Community and Technical College Maritime Workforce Consortium (CTCMWC), submitted the following 12 comments on behalf of 18 community and technical colleges located in coastal areas, the Great Lakes, and inland waterways:

1. CTCMWC requested clarification of 'voluntary' as used in this document. The draft Policy stated that participation

is entirely voluntary. We have further clarified the Policy.

2. CTCMWC suggested that it is important to define 'institution' and submitted a proposed definition. We do not agree because ''institution'' is a commonly used word with a commonly accepted meaning and the proposed definition would result in a set of circular definitions.

3. CTCMWC recommended adding the term ''public'' and language to reflect State operation or supervision to the definition of a community or technical college. We disagree because not all technical colleges are necessarily State institutions.

4. CTCMWC recommended adding the term ''public'' to the definition of a Maritime Training Center. We disagree because under the statute, Maritime Training Centers can be privately owned and operated. Including the word ''public'' would narrow the scope of the statute. Such narrowing would restrict Maritime Training Centers that otherwise would be eligible under the statute.

5. CTCMWC suggested that to be considered for designation, a program should demonstrate a period of sustained program performance, student retention, data generation, and rigor and relevance in meeting industry workforce needs. CTCMWC recommended that both community and technical colleges and maritime training centers be required to have a maritime or maritime-related program in place for a period of five years prior to applying for CoE designation. We disagree because including such requirement for a maritime or maritime-related program to be in place for a period of five years prior to applying for a CoE designation would narrow the scope of the statute. Such narrowing would restrict groups that otherwise would be eligible under the statute.

6. CTCMWC stated that a number of programs serve multiple industries (*e.g.,* welding, HVAC, diesel, transportation and logistics, advanced manufacturing, and cyber security). Therefore, CTCMWC suggested that expanding the scope of the eligibility language to include maritime-related programming would be inclusive and appropriate to best serve the needs of the maritime workforce. CTCMWC proposed including ''maritime-related industry training program in its curriculum'' within the eligibility criteria at 1.b.1 for community and technical colleges. We disagree because programs that serve multiple industries are not prohibited under the eligibility criteria for a community or technical college at 1.b.1, if at least some of the training is for the domestic maritime workforce. We note, however, that the selection criteria at 2.I.a.2 includes programs offering Ashore Career preparation tracks in the United States Maritime Industry which has been defined quite broadly. Each institution's application may explain how their maritime related programs provide Ashore Career preparation tracks in the United States Maritime Industry.

7. CTCMWC suggested that MARAD recognize the alignment of some community and technical colleges and maritime centers structuring as consortia or alliances that will apply for designation in this form, with one entity within that consortium or alliance operating as the lead. CTCMWC recommended that the eligibility criteria be modified to include a consortium or alliance of public Community or Technical Colleges and/or Maritime Training Center(s). We agree and have clarified our policy regarding applications by a group of otherwise qualified entities and the expectations we have for such filings.

8. CTCMWC suggested expanding the scope of the language with regard to high school engagement to include high schools with maritime-related programming. According to this commenter, the expansion will support: Broader outreach, outreach to underserved and underrepresented communities, and support greater awareness of career pathways, educational and apprenticeship opportunities in the industry. CTCMWC recommended corresponding changes to the text at II.g. to reflect broader scope regarding high school engagement. We agree and have incorporated appropriate changes in the Policy.

9. CTCMWC suggested that Maritime academy engagement may not be a viable strategy for all Domestic Maritime Centers of Excellence. This may be due to geographic, industry, program and other factors. According to this commenter, changing the language to be more expansive, would be appropriate, and provide a more dynamic and flexible platform from which the designated Domestic Maritime Centers of Excellence can operate. CTCMWC recommended corresponding changes to the text at II.h. to reflect flexible engagement with maritime academies and broader engagement with applicable institutions for advanced proficiency and higher education. We agree and have incorporated appropriate changes in the Policy.

10. CTCMWC suggested that the policy require a mandatory written agreement between MARAD and all designated Domestic Maritime Centers of Excellence to address intent, scope of work, performance, compliance, fiduciary guidelines, if applicable, etc. CTCMWC recommended that ''may'' be replaced by ''shall'' in ''After issuance of the designation, MARAD may enter into a cooperative agreement with the CoE.'' We disagree because imposing mandatory requirements in this guidance document would be inconsistent with the Administrative Procedure Act and DOT processes. *See* 49 CFR 5.29(e).

11. CTCMWC submitted their consensus position that a one-year designation period is not feasible, and places an onerous burden not only on an institution, but MARAD as well. CTCMWC recommended that successful applicants receive a five-year designation and may reapply for designation at the end of the five-year period. We understand the concerns identified by CTCMWC and previously weighed the potential of a five-year designation period. However, we believe that the one-year period is workable and protects the accuracy and value of our designations. A five-year period would necessitate the development of a regulation and impose additional administrative burdens, *i.e.* oversight mechanisms, not necessary with a one-year CoE designation. In addition, we believe that this policy based program is the most responsive means to exercise our discretionary authority. Consistent with other MARAD programs, this new policy will allow experience to dictate whether and how a regulation may be developed to best administer the program in the future. For now, we believe this new policy, overall, is in the best interest of potential CoE designees.

12. CTCMWC proposed that item # 3.d, addressing non-profit certification, under 'Information to include in your application' be deleted, as eligible applicants are from public community and technical colleges and maritime training centers operated under the supervision of a state. We do not agree because non-profit certification is required to be submitted only if applicable and a maritime training center could be a non-public entity.

The American Waterways Operators expressed support for the CoE program and encouraged MARAD to ensure that those community and technical colleges that receive the CoE designation are ready to assist the maritime industry in obtaining and maintaining the highest quality workforce. The CoE designation will provide further opportunities and avenues for these institutions to expand their reach, thus benefitting the entire maritime industry. We agree.

The University of Alaska (UA) supported the CTCMWC comments. In addition, UA noted that it has expanded its efforts to partner with the State of Alaska Department of Labor and Workforce Development Alaska Vocational Technical Center (AVTEC) to develop the Alaska Maritime Education Consortium (AMEC). Partnering as a single consortium will strengthen their abilities to meet the maritime workforce needs in Alaska. UA strongly recommended that MARAD allow a consortium of otherwise eligible community and technical colleges and maritime training centers, to be eligible to apply for the CoE designation within a State. Alaska's nearly 34,000 miles of coastline borders the Beaufort and Chukchi Seas to the North (both of which merge into the Arctic Ocean), the Bering Sea to the west, and the Gulf of Alaska and Pacific Ocean to the south. UA has coastal campuses in Ketchikan, Sitka, Juneau, Valdez, Homer, Kodiak, Soldotna, Dillingham, Bethel, Nome, and Kotzebue. AVTEC is located on the coast in Seward. It is neither practical nor prudent in a State like Alaska, to designate a single geographical location as a CoE. UA hopes to apply for the CoE designation as a single, integrated statewide consortium to leverage the location, programs, and expertise of UA and AVTEC, into one, robust, networked, center of excellence model. We agree and have clarified our policy regarding applications by a group of otherwise qualified entities and the expectations we have for such filings.

The Pacific Maritime Industries Education Alliance submitted comments which were identical to the comments submitted by CTCMWC.

MARAD Center of Excellence for Domestic Maritime Workforce Training and Education Designation Policy

This policy describes the process through which MARAD will exercise its discretionary authority to designate Centers of Excellence for Domestic Maritime Workforce Training and Education.

How To Be Designated a Center of Excellence for Domestic Maritime Workforce Training and Education

Introduction

The Secretary of Transportation, acting through the Maritime Administrator, may designate certain eligible and qualified training entities as Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE) and may subsequently execute Cooperative Agreements with CoE designees. The Maritime Administration (MARAD) has developed the CoE Program to provide interested parties with comprehensive agency guidance on how best to apply for CoE designation. However, conformity with this CoE applicant guidance, except where explicit in the statute, is voluntary only. MARAD will review and consider all applications it receives and may contact applicants with questions to assist in reviewing their applications. The CoE Program is a voluntary program. Each eligible and qualified training entity is free to decide whether it wishes to participate in the program and apply for a CoE designation.

Eligible training entities seeking to be designated as a CoE are welcome to apply with MARAD. The application should include information to demonstrate that the applicant institution meets certain eligibility criteria, designation requirements, and attributes consistent with 46 U.S.C. 54102.

Key Terms

The following list of key terms are either directly taken from the statute or have been developed by MARAD or from comments received from the public during our earlier notice and comment period. The list is intended to assist applicants by providing context and insight into the approval process. If you believe that your institution qualifies for CoE designee status under an alternate interpretation or by qualifications not otherwise clearly articulated in the statute, please provide a cogent justification for any such alternative and it will be given due consideration during our review.

1. ''Afloat Career'' is a term developed by MARAD to mean a career as a merchant mariner compensated for service aboard a vessel in the U.S. Maritime Industry.

2. ''Arctic'' as explicitly stated in the statute means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain. [Section 112 of the Arctic Research and Policy Act of 1984, codified at 15 U.S.C. 4111];

3. ''Ashore Career'' is a term developed by MARAD to mean a shore-based compensated occupation in the United States Maritime Industry.

4. ''Community or Technical College'' is interpreted by MARAD to mean an institution of higher education that—

a. admits as regular students, persons who are beyond the age of compulsory school attendance, or are enrolled in a high school and concurrently are participating in a dual credit or similar program, in the State in which the institution is located or in an adjoining State or region; and

b. has primary focus on awarding Associate (or equivalent) degrees; and

5. provides an educational program that is acceptable for full credit toward a bachelor's or equivalent degree or that may culminate in a professional or technical certificate or credential, stackable certificates and credentials, and/or two-year degree; ''Maritime Training Center'' is interpreted by MARAD to mean a training institution that:

a. Does not grant baccalaureate or higher levels of academic degree;

b. is not a ''Community or Technical College''; and

c. provides a structured program of training courses to prepare students and/or enhance their skills for Afloat Careers and/or Ashore Careers in the United States Maritime Industry.

6. ''Mississippi River System'' is interpreted by MARAD to mean the mostly riverine network of the United States which includes the Mississippi River, and all connecting waterways, natural tributaries and distributaries. The system includes the Arkansas, Illinois, Missouri, Ohio, Red, Allegheny, Tennessee, Wabash and Atchafalaya rivers. Important connecting waterways include the Illinois Waterway, the Tennessee-Tombigbee Waterway, and the Gulf Intracoastal Waterway.

7. ''Operated by, or under the supervision of, a State'' is interpreted by MARAD to mean operated by or under the supervision of a public entity of a State government or one of its subdivisions, as well as, county governments, and city or local governments;

a. ''operated by'' a State is interpreted by MARAD to mean that the State controls or provides direct oversight to the Maritime Training Center or the Community or Technical College through:

i. A State charter process, or other equivalent documents and system; and

ii. a State oversight body.

b. ''under the supervision of a State'' is interpreted by MARAD to mean that the State oversees in some manner the Maritime Training Center or the Community or Technical College through at least one of the following means:

i. Accreditation or similar review, validation, and approval by a public entity of the State government or one of

its subdivisions as well as, county governments, and city or local governments;

ii. Registration approval by a State Apprenticeship Agency (SAA), in accordance with 29 CFR part 29, of an apprenticeship program offered by the Maritime Training Center to qualified students from the public; or

iii. Other means which demonstrate to MARAD that the State is supervising the educational process for which a CoE designation is sought.

c. ''State'' is interpreted by MARAD to mean a State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

d. ''United States Maritime Industry'' is a term developed by MARAD that includes all segments of the maritime-related transportation system of the United States, both in domestic and foreign trade, coastal and inland waters, as well as non-commercial maritime activities, such as pleasure boating, marine sciences (including all scientific research vessels) and all of the industries that support such uses, including, but not limited to vessel construction and repair, vessel operations, ship logistics supply, berthing, port operations, port intermodal operations, marine terminal operations, vessel design, marine brokerage, marine insurance, marine financing, chartering, maritime-oriented supply chain operations, offshore industry and maritime-oriented research and development.

Applicant Information

1. Who is eligible to apply for designation as a Center of Excellence for Domestic Maritime Workforce Training and Education (CoE)?

Participation in the CoE program is entirely voluntary for an eligible educational institution. An eligible educational institution is not required to seek a CoE designation. Under the statute, an educational institution that provides training and education for the domestic maritime workforce is eligible to apply so long as it meets the following criteria:

a. An institution located in a State that borders on at least one of the following bodies of water:

1. Gulf of Mexico;
2. Atlantic Ocean;
3. Long Island Sound;
4. Pacific Ocean;
5. Great Lakes;
6. Mississippi River System;
7. Arctic; or
8. Gulf of Alaska.

b. The institution is:

1. A Community or Technical College; or

2. A Maritime Training Center—

i. Operated by, or under the supervision of a State; and

ii. With a maritime training program in operation in its curriculum on 12/12/2017; or

3. A group of Community or Technical Colleges and/or Maritime Training Centers that:

i. Consists only of members that meet the eligibility criteria at (1)(a) and either (1)(b)(1) or (1)(b)(2), and the selection criteria under (2);

ii. Names a member of such group as a lead entity. The lead entity will serve as the primary point of contact with MARAD and will be responsible for all duties, including administrative, legal and financial, as related to the CoE designation. For example, the lead entity is responsible for submitting the CoE application, responding to any inquiries from MARAD, and coordinating and executing any cooperative agreements with MARAD; and

iii. Has a legally binding agreement signed by all members. That agreement must include the name of the group, which will receive the CoE designation if one is granted, and list the lead entity and its responsibilities consistent with (ii) of this section.

2. How does MARAD interpret the selection criteria for CoE designation?

I. Assuming no alternative qualifications are provided, MARAD will consider applicants eligible for designation if they can demonstrate compliance with all the following criteria:

a. The academic programs offered by the institution include:

1. One or more Afloat Career preparation tracks in the United States Maritime Industry, and/or

2. One or more Ashore Career preparation tracks in the United States Maritime Industry.

b. Applicant institutions offering Afloat Career and/or Ashore Career tracks have been accredited as follows:

1. ''Community or Technical Colleges'' hold current accreditation of the institution from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education.

2. ''Maritime Training Centers'' hold current accreditation either—

i. of the institution, from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education; or

ii. of the maritime training program offered by the institution from either:

A. The State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29,

B. the State's Department of Education or equivalent State agency,

C. the United States Coast Guard (USCG), or

D. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.

c. As applicable, maintain USCG approval for the merchant mariner training program and/or merchant mariner training course(s) offered by the institution.

d. Provide data and statistics to demonstrate institutional and/or program effectiveness. This should include, but is not limited to, recruitment data, past/current enrollment (trends), attrition rates, student program completion data, post-program job and placement statistics (to the extent available to the institution), and program effectiveness feedback from students, faculty, alumni, and other stakeholders.

e. As applicable, maintain authorization and/or endorsement of the program and/or course(s) by an applicable professional society or industry body (including, but not limited to Welding, Electrician, Electronics, Maritime Construction, Maritime Logistics, Maritime Systems, etc.) to issue industry accepted certifications that reflect professional recognition of the level of educational or technical skill achievement.

II. Additional factors to be considered may include the following qualitative attributes fostered by the institution:

a. Supporting workforce needs of the local, state, or regional economy;

b. Building Science, Technology, Engineering, and Math (STEM) competencies of local/future workforce through maritime programs to meet emerging local, regional, and national economic interests;

c. Promoting diversity and inclusion among the student body;

d. Offering a broad-based curriculum and stackable credentials where applicable;

e. Engaging and/or collaborating with the maritime industry including, but not limited to employers, associations, and other industry organizations or partners;

f. Engaging and/or collaborating with employer-led maritime training practices and programs through Sector Partnerships as authorized in the 2014

Workforce Innovation and Opportunity Act Section 3(26);

g. Engaging and/or collaborating with local and regional maritime high schools or other high schools with maritime, maritime related, Career Technical Education (CTE) or STEM programs;

h. Engaging and/or collaborating with maritime academies as appropriate and other applicable institutions or organizations for advanced proficiency and higher education; and

i. Conducting other significant domestic maritime workforce development related activities.

3. What agreement may MARAD execute with a designated CoE?

The Maritime Administrator, or designee, may enter into a cooperative agreement with a CoE to support maritime workforce training and education, including but not limited to, efforts of the CoE to:

a. Recruit, admit, and train students;

b. Recruit and train faculty;

c. Expand or enhance facilities;

d. Create new maritime career pathways;

e. Award students credit for prior experience, including military service;

f. Expand and improve employer-led maritime training practices and programs through the establishment of Sector Partnerships as authorized in the 2014 Workforce Innovation and Opportunity Act Section 3(26); and

g. Conduct such other CoE activities that are determined by MARAD to further maritime workforce training and education.

4. What specific assistance may MARAD offer to a designated CoE under a Cooperative Agreement?

By entering into a cooperative agreement, MARAD may be able to offer the following types of assistance:

a. Donation of surplus equipment to CoEs that also meet the requirements of 46 U.S.C. 51103(b)(2)(C);

b. Temporary use of MARAD vessels and assets for indoctrination, training, and assistance, subject to availability and approval by MARAD and the Department of Defense when applicable. For any CoE requests relating to temporary use of a MARAD Training Ship operated by a State Maritime Academy, the MARAD approval process will include consultation with that Academy;

c. Availability of MARAD subject matter experts to address students when feasible; and

d. Funding, to the extent such funds are properly appropriated and made available for this purpose.

Implementation and Administration

MARAD will evaluate the applicant's supporting documentation and either approve or disapprove the request for designation. During the evaluation of the application and the supporting documentation, MARAD may request clarifications or additional information from the applicant. Upon approval, the Maritime Administrator or his/her designee will make a designation. MARAD will thereafter publish the CoE's name and contact information on its website. After issuance of the designation, MARAD may enter into a cooperative agreement with the CoE.

5. When and where should I submit my application for designation?

a. MARAD will publish notifications in the **Federal Register** and on its website at the beginning of March each year seeking applications on or before June 1. This should provide applicants a minimum of 60 days to prepare and submit their applications.

Note: The first CoE application period is anticipated to occur sometime soon after the agency receives the required Office of Management and Budget information collection number. Accordingly, the first CoE application period to be noticed may occur outside the proposed March–June time frame.

b. An eligible training entity seeking designation as a CoE may submit applications, including all supporting information and documents, by email to *CoEDMWTE@dot.gov.*

Or by mail addressed as follows: Department of Transportation, Maritime Administration, Deputy Associate Administrator for Maritime Education and Training, Attention: CoE Designation Program, 1200 New Jersey Ave. SE, Washington, DC 20590.

6. How will I know the outcome of my designation request application?

MARAD will notify each applicant of the status of their designation request. During the evaluation period, MARAD may request clarification or additional information from the applicant.

7. Does my CoE designation expire?

CoE designations are identified by year (*e.g.,* X has been designated a Center of Excellence for Domestic Maritime Workforce Training and Education for 2020). Successful applicants can apply each year for designation.

How To Apply for a CoE Designation

8. What should be included in my CoE Designation Application?

Special Instructions: To assist MARAD in its review of your application and to ensure that your application is identified as complete, your institution should provide only concise and relevant information and supporting documentation to adequately demonstrate your eligibility and compliance with the statutory designation criteria. To that end, MARAD encourages your institution to ensure that each responsive section and each page of any document or enclosure in your application clearly references the question number(s) and section(s) listed in this guidance and or the statute. See the below examples:

Example 1. ''*Mar Ex*'' *is eligible for the CoE program as a community college. (Q10, Section I(c)). Please find enclosed our Articles of Incorporation, Certificate of Status, State supervision and validation document. (Q10, Section I(c)(1–3).*

Example 2. ''*Mar Ex*'' *is enclosing the following supporting documents to demonstrate that our Maritime Training Center offers Afloat Track programs and that we are State accredited. (Q10, Section I(e)(2)): U.S. Department of Education Accrediting Agency XYZ accreditation (Q10, Section I(e)(2)(i).*

Information To Include in Your Application

Including the following information will greatly assist our review process:

1. Letter applying for CoE designation from the Chief Executive of the applicant institution.

2. Applicant contact information:

a. Legal name of applicant institution and address.

b. Chief executive's name, position title, address, phone number(s) and email.

c. Points of contact (POC) name(s), position titles, phone number(s), emails.

3. Indicate if the applicant institution is claiming eligibility for the CoE program as a ''Community or Technical College'' or ''Maritime Training Center'', and submit the following supporting information and documents:

a. Charter, Articles of Incorporation, Certificate of Incorporation, or equivalent, if applicable.

b. Certificate of Status (also known as Certificate of Existence or Certificate of Good Standing), a document issued by a State official (usually the Secretary of State), if applicable.

c. State operation or State supervision validation documents, if applicable.

d. Non-Profit certification, if applicable.

e. Accreditation approval letter(s) from an accrediting agency(ies).

f. Approval letter from a State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29, if applicable.

g. Approval letter from the State's Department of Education or equivalent State agency, if applicable.

h. Approval letter from the United States Coast Guard (USCG), if applicable.

i. ISO 9001 or other quality management certification (Maritime Training Centers only), if applicable.

j. Data and statistics to demonstrate institutional effectiveness. This should include, but not be limited to, recruitment data, past/current enrollment (trends), attrition rates, student program completion data, post-program job and placement statistics (to the extent available to the institution), and program effectiveness feedback from students, faculty, alumni, and other stakeholders.

4. Indicate that the applicant offers one or more Afloat Career preparation tracks and/or one or more Ashore Career preparation tracks in the United States Maritime Industry and submit the following supporting information:

a. Program summary;

b. A description of applicable courses offered (only relevant maritime related program-specific pages from the catalogue);

c. If applicable, letters of authorization and/or endorsement of the course/program and/or course(s) by an applicable professional society or industry body (including, but not limited to Welding, Electrician, Electronics, Maritime Construction, Maritime Logistics, Maritime Systems, etc.) to issue industry accepted certifications that reflect a professionally recognized level of educational or technical skill achievement; and

d. Any other relevant supporting documentation.

Note: Applicant institutions offering both Ashore and Afloat Career tracks are encouraged to submit supporting information for both tracks.

5. Applicant institutions offering Afloat Career and/or Ashore Career tracks should indicate that they have satisfied accreditation requirements, as set forth below:

a. ''Community and Technical Colleges'' hold current accreditation of the institution from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education.

b. ''Maritime Training Centers'' hold current accreditation—

i. either of the institution from a Regional Accreditation Agency or a Nationally Recognized; Agency on the list of Accrediting Agencies approved by the U.S. Department of Education; or

ii. of the maritime training program offered by the institution from one or more of the following:

A. A State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29,

B. the State's Department of Education or equivalent State agency,

C. the United States Coast Guard (USCG), if applicable; or

D. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.

6. All applicant institutions may submit a brief narrative statement for one or more qualitative attributes fostered by the institution to accomplish the following:

a. Support the workforce needs of the local, state, or regional economy;

b. Build the STEM (Science, Technology, Engineering, and Math) competencies of local/future workforce to meet emerging local, regional, and national economic interests;

c. Promote diversity and inclusion among the student body;

d. Offer a broad-based curriculum and stackable credentials, where applicable;

e. Engage and/or collaborate with the maritime industry, including, but not limited to employers, associations, and other industry organizations or partners;

f. Engage and/or collaborate with employer-led maritime training practices and programs through Sector Partnerships as authorized in the 2014 Workforce Innovation and Opportunity Act Section 3(26);

g. Engage and/or collaborate with local and regional maritime high schools with maritime, maritime related, Career Technical Education (CTE) or STEM programs;

h. Engage and/or collaborate with maritime academies and other institutions or organizations for advanced proficiency and higher education; and

i. Conduct other significant domestic maritime workforce development related activities.

7. All applicant institutions may provide any relevant endorsements, awards, recognition and significant accomplishments in support of their application.

Policy Analysis and Notices

Consistent with the Administrative Procedures Act and Department of Transportation rulemaking policy, MARAD is publishing this policy in the **Federal Register** to indicate how it plans to exercise the discretionary authority provided by Section 3507 of the National Defense Authorization Act of 2018, Public Law 115–91 (December 12, 2017). Nothing in this notice or in the policy itself requires MARAD to exercise its discretionary authority under 46 U.S.C. 54102. This policy establishes a voluntary program in which successful applicants may be designated as a Center of Excellence for Domestic Maritime Workforce Training and Education (CoE).

Paperwork Reduction Act

The information collection requirements in this final policy are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* The sections that contain the information collection requirements are detailed in the above section entitled ''*How to be Designated a Center of Excellence for Domestic Maritime Workforce Training and Education*'' and the estimated time to fulfill each requirement and to prepare a complete application are estimated in the section entitled ''Collection Summary'' below.

The OMB is required to make a decision concerning the collection of information requirements contained in this final policy within 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. [To direct your comments, see section entitled **ADDRESSES**]

MARAD intends to obtain a current OMB control number for the information collection requirements resulting from this rulemaking action prior to the effective date of this final policy. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Copies of this notice and information collection request may be obtained from the Office of Maritime Labor and Training MAR–650, Room W23–314, 1200 New Jersey Avenue SE, Washington, DC 20590.

—*Title of Information Collection:* Centers of Excellence for Domestic Maritime Workforce Training and Education Program.

—*OMB Control Number:* Pending.

—*Form Number:* None.

—*Expiration Date of Approval:* Three years following approval by the Office of Management and Budget.

—*Summary of Collection of Information:* Entities seeking to obtain

designation as a Center of Excellence for Domestic Maritime Workforce Training and Education (CoE). Entities seeking CoE designation must submit certain information described in the proposed policy and application procedures. No form is required to make a submission. However, all information described in the application procedures will be required to be submitted as described therein and is necessary for the proper review of the applicant's qualifications.

—*Need for and Use of the Information:* The information collected will be used to analyze whether applicants have the qualifications to meet the programmatic requirements of Section 3507 of the National Defense Authorization Act, 2018. This policy is necessary to establish an understanding between MARAD and the applicant/training entity that certain terms must be met to hold a CoE designation. Without this information, MARAD would not be able to offer the benefit of its CoE designation program to applicants. In addition, CoE designation will facilitate the training and education of a domestic maritime workforce essential to meeting the nation's current and projected economic and national security needs.

—*Description of Respondents:* As defined by statute, Community Colleges, Technical Colleges and certain Maritime Training Centers with a maritime training program in operation on December 12, 2017.

—*Annual Responses:* Once the Program is implemented, the agency anticipates between 75–100 submissions each year. Designation is a one-time event identified by year. However, the agency does anticipate the collection of information annually from the same estimated number of training entities seeking annual designation.

—*Annual Burden:* 24 hours per program participant.

(Authority: The National Defense Authorization Act of 2018, P.L. 115–91 (December 12, 2017), 46 U.S.C. 54102, The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended, 49 CFR 1.49)

Dated: March 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04570 Filed 3–5–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons who have been removed from the list of Specially Designated Nationals and Blocked Persons (SDN List). Their property and interests in property are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

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 (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

OFAC previously determined on December 14, 2018 that the individual and entities listed below met one or more of the criteria under Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons with Respect to South Sudan,'' 79 FR 19283, 3 CFR, 2014 Comp., p. 238 (E.O. 13664).

On February 26, 2020, the Director of OFAC determined that circumstances no longer warrant the inclusion of the following individual and entities on the SDN List under this authority. This entity is no longer subject to the blocking provisions of Section 1(a) of E.O. 13664.

Individual

1. ZIV, Israel (a.k.a. ZILBERSTEIN, Israel Baruch; a.k.a. ZIV, Israel Baruch; a.k.a. ZIV, Yisrael), Haela 16, Har Hadar, Israel; Haela 40, Har Adar, Israel; DOB 06 Jul 1957; nationality Israel; Gender Male; Passport 29037166 (Israel); National ID No. 5490537 (individual) [SOUTH SUDAN].

Entities

1. GLOBAL IZ GROUP LTD (a.k.a. ZIV HG LTD), 7 Metzada, Bnei Brak 5126112, Israel; Business Registration Number 514033703 (Israel) [SOUTH SUDAN] (Linked To: ZIV, Israel).

2. GLOBAL LAW ENFORCEMENT AND SECURITY LTD (a.k.a. ''GLS''), 2 Granit, Petah Tikva 4951446, Israel; Business Registration Number 514151331 (Israel) [SOUTH SUDAN] (Linked To: GLOBAL N.T.M LTD).

3. GLOBAL N.T.M LTD (a.k.a. CST GLOBAL; a.k.a. GLOBAL CST; a.k.a. ''GLOBAL GROUP''; a.k.a. ''GREEN HORIZON''), 11 Granit Street, P.O. Box 3111, Petach-Tikva 49514, Israel; 2 Granit, Petah Tikva 4951446, Israel; Business Registration Number 513884569 (Israel) [SOUTH SUDAN] (Linked To: ZIV, Israel).

Dated: February 26, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–04402 Filed 3–5–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Agency Information Collection Activity: Compliance Inspection Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: 60-Day notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) or 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed *extension,* of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 5, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0041'' in any correspondence. During the comment

period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: (Pub. L. 104–13; 44 U.S.C. 3501—21).

Title: Compliance Inspection Report (VA Form 26–1839).

OMB Control Number: 2900–0041.

Type of Review: Extension of an approved collection.

Abstract: Fee-compliance inspectors complete VA Form 26–1839 during their inspection on properties under construction. The inspections provide a level of protection to Veterans by assuring them and VA that the adaptation are in compliance with the plans and specifications for which a specially adapted housing grant is based.

Affected Public: Individuals or households.

Estimated Annual Burden: 900 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–04632 Filed 3–5–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Agency Information Collection Activity: (State Cemetery Data Sheet and Cemetery Grant Documents)

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine when to begin development of additional acreage for burial space and, in so doing, to anticipate when to provide money to expand or improve these National Cemeteries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 5, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Louis Wingfield, National Cemetery Administration (41E), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; or email: *Louis.Wingfield@va.gov.* Please refer to ''OMB Control No. 2900–0559'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, *cynthia.harvey-pryor@va.gov* or at 202–461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: State Cemetery Data, VA Form 40–0241 and Cemetery Grant Documents, 40–0895 Series.

OMB Control Number: 2900–0559.

Type of Review: Extension without change of a currently approved collection.

Abstract: VA Form 40–0241 and Cemetery Grant Documents, 40–0895 Series, are required to provide data regarding the number of interments conducted at State Veterans cemeteries and support grant applications each year. This data is necessary for budget, oversight and compliance purposes associated with exiting and establishment of new State and Tribal government Veteran cemeteries.

Affected Public: State, Local and Tribal Governments.

Estimated Annual Burden: 10,050.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 286.

By direction of the Secretary.

Danny S. Green,

Department Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–04633 Filed 3–5–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Agency Information Collection Activity: VA Request for Determination of Reasonable Value

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 5, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0045'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0045'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: VA Request for Determination of Reasonable Value (VA Forms 26–1805, and 26–1805–1).

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1805 (fillable printable) and VA Form 26–1805–1 (computer-generated) are used to collect data necessary for VA compliance with requirements of 38 U.S.C. 3710 (b) (4), (5), and (6) or 38 U.S.C.3711. These requirements prohibit the VA guaranty or making of any loan unless the suitability of the security property for dwelling purposes is determined, the loan amount does not exceed the reasonable value, and if the loan is for purposes of alteration, repair of improvements, or the work substantially improves the basic livability of the property.

Affected Public: Individuals or households.

Estimated Annual Burden: 51,400 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 257,000.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–04634 Filed 3–5–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting, Amended

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the Advisory Committee on Disability Compensation (Committee) will meet on March 30–31, 2020. The Committee will meet at 1800 G Street NW, Conference Room 542, Washington, DC 20006. The sessions will begin at 8:30 a.m. and adjourn at 4 p.m. EST each day. The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The agenda will include overview briefings on the VA Schedule for Rating Disabilities, the transition process for retiring and separating Reserve and National Guard members, and Individual Unemployability. Time will be allotted for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2-page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Janice Stewart, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Implementation Staff (211B), 810 Vermont Avenue NW, Washington, DC 20420 or email at *Janice.Stewart@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the screening process. Due to an increase in security protocols, you should allow an additional 30 minutes before the meeting begins. Routine escort will be provided until 8 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Janice Stewart or call her at (202) 461–9023.

Dated: March 3, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–04613 Filed 3–5–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Friday,
No. 45 March 6, 2020

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88300; File No. SR–BOX–2019–19]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

February 28, 2020.

On September 27, 2019, BOX Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing the listing and trading of equity securities that would be NMS stocks on the Exchange through a facility of the Exchange known as the Boston Security Token Exchange LLC (''BSTX''). The proposed rule change was published for comment in the **Federal Register** on October 18, 2019.[3] On November 29, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On December 26, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended the proposed rule change as originally filed.[6]

On January 16, 2020, the Commission published the proposed rule change, as modified by Amendment No. 1, for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On February 19, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[9] The Commission has received four comment letters on the proposed rule change.[10] The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as modified by Amendment No. 2, and as described in Items I and II below, which Items have been prepared by the Exchange.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (''Exchange Act''),[11] BOX Exchange LLC (''BOX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the Exchange known as Boston Security Token Exchange LLC (''BSTX''). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of ''security tokens,'' which would be equity securities that meet BSTX listing standards and for which ancillary records of ownership would be able to be created and maintained using distributed ledger (or ''blockchain'') technology. The proposed additions to the Exchange's Rules setting forth new Rule Series 17000–28000 are included as Exhibit 5A. All text set forth in Exhibit 5A would be added to the Exchange's rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the proposed rule change, such as the application to become a BSTX Participant, are included as Exhibits 3A through 3N.

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM–8050–3, 11010, 11030, 12030, and 12140. These proposed changes are set forth in Exhibit 5B. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange's Rules.[12]

This Amendment No. 2 to SR–BOX–2019–019 amends and supersedes the original filing, as modified by Amendment No. 1, in its entirety.

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 proposing to adopt a series of rules to govern the trading of equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system (''BSTX System'') for the trading of securities that will be considered ''security tokens'' under the proposed rules. The ''security tokens'' under the proposed rules would be equity securities that meet BSTX listing standards, and that trade on the BSTX System, and for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87287 (October 11, 2019), 84 FR 56022 (October 18, 2019).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87641 (November 29, 2019), 84 FR 66701 (December 5, 2019). The Commission designated January 16, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] When the Exchange filed Amendment No. 1 to BOX–2019–19, it also submitted the text of the partial amendment as a comment letter to the filing, which the Commission made publicly available at *https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6613675-202939.pdf* (''Amendment No. 1'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 88002 (January 16, 2020), 85 FR 4040 (January 23, 2020) (''Order Instituting Proceedings'').

[9] Amendment No. 2 is available at: *https://lynxstorageaccount.blob.core.windows.net/boxvr/SE_resources/SR-BOX-2019-19_Amendment_2.pdf.*

[10] *See* Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, dated January 13, 2020; Letter from Dave G., dated January 17, 2020; Letter from Holly H. Smith, Partner, Eversheds Sutherland (US) LLP, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated February 12, 2020; and Letter from David A. Schrader, Partner, Paykin Krieg & Adams, LLP, to Vanessa Countryman, Secretary, Commission, dated February 25, 2020. All comments on the proposed rule change are *available at: https://www.sec.gov/comments/sr-box-2019-19/srbox201919.htm.*

[11] 15 U.S.C. 78s(b)(1).

[12] The Exchange's Rules can be found on the Exchange's public website: *https://boxoptions.com/regulatory/rulebook-filings/.*

which ancillary records of ownership would be able to be created and maintained using distributed ledger technology. These ancillary records of ownership that would be maintained using distributed ledger technology would not be official records of security token ownership. Instead, as described further herein, such records would be ancillary records that would reflect certain end-of-day security token position balance information as reported by market participants. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies that wish to issue their registered securities as security tokens. Security tokens would trade as NMS stock.[13] The Exchange is not proposing rules that would support its extension of unlisted trading privileges to other NMS stock, and accordingly the Exchange does not intend to extend any such unlisted trading privileges in connection with this proposal. The Exchange would therefore only trade security tokens listed on BSTX unless and until it proposes and receives Commission approval for rules that would support trading in other types of securities, including through any extension of unlisted trading privileges to other NMS stock. A guide to the structure of the proposed rule change is described immediately below.

The Exchange is filing this amendment to SR–BOX–2019–019, which was published for comment by the Commission on October 11, 2019,[14] in order to: Provide additional clarification and justification in support of the proposed rule change, delete and revise certain language in the Original Proposal, and respond to questions raised by the Commission [15] and comment letters received regarding the proposal. This amendment supersedes and replaces the Original Proposal in its entirety.

I. Guide to the Scope of the Proposed Rule Change

The proposal for trading of securities that will be ''security tokens'' (under the BSTX Rules, as defined below) through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (''BSTX Rules''). In addition, BSTX corporate governance documents as well as certain discrete changes to existing BOX corporate governance documents are necessary, which the Exchange has submitted to the Commission through separate proposed rule changes. To support the trading of security tokens through BSTX, certain conforming changes are proposed to existing BOX Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 28000.[16] Each of those new Rule Series and the provisions thereunder are described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a discussion of notable differences between the source rule and the proposed BSTX Rule. The proposed BSTX Rules are addressed in Part III below and they generally cover the following areas:

- Section 17000—General Provisions of BSTX;
- Section 18000—Participation on BSTX;
- Section 19000—Business Conduct for BSTX Participants;
- Section 20000—Financial and Operational Rules for BSTX Participants;
- Section 21000—Supervision;
- Section 22000—Miscellaneous Provisions;
- Section 23000—Trading Practice Rules;
- Section 24000—Discipline and Summary Suspension;
- Section 25000—Trading Rules;
- Section 25200—Market Making on BSTX;
- Section 26000—BSTX Listing Rules;
- Section 27000—Suspension and Delisting;
- Section 27100—Guide to Filing Requirements;
- Section 27200—Procedures for Review of Exchange Listing Determinations; and
- Section 28000—Dues, Fees, Assessments and Other Charges.

II. Overview of BSTX and Considerations Related to the Listing, Trading and Clearance and Settlement of Security Tokens

A. The Joint Venture and Ownership of BSTX

On June 19, 2018, t0.com Inc. (''tZERO'') and BOX Digital Markets LLC (''BOX Digital'') announced a joint venture to facilitate the trading of security tokens on the Exchange.[17] As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture and accompanying changes to the Exchange's current governance documents and bylaws, are the subject of separate proposed rule changes that the Exchange has submitted to the Commission.[18]

B. BSTX Is a Facility of BOX That Would Support Trading in the New Asset Class of Security Tokens

BSTX would operate as a facility [19] of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX's operations would be subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules and regulations.[20] Currently, BOX functions as an exchange only for standardized options. While BSTX may eventually support a wider variety of securities, subject to Commission approval, at the time that BSTX commences operations it would only support trading in security tokens that are equity securities. Accordingly, this represents a new asset class for BOX, and this proposal sets forth the changes and additions to the Exchange's rules to support the trading of equity securities as security tokens on BSTX.

The Exchange proposes to use the term ''security token'' [21] to describe the

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[13] 17 CFR 242.600(b)(48).

[14] *See* Securities Exchange Act Release No. 87287 (October 11, 2019), 84 FR 56022 (October 18, 2019) (''Original Proposal'').

[15] *See* Securities Exchange Act Release No. 88002 (January 16, 2020), 85 FR 4040 (January 23, 2020) (''Order'').

[16] The proposed changes to BOX Rules and the proposed BSTX Rules are attached as Exhibit 5A.

[17] *See* tZERO and BOX Digital Markets Sign Deal to Create Joint Venture, Business Wire (June 19, 2018), *available at https://www.businesswire.com/news/home/20180619005897/en/tZERO-BOX-Digital-Markets-Sign-Deal-Create.*

[18] *See e.g.,* Exchange Act Release No. 87868 (December 30, 2019), 85 FR 345, 70748 (January 3, 2020).

[19] 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act, provides that ''the term 'facility' when used with respect to an exchange includes 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.'' Because BSTX will share certain systems of the Exchange, BSTX is a facility of the Exchange.

[20] 15 U.S.C. 78f; 15 U.S.C. 78s.

[21] The Exchange proposes to define the term ''security token'' to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. References to a ''security'' or ''securities'' in the Rules include security tokens. *See* proposed Rule 17000(a)(30).

BSTX-listed securities that would use blockchain technology as an ancillary recordkeeping mechanism, as described in further detail below. However, ownership of securities that are security tokens under the BSTX rules would still be able to be transferred without regard to the blockchain-based ancillary recordkeeping functionality (as also described further below). Notwithstanding this, the Exchange believes that it is appropriate to describe these securities as ''security tokens'' to distinguish them from other securities for which there is no related legal and regulatory structure that is designed to use blockchain technology as an ancillary recordkeeping mechanism and as a way of indicating the additional proposed obligations of BSTX Participants trading security tokens to obtain a wallet address and report end-of-day security token balances to BSTX.[22] The legal significance, therefore, of a security token is that a ''security token'' will be an equity security that is approved for listing on BSTX, and that trades on the BSTX System, and for which BSTX Participants are therefore required under BSTX Rule 17020 to obtain a whitelisted wallet address and report certain end-of-day security token position balance information to BSTX. A security that is offered by an issuer with the intent of it becoming listed on BSTX would therefore not become a ''security token'' under the proposed BSTX Rules unless and until it actually does become listed on BSTX and trades on the BSTX System. The Exchange believes that the obligations on a BSTX Participant under the proposal to obtain a wallet address and to report certain end-of-day security token position balance information to BSTX are the only legal rights or obligations associated with security tokens that would differ from how NMS stock is generally traded by market participants today.[23]

C. Security Tokens Would Be NMS Stocks

The security tokens would qualify as NMS stocks pursuant to Regulation NMS,[24] which defines the term ''NMS security'' in relevant part to mean ''any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan . . . .'' [25] The Exchange plans to join existing transaction reporting plans, as discussed in Part VIII below, for the purposes of security token quotation and transaction reporting.[26] The term ''NMS stock'' means ''any NMS security other than an option'' [27] and therefore security tokens traded on BSTX that represent equity securities will be classified as NMS stock.

D. BSTX Would Support Trading of Registered Securities

All security tokens traded on BSTX would generally be required to be registered with the Commission under both Section 12 of the Exchange Act [28] and Section 6 of the Securities Act of 1933 (''Securities Act'').[29] BSTX would not support trading of security tokens offered under an exemption from registration for public offerings, with the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards.

E. Clearance and Settlement of Security Tokens

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with security tokens. All transactions in security tokens would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies. Specifically, BSTX anticipates that at the time it commences operations, security tokens that are listed and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (''DTC'') and that DTC would serve as the securities depository [30] for such security tokens. It is also expected that confirmed trades in security tokens on BSTX would be transmitted to National Securities Clearing Corporation (''NSCC'') for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange traded equity securities. Importantly, for purposes of NSCC's clearing activities and DTC's settlement activities in respect of the security tokens, the relevant securities will be cleared and settled by NSCC and DTC in exactly the same manner as those activities are performed by NSCC and DTC currently regarding a class of NMS Stock. This is because the tokenized ancillary recordkeeping process that will be implemented through the operation of the proposed BSTX Rules will occur separate and apart from the clearance and settlement process and the security itself will not exist in tokenized form. Rather, the security will be an ordinary equity security for NSCC's and DTC's purposes. The tokenized feature in connection with the security that will be implemented through the operation of BSTX's Rules is that there will also be a separate, ancillary recordkeeping process that will use distributed ledger technology to record BSTX Participant end-of-day position balance information for the relevant security.

1. Issuance of Equity Securities Eligible To Become a Security Token

With the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards, all security tokens traded on BSTX will have been offered and sold in registered offerings under the Securities Act, which means that purchasers of the security tokens will benefit from all of the protections of registration. The Division of Corporation Finance will need to make a public interest finding in order to accelerate the effectiveness of the registration statements for these offerings. Because BSTX is a facility of a national securities exchange, all security tokens will be registered under Section 12(b) of the Exchange Act, thereby subjecting all of these issuers to the reporting regime in Section 13(a) of the Exchange Act.

All offerings of securities that are intended to be listed as security tokens on BSTX will be conducted in the same general manner in which offerings of exchange-listed equity securities are conducted today under the federal securities laws. An issuer will enter into a firm commitment or best efforts underwriting agreement with a sole underwriter or underwriting syndicate; the underwriter(s) will market the

[22] *See* Part II, Sections G and J for further description of these obligations.

[23] The Exchange notes that its proposed Rule 17000(a)(30) defines ''security token'' to mean an ''NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System.''

[24] 17 CFR 242.600 through 613.

[25] 17 CFR 242.600(b)(47).

[26] 17 CFR 242.601(a)(1). The Rule states in relevant part that ''every national securities exchange shall file [with the SEC] a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities . . . .''

[27] 17 CFR 242.600(b)(47).

[28] 15 U.S.C. 78l.

[29] 15 U.S.C. 77f.

[30] 15 U.S.C. 78c(a)(23)(A). Section 3(a)(23)(A) of the Exchange Act defines the term ''clearing agency'' to include ''any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.''

securities and distribute them to purchasers; and secondary trading in the securities (that are intended to trade on BSTX as security tokens) will thereafter commence on BSTX. The ancillary recordkeeping function associated with the security token will not commence until the conclusion of the first day of the security token's secondary trading on BSTX pursuant to proposed BSTX Rule 17020.[31]

Issuers on BSTX could include both (1) new issuers who do not currently have any class of securities registered on a national securities exchange, and (2) issuers who currently have securities registered on a national securities exchange and who are seeking registration of a separate class of equity securities for listing on BSTX. BSTX does not intend for security tokens listed, or intended to be listed, on BSTX to be fungible with any other class of securities from the same issuer. If an issuer sought to list securities on BSTX that are not a separate class of an issuer's securities, BSTX does not intend to approve such a class of security for listing on BSTX, pursuant to BSTX's authority under BSTX Rule 26101. At the commencement of BSTX's operations, only equity securities would be eligible for listing as security tokens. This would be addressed by BSTX Rules 26102 (Equity Issues), 26103 (Preferred Security Tokens) and 26105 (Warrant Security Tokens), which would be part of BSTX's listing rules and would contemplate that only those specified types of equity securities would be eligible for listing.

2. Securities Depository Eligibility

BSTX would maintain rules that would promote a structure in which security tokens would be held in ''street name'' with DTC.[32] BSTX Rule 26136 would require that for an equity security to be eligible to be a security token BSTX must have received a representation from the issuer that a CUSIP number that identifies the security is included in a file of eligible issues maintained by a securities depository that is registered with the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.[33] In practice, BSTX Rule 26136 requires the security token to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.[34]

3. Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26137 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.[35] Proposed BSTX Rule 26137 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory Authority (''FINRA'').[36] Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings and ''thereby reduce settlement risk'' in the U.S. national market system.[37]

4. Participation in a Registered Clearing Agency That Uses a Continuous Net Settlement System

Under proposed BSTX Rule 25140, each BSTX Participant would be required to either (i) be a member of a registered clearing agency that uses a continuous net settlement (''CNS'') system, or (ii) clear transactions executed on BSTX through a member of such a registered clearing agency. The Exchange believes that today NSCC is the only registered clearing agency that uses a CNS system to clear equity securities, and proposed BSTX Rule 25140 further specifies that BSTX will maintain connectivity and access to the Universal Trade Capture system of NSCC to transmit confirmed trade details to NSCC regarding trades executed on BSTX. The proposed rule would also address the following: (i) A requirement that each security token transaction executed through BSTX must be executed on a locked-in basis for automatic clearance and settlement processing; (ii) the circumstances under which the identity of contra parties to a security token transaction that is executed through BSTX would be required to remain anonymous or may be revealed; and (iii) certain circumstances under which a security token transaction may be cleared through arrangements with a member of a foreign clearing agency. Proposed BSTX Rule 25140 is based on a substantially identical rule of the Investor's Exchange, LLC (''IEX''), which, in turn, is consistent with the rules of other equities exchanges.[38]

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which security tokens that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry. The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX's operations, security tokens would be securities that have been made eligible for services by DTC, including book-entry settlement services.

5. Settlement Cycle

Proposed BSTX Rule 25100(d) would address settlement cycle considerations regarding trades in security tokens. Security token trades that result from

[31] Although the smart contract that would be used to carry out the ancillary recordkeeping function related to the security would need to be built by or at the direction of the issuer prior to the commencement of the security's trading on BSTX, the corresponding smart contract would effectively remain dormant until the ancillary recordkeeping process contemplated under the proposed BSTX Rules is activated due to trading on the BSTX System in that security token.

[32] The term ''street name'' refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26135 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

[33] Proposed BSTX Rule 26136 is based on current NYSE Rule 777.

[34] *See* Exchange Act Release No. 78963 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

[35] FINRA is currently the only national securities association registered with the SEC.

[36] *See e.g.,* FINRA Rule 11310. Book-Entry Settlement and NYSE Rule 776. Book-Entry Settlement of Transactions.

[37] These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project. *See* Securities Exchange Act Release Nos 35774 (May 26, 1995) (SR–NASD–95–24), 60 FR 28813 (June 2, 1995); 35773 (May 26, 1995), 60 FR 28817 (June 2, 1995) (SR–NYSE–95–19).

[38] *See* IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX's application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); *see also* Cboe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

orders matched against the electronic order book of BSTX would be required to clear and settle pursuant to the rules, policies and procedures of a registered clearing agency. Additionally, Rule 25100(d) would provide that such security token transactions occurring through BSTX would settle one business day after the trade date (*i.e.,* T+1) where that settlement cycle timing is permitted under the rules, policies and procedures of the relevant registered clearing agency. This creates a presumption of T+1 settlement for security token trades because, as described below, NSCC already processes trades for T+1 settlement pursuant to the authority in its approved rules, policies and procedures. However, market participants, including BSTX Participants, that are parties to a security token trade that occurs away from BTSX would have the ability to agree to a shorter or longer settlement cycle for the settlement of the security token trade as is permitted by applicable law, including under the rules, policies and procedures of a relevant registered clearing agency.

As noted above in connection with the description of proposed BSTX Rule 25140, BSTX expects at the commencement of its operations that it would transmit confirmed trade details to NSCC regarding security token trades that occur on BSTX and that NSCC would be the registered clearing agency that clears security token trades. BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6–1 for a security trade that involves a broker-dealer.[39] Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority. For example, based on information provided by a representative of DTCC to outside counsel for BSTX, BSTX understands that on average for each business day for the months of November and December 2019, NSCC cleared over 19,000 trades designated for T+1 settlement and over 2,000 trades designated for T+0 settlement.[40] As described above regarding BSTX Rules 26136 and 26137, all security token trades occurring on BSTX that are cleared by NSCC, including those for which the T+1 settlement presumption would apply, would be settled through book-entry settlement at DTC pursuant to its rules, policies and procedures.

In adopting amendments to SEC Rule 15c6–1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs central counterparty[41] (''CCP'') services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting ''reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP's risk management process . . .'' and that ''[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.''[42] The Commission went on to state its belief that shortening the settlement cycle ''would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors'' such as ''quicker access to funds and securities following trade execution'' and ''reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]''[43] The Commission also ''noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]''[44] BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rule 25100(d) in a form that would promote the benefits of a T+1 settlement cycle regarding security token trades where T+1 settlement is already permitted pursuant to the rules, policies and procedures of NSCC and DTC today.

F. Compatibility With the BSTX Security Token Protocol for BSTX-Listed Security Tokens To Facilitate Ancillary Recordkeeping

BSTX would maintain listing standards that would enable security tokens to have an ancillary record of ownership recorded on the Ethereum blockchain using a protocol standard determined by BSTX (the ''BSTX Security Token Protocol'' or the ''Protocol'').[45] In this way, the Ethereum blockchain would serve as a complementary recordkeeping mechanism to official records of security token ownership maintained by market participants.

1. Background on Blockchain Technology

In general, a blockchain is an open, decentralized ledger that can maintain digital records of assets and transactions that are accessible to anyone running the same protocol.[46] The blockchain's central function is to encode transitions or changes to the ledger, such as the movement of an asset from one person to another person. Whenever one change to the blockchain ledger occurs to record a state transition, the entire blockchain is immutably changed to reflect the state transition. The purpose of requiring security tokens to adopt the BSTX Security Token Protocol is to enable security token ownership to be recorded on the public Ethereum blockchain as an ancillary recordkeeping mechanism and to ensure uniformity among security tokens rather than permitting each security token to have its own unique specifications that might complicate updates to the blockchain and add unnecessary complexity.

2. Background on the Ethereum Blockchain

The Ethereum blockchain is an open-source, public blockchain that operates as a computing platform and operating system that supports smart contract

[39] 17 CFR 240.15c6–1. Under SEC Rule 15c6–1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

[40] Mike McClain, Managing Director and General Manager of Equity Clearing and DTC Settlement Services at DTCC provided this information to BSTX's outside counsel, Andrew Blake, Partner, Sidley Austin LLP during a telephone conference on February 13, 2020.

[41] *See* 17 CFR 240.17Ad–22(a)(2) (defining the term ''central counterparty'' to mean ''a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer'').

[42] Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15570–71 (March 29, 2017).

[43] *Id.* at 15571.

[44] *Id.* at 15582.

[45] While BSTX initially intends to support only the trading of eligible security tokens that are compatible with the Ethereum public blockchain, BSTX may support tokens compatible with other blockchains that support smart contract functionality in the future.

[46] A ''protocol'' for this purpose is a set of rules governing the format of messages that are exchanged between the participants.

functionality.[47] Smart contracts are computer protocols designed to digitally facilitate, verify, and enforce the performance of a contract. Ethereum-based smart contracts are executed on the Ethereum Virtual Machine, which can be thought of as a global computer network upon which the smart contracts run. Ether is the digital currency used to pay fees associated with operating smart contracts (known as ''gas'') on the Ethereum networks. This is because there are costs involved in performing the computations necessary to execute a smart contract and to record any state transitions onto the Ethereum blockchain.[48] Thus, moving tokens from one address to another address (*i.e.,* a state transition) requires some amount of Ether to pay the fee (*i.e.,* ''gas'') associated with recording the movement of tokens to the Ethereum blockchain. Parties to a transaction in Ethereum-based smart contracts can determine what those gas costs are depending on how quickly they would like the transaction to be reflected on the Ethereum blockchain.

3. Background on Smart Contracts

The term ''smart contract'' is commonly used to describe computer-coded functions in connection with the Ethereum blockchain. An Ethereum smart contract is neither ''smart'' nor a legal contract in the traditional sense. Smart contracts in this context refer to immutable [49] computer programs that run deterministically [50] in the context of the Ethereum Virtual Machine. Smart contracts operate within a very limited execution context. They can access their own state, the context of the transaction that called them, and some information about the most recent blocks (*i.e.,* the most recent recording of transactions and other events recorded to the Ethereum blockchain).

In the context of security tokens, smart contracts generally may have three components: (i) Functions, (ii) configurations; (iii) and events.[51] Functions describe the basic operations of a smart contract, such as the ability to query a particular address to determine how many tokens belong to that address.[52] Configurations are attributes of a smart contract that are typically set at the launch of a smart contract, such as designating the name of the smart contract (*e.g.,* as XYZ security token). Events describe the functions of a smart contract that, when executed, result in a log or record being recorded to the Ethereum blockchain, such as the transfer of tokens from one address to another. Not all functions of a smart contract result in a log or record being recorded to the Ethereum blockchain. Smart contracts only run if they are called by a transaction.[53]

Smart contracts can call another smart contract, which can call another contract, and so on. Smart contracts never run ''on their own'' or ''in the background,'' but rather lie dormant until a transaction triggers them to carry out a specified operation pursuant to the protocol on which they operate. All transactions execute in their entirety or not at all, regardless of how many smart contracts they call or what those smart contracts do. Only if a transaction successfully executes in its entirety is there an ''event'' representing a change to the state of the blockchain with respect that transaction. If an execution of a smart contract's operation fails due to an error, all of its effects (*e.g.,* events) are rolled back as if the transaction never ran.

4. Background on Tokens

Tokens historically referred to privately issued, special-purpose coin-like items (*e.g.,* laundry tokens or arcade game tokens). In the context of blockchain technology, tokens generally mean blockchain-based abstractions that can be owned and that represent assets, currency, or access rights. A security token on the blockchain used for ancillary recordkeeping of ownership can be thought of as a digital representation of shareholder equity in a legal entity organized under the authority of state or federal law and that meet BSTX's listing standards. Having a security token attributed to a particular address, however, would not convey ownership of shareholder equity in the issuer because the official records of ownership would be maintained by participants at DTC.[54]

To create a new token on Ethereum, including for purposes of facilitating ancillary recordkeeping of security token ownership, one must create a new smart contract. The smart contract would be configured to detail, among other things, the name of the issuer and the total supply of the tokens. Smart contracts can be designed to carry out any event that one wants, but using a set standard or protocol allows for participants transacting in those smart contracts to have uniform expectations and functionality with respect to the tokens.

5. Background on Protocols

A protocol (also sometimes referred to as a ''standard'' or ''protocol standard'') defines the functions, events, configurations, and other features of a given smart contract. The most common protocol used with Ethereum is the ERC–20 protocol, which describes the minimum functions that are necessary to be considered an ERC–20 token.[55] The ERC–20 protocol offers basic functionalities to transfer tokens, obtain account balances, and query the total supply of tokens, among other features. The BSTX Security Token Protocol is compliant with the ERC–20 protocol but adds additional requirements and functionality, as described below.

As noted above, Ether is the digital currency used to pay fees associated with operating smart contracts (known as ''gas'') on the Ethereum network. Payment of gas is required to operate smart contracts because there are costs involved in performing the computations necessary to execute a smart contract and to record any state transitions onto the Ethereum blockchain.

There is an important conceptual distinction between ERC–20 tokens, including security tokens, and Ether itself. Where Ether is transferred by a transaction that has a recipient address as its destination, token transfers occur

[47] *See* Ethereum White Paper (last updated Aug. 1, 2018) *available at https://github.com/ethereum/wiki/wiki/White-Paper.*

[48] *See What Is Gas,* MyEtherWallet (2018) *available at https://kb.myetherwallet.com/posts/transactions/what-is-gas/.*

[49] Smart contracts are immutable in that, once deployed, the code of a smart contract cannot change. Unlike with traditional software, the only way to modify a smart contract is to deploy a new instance.

[50] Deterministic in this context means that the outcome of the execution of a smart contract is the same for everyone who runs it, given the context of the transaction that initiated its execution.

[51] However, a smart contract need not necessarily have each of these components. Some smart contracts may simply be used to support the functioning of other smart contracts and may not itself result in events being recorded to the Ethereum blockchain.

[52] An ''address'' in this context refers to a number that is associated with a particular market participant within the smart contract that can be updated to reflect changes in ownership of tokens.

[53] The term ''transaction'' in this context refer not to an actual execution or transaction occurring on BSTX or in the marketplace, but rather to an operation triggering a smart contract to carry out its specified function, which must ultimately originate from a human source.

[54] Rather, a digital representation of a security token associated with a particular address reflects an ancillary record of security token ownership based on data provided to BSTX by BSTX Participants. The records reflected on the Ethereum blockchain regarding security tokens may not be current to reflect the most recent transactions in the marketplace and may not reflect ownership by all market participants.

[55] *See e.g.,* Jesus Najera, Understanding ERC20, Coin Central (Jan. 8, 2018), *available at https://coincentral.com/understanding-erc20/;* Alfonso de la Rocha, *Anatomy of an ERC: An Exhaustive Survey,* Medium (May 7, 2018), *available at https://medium.com/coinmonks/anatomy-of-an-erc-an-exhaustive-survey-8bc1a323b541.*

within the specific token contract state and have the token smart contract as their destination, not the recipient's address. The token smart contract tracks balances and issues events to the Ethereum blockchain. In a token transfer,[56] no transaction is actually sent to the recipient of the token. Instead, the recipient's address is added to a map within the token smart contract itself. In contrast, a transaction sending Ether to an address changes the state of an address. A transaction transferring a token to an address only changes the state of the token contract, not the state of the recipient address. Thus, an address is not really full of tokens; rather it is the token smart contract that has the addresses and balances associated with each address in it.

6. BSTX Security Token Protocol

BSTX Rule 26138 requires that a BSTX listed company's security tokens must comply with the Protocol to trade on BSTX. The purpose of this requirement is to ensure that all security tokens are governed by the same set of specifications and controls that allow for ownership of security tokens to be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism.

The Protocol involves three smart contracts. The Asset Smart Contract is the primary smart contract that contains the balances of security tokens associated with each address and carries out the functions necessary to reflect changes in ownership. There are two ancillary smart contracts that are called by the Asset Smart Contract in executing transactions. The first of these is the Registry Smart Contract (''Registry''), which contains the list of permissioned (or ''whitelisted'') addresses, and the second is the Compliance Smart Contract, which includes a variable list of additional compliance related rules that the Asset Smart Contract must comply with in executing a transaction. Each of these three smart contracts are described in greater detail below:

(1) *Asset Smart Contract*—The Asset Smart Contract defines and establishes the security tokens (*e.g.,* the maximum number of security tokens available for a particular issuance) for purposes of the Ethereum blockchain ancillary recordkeeping function and records a list of market participant addresses and the security tokens associated with each address.

(2) *Registry Smart Contract*—The Registry Smart Contract (or ''Registry'') defines the permissions available to different types of market participants to perform certain functions. Under the Protocol, there are five different types of market participants connected with the Registry, each with different abilities and permissions (as detailed below):[57] (1) Contract Owner, (2) Custodian, (3) Broker Dealer, (4) Custodial-Account, and (5) Investor. The Registry also contains the list of whitelisted addresses to which security tokens may be sent and additional information associated with each address (*e.g.,* whether an address has been suspended).

(3) *Compliance Smart Contract*—The Compliance Smart Contract is the set of rules held in a separate smart contract that a security token can be configured to abide by to ensure compliance with applicable laws and regulations (*e.g.,* by restricting a movement of security tokens to an address that has not been added to the Registry for purposes of the Ethereum blockchain ancillary recordkeeping mechanism). The Compliance Smart Contract can be modified to add or remove applicable rules in light of changes to applicable regulatory requirements.

Each of these three smart contracts work together to facilitate the ancillary recordkeeping mechanism for Security Tokens using the Ethereum blockchain. The details of the specific functions, configurations, and events under the Protocol are set forth in greater detail in Exhibit 3N.

The Exchange selected the Ethereum blockchain among other possible blockchains that support smart contracts as the blockchain upon which security tokens would be built in accordance with the BSTX Security Token Protocol for ancillary recordkeeping purposes because of, among other reasons, its widespread use, the public's familiarity with Ethereum, and its smart contract functionality. Ethereum has maintained the second largest market capitalization behind Bitcoin among blockchain-based digital assets for at least two years and is widely recognized by the public.[58] Over 200,000 different ERC–20 tokens have been built on the Ethereum blockchain, demonstrating its widespread use and functionality. The Exchange believes that the Ethereum blockchain is able to support all of the necessary functions of the BSTX Security Token Protocol to carry out the security token ancillary recordkeeping function. The Exchange also believes that using a widely-known smart contract platform as opposed to a lesser-known smart contract platform may help issuers become more comfortable with the ancillary recordkeeping process as well as allow them to more-readily locate service providers as necessary to assist them in building their security tokens in accordance with the BSTX Security Token Protocol. As noted, the Exchange may consider the use of other blockchains supporting smart contract functionality in the future, subject to applicable rule filing requirements with the Commission pursuant to Section 19 of the Exchange Act.[59]

G. Obtaining a Whitelisted Wallet Address

Pursuant to proposed Rule 17020(a), a BSTX Participant must, either directly or through its carrying firm, establish a wallet address to which its end-of-day security token balances may be recorded by contacting BSTX.[60] A BSTX Participant that is a carrying broker-dealer for other BSTX Participants would be assigned the wallet address with the status of a Custodian, which would allow that BSTX Participant to request wallet addresses on behalf of other BSTX Participants (for which it serves as the carrying broker-dealer) as either a Custodial Account or Broker-Dealer wallet address, as described above. A BSTX Participant that is not a carrying broker-dealer could request a Broker-Dealer wallet address, a Custodial Account wallet address in coordination with its carrying firm, and an Investor wallet address on behalf of a customer that would like its ownership of security tokens to be reflected at its own address for purposes of the Ethereum blockchain as an ancillary recordkeeping mechanism.[61]

[56] A ''transfer'' in the context of the BSTX Security Token Protocol regarding a security token refers to a reallocation of the digital representation of a security token on the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect corresponding changes in ownership of the security token.

[57] There are additional roles that are not technically part of the Registry and are instead specific to certain smart contracts. For example, an ''Issuer'' is an Asset Smart Contract-specific role. Also, an ''Administrator'' is a Compliance Smart Contract-specific role that allows such a user to, for example, freeze the transfer of tokens for purposes of the ancillary recordkeeping function under certain circumstances and modify or add compliance rules to govern a security token.

[58] The Commission has also publicly recognized Ethereum and its native currency Ether. *See* William Hinman, Director, Division of Corporation Finance, Digital Asset Transactions: When Howey Met Gary (Plastic) (June 14, 2018) *available at https://www.sec.gov/news/speech/speech-hinman-061418.*

[59] 15 U.S.C. 78s.

[60] Multiple security token issuances can be attributed to a BSTX Participant's wallet address. A BSTX Participant would not need a separate wallet address for each security token issuance that it trades.

[61] A BSTX Participant that is a carrying broker-dealer, and which therefore has a Custodial

Contact information for BSTX for the purpose of establishing a wallet address will be published on the BSTX website. Proposed BSTX Rule 17020(a) requires a BSTX Participant to establish a wallet address by contacting BSTX directly or through its carrying firm acting on its behalf. BSTX expects that this process (*i.e.,* contacting the Exchange and establishing a wallet address) would occur contemporaneously with the application by a market participant to become a BSTX Participant. However, under proposed BSTX Rule 17020(a), a BSTX Participant would have up until five business days from the date that the Exchange approves the application of the BSTX Participant to satisfy the obligation to obtain a wallet address. In the event that a BSTX Participant has not obtained a wallet address prior to the Exchange's approval of its application, the BSTX Participant would become subject to the end-of-day security token balance reporting requirements in proposed BSTX Rules 17020(b) and (c). However, because the BSTX Participant would not yet have a wallet address to which the position balance information could be attributed by a Wallet Manager, any security token position balances of such BSTX Participant would be attributed to the omnibus wallet address for the security token (as described below) until the time the BSTX Participant obtains a wallet address. For the avoidance of doubt, having end-of-day position balance information related to a security token attributed to a particular wallet address would not convey ownership of shareholder equity in the issuer to the person or entity with whom such wallet address is associated. BSTX-listed security tokens will be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency, and the official records of ownership would be maintained as discussed above in Part II.E. Therefore, any lack of a wallet address would not affect the official records of ownership of the BSTX-listed security token.

Once a BSTX Participant has been assigned a particular wallet address, the only further obligation of that BSTX Participant is to report its end-of-day security token position balances to BSTX, as described below. Non-BSTX Participants that may trade security tokens are not subject to the requirement that they obtain a wallet address prior to trading a security token or to the end-of-day security token balance position reporting requirements. The Exchange will not accept voluntary reports of end-of-day security token balances from non-BSTX Participants, but may consider doing so in the future, subject to any applicable or necessary rule filing requirements with the Commission. The Exchange believes that the proposed requirement in Rule 17020(a) to obtain a wallet address is consistent with the Exchange Act and Section 6(b)(5)[62] in particular because it would help foster cooperation and coordination with persons engaged in regulating and facilitating transactions in security tokens by setting forth a process through which BSTX Participants may obtain a wallet address to which their end-of-day security token balances may be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange believes that the proposed requirement is similar to obtaining a market participant identifier (''MPID'') in that it establishes an identifier that can be attributed to a particular BSTX Participant for reporting purposes. The proposed requirement to obtain a wallet address is the same for all BSTX Participants, and is therefore not unfairly discriminatory, and the Exchange does not propose to charge a fee for obtaining a wallet address.

H. Wallet Manager[63]

As described further below, following the end of a trading day, BSTX Participants (or their carrying firms) will be required to send security token position balance information to BSTX. Based on the information that BSTX receives, BSTX will deliver that information to one or more Wallet Managers who will be responsible for updates to the security token position balances on the Ethereum blockchain by allocating balances among the wallet addresses of BSTX Participants and the omnibus wallet address.

The Exchange would enter into a contractual arrangement with a Wallet Manager as a service provider to the Exchange performing the function described above. The Exchange does not believe that performing the ancillary recordkeeping process would make a Wallet Manager a facility of the Exchange because the Wallet Manager's functions do not meet the definition of ''facility'' under the Exchange Act. Section 3(a)(2) of the Exchange Act provides that ''the term 'facility' when used with respect to an exchange includes 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.''[64] A Wallet Manager is neither property of the Exchange nor does a Wallet Manager provide services for effecting or reporting a transaction taking place on the Exchange. Rather, a Wallet Manager performs the function of updating end-of-day security token position balance information provided by the Exchange as part of an ancillary recordkeeping mechanism. The Ethereum blockchain would not reflect any particular transaction(s) that occurred in the marketplace but would instead record allocations of end-of-day security token position balances—which may result from a variety of activities in the marketplace for the relevant security tokens such as trading activity, lending activity, and free-of-payment transfers between DTC accounts. The definition of ''facility'' in Section 3(a) of the Exchange Act is instead focused on ''effecting or reporting a transaction'' as part of the operations of an exchange, namely the bringing together of orders for securities of multiple buyers and sellers using non-discretionary methods under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.[65] Thus, systems of communication to the Exchange used to effect trades or to receive market data would likely be considered facilities of the Exchange, but an end-of-day ancillary recordkeeping reporting process that does not provide any real or near-time information regarding transactions in the market should not.[66] The Commission ''long has recognized that there must be some practical limitations on entities encompassed within the broad definition of the term

Account address, could also request Investor wallet addresses on behalf of customers.

[62] 15 U.S.C. 78f(b)(5).

[63] A ''Wallet Manager'' is defined as a party approved by BSTX to operate software compatible with the BSTX Protocol. *See* proposed Rule 17000(a)(31). A Wallet Manager would be a third-party service provider for the Exchange that will help facilitate establishing wallet addresses for BSTX Participants and facilitate updates to the Ethereum blockchain as an ancillary recordkeeping mechanism regarding changes in ownership resulting from trading. Approved Wallet Managers will be listed on the Exchange's website.

[64] 15 U.S.C. 78c(a)(2).

[65] 17 CFR 240.3b–16.

[66] The Commission has not defined the term ''facility.'' *See* Exchange Act Release No. 26708 (Apr. 11, 1989), 54 FR 15429 (Apr. 18, 1989) (noting that the term ''facility'' has not changed since it was originally adopted and that no hearing testimony referred to it because ''the Committee felt that the definition was 'self-explanatory' '').

'exchange.' '' [67] The ancillary recordkeeping process would have no impact on, or perform a function related to, the bringing together of buyers and sellers' orders, clearance, settlement, market data or routing functions of the exchange (*i.e.,* all of these functions can continue upon any suspension of the ancillary recordkeeping process), and therefore cannot reasonably be considered a ''facility'' of the exchange. The Exchange intends to enter into a contractual arrangement with at least one Wallet Manager.[68] The Exchange intends to evaluate each potential Wallet Manager's capability to receive information from BSTX related to BSTX Participants' end-of-day security token balances along with its ability to update the Ethereum blockchain upon receipt of such information. Further, the Exchange intends to perform due diligence on potential Wallet Managers, including but not limited to checking the list produced by the U.S. Treasury Department of persons with whom U.S. citizens are prohibited from doing business (''OFAC List''). Finally, the Exchange intends to require each Wallet Manager in its service agreement with the Wallet Manager to agree to comply with all applicable securities laws. The Exchange believes that using the criteria listed above for evaluating potential Wallet Managers may prevent fraudulent and manipulative acts and practices, consistent with Section 6(b)(5) of the Exchange Act.[69] The Exchange believes that requiring every Wallet Manager to act in a manner consistent with applicable securities laws and not be on the OFAC List would help ensure that persons reputed to have committed illegal acts and who violate securities laws, including any such laws meant to prevent fraud and market manipulation, will not operate as Wallet Managers.

I. Coordination Between BSTX, Registered Clearing Agencies, and Wallet Managers

Upon the occurrence of a transaction on BSTX due to the completion of its order matching process,[70] BSTX would generate an execution report, and it would deliver drop copies to its own front-end systems to update the BSTX Participants and to NSCC.[71] Where a BSTX transaction creates a settlement obligation to transfer registered ownership of a security token, clearance and settlement would be performed in accordance with the rules, policies and procedures of a registered clearing agency as described in Part II.E. above. The Wallet Manager would be provided with end-of-day position balance information of BSTX Participants necessary to update the Ethereum blockchain through the end of day reporting mechanism discussed below.

J. Reporting End-of-Day Security Token Balances To Facilitate Ancillary Recordkeeping

To update the Ethereum blockchain to reflect ownership of security tokens as an ancillary recordkeeping mechanism, the Exchange proposes to require that each BSTX Participant, either directly or through its carrying firm, report each business day to BSTX certain end-of-day security token balances in a manner and form acceptable to BSTX.[72] A BSTX Participant that is a participant at DTC would be required to report to BSTX the total number of security tokens for each class of security token that is credited to each DTC account of the BSTX Participant.[73] For a BSTX Participant that is not a DTC participant, the BSTX Participant would be required to report the total number of security tokens for each class of security token that are credited to the BSTX Participant by its carrying firm.[74] Pursuant to proposed Rule 17020(d), upon receipt of the end-of-day security token balances from BSTX Participants, the Exchange would provide such information to the Wallet Manager(s) to update the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect updates in security token balances.[75] Proposed Rule 17020(d) would also provide that unreported security token balances will be determined and allocated to an omnibus wallet address for each security token as described further below. The Exchange would determine the number of security tokens to be allocated to the omnibus wallet address by the Wallet Manager(s) by subtracting the sum of the security token position balances reported for a particular security token by BSTX Participants from the total outstanding number of that particular security token. BSTX expects that each security token would have a dedicated omnibus wallet address that the Wallet Manager(s) would use to allocate the resulting balance to that address.

The Exchange proposes that these end-of-day security token balance reports would be required each business day when DTC is also open for business, but after such time as DTC has completed its end-of-day settlement process.[76] The Exchange believes that once DTC has completed its end-of-day settlement process, DTC participants would be able to determine the number of security tokens credited to their DTC account(s) and to other market participants that settle through that DTC participant. Thereafter, BSTX Participants, or their carrying firms, would be able to obtain their security token balance information and report it to BSTX by the end of the day. The Exchange understands that DTC typically makes end-of-day security position reports available to DTC participants at approximately 7:30 p.m. Eastern time. Therefore, the Exchange will notify BSTX Participants via

[67] *Id.*

[68] The Exchange expects that it will initially operate with one Wallet Manager, but there is nothing to preclude the use of another Wallet Manager provided the prospective Wallet Manager is capable of operating software compatible with the BSTX Security Token Protocol. The Exchange expects that tZERO would operate as the initial Wallet Manager. BOX Exchange LLC, the self-regulatory organization of which BSTX is a facility, neither controls, directly or indirectly, nor is under common control with tZERO. The BSTX facility is 50% owned by tZERO and BOX Digital Markets, which is 100% owned by BOX Holdings Group LLC. BOX Exchange LLC does not have direct or indirect ownership interest in BOX Holdings LLC or its subsidiaries. As a result, because BOX Exchange LLC does not exercise control over tZERO or its affiliates, tZERO would not constitute ''property'' of the Exchange for purposes of determining whether it is a facility. In any case, it is the functions of the particular entity that should matter for purposes of determining whether an entity or function is a facility of an exchange rather than whether an entity is affiliated or not with an exchange. *See e.g.,* Exchange Act Release No. 54538 (Sept. 28, 2006), 71 FR 59184 (Oct. 6, 2006) (order approving PHLX's new equity trading system and operation of optional outbound router as a facility of PHLX, where PHLX had no ownership interest in the third party operator).

[69] 15 U.S.C. 78f(b)(5).

[70] Order matching would occur through a price-time priority model, as discussed in greater detail below.

[71] The last sale transaction data would also be publicly disseminated pursuant to the transaction reporting plan, which would occur before delivery of drop copies to these parties.

[72] *See* Proposed Rule 17020(b).

[73] *See* Proposed Rule 17020(b)(1). As described above in Part II.E., BSTX would maintain rules that would promote a structure in which security tokens would be held in ''street name'' with DTC.

[74] *See* Proposed Rule 17020(b)(2).

[75] Notably, because the Ethereum blockchain is updated each day using the end-of-day security token balance reports, and is, in any case, only functioning at this time as an ancillary recordkeeping function, concerns regarding a loss of private keys or disruption to the Ethereum blockchain are fully mitigated. For example, assume a BSTX Participant owns 100 security tokens of XYZ at the end of Day 1 and, as a result of trading on Day 2, ends Day 2 with a balance of 200 security tokens of XYZ. If the BSTX Participant's wallet address were somehow compromised during the trading day on Day 2 and the 100 security tokens were moved to another address (which could only be moved to another whitelisted address), this would not substantively impact the functioning of the blockchain as an ancillary recordkeeping tool. At the end of trading on Day 2, the BSTX Participant would report its ownership of 200 security tokens of XYZ to BSTX, which would then update the Ethereum blockchain to reflect this end of day balance.

[76] *See* Proposed Rule 17020(c).

Regulatory Circular of the time after 7:30 p.m. Eastern time by which end-of-day security position balance reports will be required to be provided to BSTX pursuant to BSTX Rule 17020(c). The Exchange will also notify BSTX Participants via Regulatory Circular of the time by which it will provide security token position balance information to the Wallet Manager(s) so that the Wallet Manager(s) will have sufficient time to carry out their contractual obligation to update the Ethereum blockchain as an ancillary recordkeeping mechanism prior to the commencement of trading on BSTX on the next trading day.

The Exchange acknowledges that, in certain circumstances, a BSTX Participant subject to the requirements of proposed Rule 17020 could fail to report end-of-day security token balances to BSTX in a timely manner, inaccurately report such balances, or fail to obtain a wallet address prior to acquiring a position in a security token. Such failures would impair the ability of the Exchange to report complete end-of-day security token balance information regarding a security token to the Wallet Manager(s) who will be responsible for using that information, in turn, to update the security token balance information that is reflected on the Ethereum blockchain. The Exchange notes that BSTX Participants would be required to comply with applicable Exchange Rules, including the requirement to report their end-of-day security token balances, and may be subject to disciplinary action for failing to comply with applicable rules pursuant to proposed Rule Series 24000 (Discipline and Summary Suspension).

As noted above, to account for instances in which a BSTX Participant fails to report or to accurately report its end-of-day security token balance pursuant to proposed Rule 17020, as well as to account for the positions of security token holders who are not BSTX Participants and therefore not subject to the end-of-day security token balance reporting requirement, the Exchange proposes to use an omnibus wallet address to account for such security tokens in the ancillary records that would be published on the Ethereum blockchain. Specifically, the Exchange would know the total number of security tokens outstanding and would provide information to the Wallet Manager(s) to allow the Wallet Manager(s) to attribute the unreported security token balance for a given security token to an omnibus wallet address for each security token. For example, assume that on Day 1 there are 1,000 security tokens for company XYZ outstanding, 800 are held at DTC in accounts for the benefit of eight BSTX Participants and 200 are otherwise held at DTC. Assume further that BSTX receives timely and accurate end-of-day XYZ security token balance reports from all eight BSTX Participants in respect of 800 XYZ security tokens. At the end of Day 1 as part of the end-of-day reporting process, the Exchange would provide information to the Wallet Manager(s) allowing the Wallet Manager(s) to allocate the 800 XYZ security tokens among the BSTX Participants consistent with their end-of-day security token balance reports and to allocate the remaining balance of 200 security tokens to the omnibus wallet address. In this same example, assume a BSTX Participant who holds 100 XYZ security tokens failed to report its XYZ security token balance to BSTX. In this case, the Exchange would provide information to the Wallet Manager(s) allowing the Wallet Manager(s) to allocate 300 XYZ security tokens to the omnibus wallet address for XYZ security token. The omnibus wallet address in this example would thus reflect the sum of XYZ security tokens held by non-BSTX Participants who are not subject to the end-of-day security token balance reporting requirement as well as any missing end-of-day security token balance reports among BSTX Participants.[77] In all cases, the security token balances displayed on the Ethereum blockchain would reflect end-of-day security token balances reported to BSTX pursuant to Rule 17020 and an omnibus wallet address for any type of security token for which the sum of the reported positions is less than the number of security tokens known by the Exchange to be issued and outstanding. In this way, it is possible that the end-of-day balances published on the Ethereum blockchain may not reflect the precise distribution of a security token among holders of the security token, even among BSTX Participants.[78] The Ethereum blockchain could also reflect information that is not accurate to the extent that BSTX Participants inaccurately report end-of-day security token balances to BSTX. There could conceivably be situations where the number of reported security tokens exceeds the number of outstanding security tokens of a particular issuance (*e.g.,* if security token XYZ were held entirely by BSTX Participants and one BSTX Participant over-reports). There could also be situations in which the Exchange is unable to communicate end-of-day security token balances to the Wallet Manager(s) or the Wallet Manager(s) is/are unable to update the blockchain. Additionally, it is also possible that there could be a disruption to the website through which security token balances may be observed (*i.e.,* Etherscan.io, discussed below), to the Ethereum blockchain itself that prevents the updating of end-of-day security token balances as an ancillary recordkeeping mechanism, or potentially to the architecture or functioning of a particular security token.[79]

To account for these types of situations, proposed Rule 17020(e) provides that the Exchange may suspend the requirements in paragraphs 17020(a) through (d) regarding any BSTX Participant and/or regarding one or more security tokens, as applicable, in its discretion and in any such case the Exchange will provide prompt notice thereof and the reason(s) therefore to BSTX Participants.[80] The Exchange will notify the Commission within two hours of its determination to make any such suspension and the suspension may continue in effect for no more than thirty calendar days from the date the determination is made unless the Exchange has submitted a

[77] The omnibus wallet address for each security token could also have greater or fewer security tokens as a result of a misreport by a BSTX Participant. In the case of an under-report by a BSTX Participant (*e.g.,* owns 100 of XYZ security tokens, but reports only 90), the omnibus address for XYZ would have an additional 10 XYZ security tokens allocated to it. In the case of an over-report (*e.g.,* owns 100 of XYZ security tokens, but reports 110), the omnibus address for XYZ may have 10 additional XYZ security tokens allocated to it.

[78] The Exchange notes, however, that even in such a case, the total number of shares of the security token outstanding should still be reflected on the blockchain due to unreported balances being attributed to the omnibus wallet address. It is also possible the omnibus wallet address could display the entire outstanding balance of a security token to the extent only non-BSTX Participants held the entire outstanding balance of a particular security token.

[79] This could potentially occur if, for example, the Ethereum Virtual Machine were to suffer a ''51% Attack'' whereby an individual or group acting together gain 51% or more of the computing power, essentially giving the attackers control over the Ethereum blockchain and the ability to disrupt or modify transactions on the Ethereum blockchain. The Exchange believes that this possibility is remote, but the Exchange will nonetheless monitor for such possibilities either directly or by using a vendor, which may include Wallet Managers that agree to perform this function and promptly alert the Exchange to any compromise of the Ethereum blockchain or other type of disruption that might impact the end-of-day security token balance reporting process as an ancillary recordkeeping mechanism (*e.g.,* inability to access Etherscan.io).

[80] The particular details included in such notice to BSTX Participants will vary based on the facts and circumstances giving rise to the suspension, but the Exchange expects that such notice would describe: (i) The impacted security token(s); (ii) the nature of the disruption; (iii) the anticipated length of the suspension; and (iv) any changes to BSTX Participants' obligations to report end-of-day security token balances.

proposed rule change with the Commission seeking approval of such suspension, in which case the suspension may continue in effect until the Commission approves or disapproves the proposed rule change.[81]

In all such cases involving these types of disruptions relating to the end-of-day security token balance reporting process, there would be no impact on the ability to trade, clear, or settle security token transactions in the ordinary course.[82] This is because the end-of-day security token balance reporting is solely as an ancillary record-keeping mechanism and because the actual trading, clearance, and settlement of security tokens would occur in the same manner as other NMS stock.

The Exchange would set forth via Regulatory Circular the precise manner in which security tokens should be reported. In general, the report would simply require certain identifying information regarding the BSTX Participant (*e.g.,* name, carrying firm, MPID) and a list of the end-of-day security token position balances of the BSTX Participant.[83]

As a result of this process, the Ethereum blockchain would in the ordinary course reflect for each security token the end-of-day balance associated with each BSTX Participant's wallet address. Wallet addresses are essentially just a string of numbers and characters, and it would not be made public which BSTX Participant is associated with which wallet address or which address is the omnibus wallet address.[84] An observer of security token balances associated with a particular address would not be able to determine whether a particular address represented, for example, a carrying firm reporting end-of-day balances on behalf of multiple BSTX Participants, an individual BSTX Participant, or the omnibus wallet address. Neither could an observer determine which underlying customer(s) of a BSTX Participant associated with a particular wallet address held the security tokens or whether the BSTX Participant owned the security tokens proprietarily. In addition, an observer of the security token balances would not be able to tell whether a particular wallet address was long or short the shares.[85] For these reasons, the Exchange believes that the security token balance information that would be publicly available on the Ethereum blockchain would be sufficiently anonymous to address privacy concerns related to such information. Security token balance information for the Ethereum blockchain is available at Etherscan.io (''Etherscan''). From Etherscan.io, an observer would be able to search for the name of the particular security token and see the holders of tokens and the associated quantity, as well as other information (*e.g.,* transfers made as a result of the Wallet Manager(s) reallocation process).[86]

The Exchange does not believe that the ancillary records of security token balance information published on the Ethereum blockchain would be likely to cause investor confusion because there is no similar source of information with which an observer of the blockchain data could be confused. That is, the resting position balances related to security token ownership of BSTX Participants and other market participants are not available through another medium (*e.g.,* such as by DTC making such information available) in a manner that could lead an investor to be confused as to whether the Ethereum blockchain or some other source of security token balance information is accurate. Moreover, security token position balance information as recorded on the Ethereum blockchain will not reflect legal ownership of security tokens and the identities of BSTX Participants corresponding to each wallet address (as well as the omnibus wallet address) would not be made public. The Exchange believes that the proposed end-of-day security token balance reporting requirement is consistent with the Exchange Act, and Section 6(b)(5)[87] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens and would not unfairly discriminate among BSTX Participants, all of whom are subject to the same reporting requirement. The purpose of the reporting obligation is to allow the Exchange to receive information from BSTX Participants regarding end-of-day balances in security tokens so that the Exchange can provide that information to the Wallet Manager(s) and the Wallet Manager(s) can, in turn, use the information to update the Ethereum blockchain as an ancillary recordkeeping mechanism reflecting changes in security token ownership (*i.e.,* the recording of end-of-day balance information). Without this information, all of the outstanding balances regarding a security token would be attributed by the Wallet Manager(s) to the omnibus wallet address rather than allocated to multiple wallet addresses belonging to corresponding BSTX Participants. Accordingly, to the extent that BTSX Participants have end-of-day balances in security tokens, the allocation of the security token balances to their respective wallet addresses by the Wallet Manager(s) will reflect a relatively more robust use of the functionality of the smart contracts than if the entire outstanding balance of a security token is attributed to the omnibus wallet address. Promoting this more robust use of the functionality of the smart contracts and their ability to allocate and re-allocate security token balances across multiple wallet addresses will enhance the ability of

[81] *See* proposed Rule 17020(e). The Exchange believes that proposed Rule 17020(e) may foster coordination with persons processing information with respect to securities and is not designed to permit unfair discrimination because such provision will allow the Exchange to suspend certain Rule requirements in events where there may be difficulty coordinating or sharing pertinent information with BSTX Participants and/or Wallet Manager(s). Further, Rule 17020(e) is designed to apply to all market participants equally and to provide notice to affected market participants and regulators of BSTX, in order to allow such individuals and entities to coordinate with the Exchange and react to potential issues as deemed necessary.

[82] The Exchange acknowledges, of course, that certain issues such as a widespread power outage that prevents the Exchange from being able to transmit information to the Wallet Manager(s) could also result in a disruption to trading on BSTX and potentially the declaration of a halt in trading of the security token by the Exchange.

[83] Pursuant to the BSTX Listing Rules, BSTX will allow listing of three types of security tokens: Equity security tokens, preferred security tokens, and warrant security tokens. These three types of security tokens will have similar end-of-day reporting processes; each BSTX Participant will be required to provide end-of-day security token position balance information to BSTX related to each security token issuance based on such BSTX Participant's DTC account balance. The BSTX Listing Rules also discuss paired security tokens, which are security tokens that may be transferred and traded only in combination with one another as a single economic unit. For paired security tokens, BSTX expects that BSTX Participants, when submitting position balance information to BSTX, will specify the end-of-day balances for each constituent security token that comprises a paired security token.

[84] The Wallet Manager(s) would have information regarding security token balance information associated with a particular BSTX Participant. However, as noted in Part II.H, a condition of serving as a Wallet Manager would include, among other things, a representation to comply with the federal securities laws, including trading on the basis of material non-public information.

[85] This is because the end-of-day ancillary recordkeeping process captures only end-of-day balances as reported by DTC to BSTX Participants or their carrying firms. Thus, if a BSTX Participant borrowed security tokens and the borrowed security tokens were moved to its DTC account (or the DTC account of its carrying firm on its behalf), the borrowed security tokens would appear to be a long position in the security token, when in fact the BSTX Participant was taking a short position.

[86] This process can be done presently with ERC–20 tokens or other digital assets built on Ethereum.

[87] 15 U.S.C. 78f(b)(5).

market participants, including the Exchange, to observe and evaluate the capabilities of blockchain technology as an ancillary recordkeeping mechanism. The Exchange notes that under the existing authority of other equity exchanges, the exchange is able to request that exchange members/participants furnish to the exchange records pertaining to transactions executed on or through the exchange in a time and manner required by such exchange.[88] Accordingly, BSTX believes that the proposed end-of-day security token balance reporting requirement would be consistent with authority that the Commission has already approved regarding furnishment of records by members of exchanges.

The Exchange recognizes that there are limitations in what the Ethereum blockchain will reflect with regard to end-of-day security token balances as an ancillary recordkeeping mechanism given that all non-BSTX Participants' balances will be aggregated and reflected in an omnibus wallet address for each security token.[89] In addition, the end-of-day security token balances may be inaccurate or unavailable such as when a BSTX Participant misreports its balance or under circumstances in which BSTX is unable to send the balances to the Wallet Manager or the Wallet Manager is unable to update the Ethereum blockchain, as discussed above. For these reasons, among others, the Exchange believes that initially using blockchain technology as an ancillary recordkeeping mechanism pursuant to which the security tokens represented on the blockchain would not convey legal ownership is the appropriate way to explore the potential benefits of blockchain technology consistent with the protection of investors and the public interest.[90] In the event of any disruption to the blockchain, the architecture of the security token, or to the end-of-day security token balance reporting process, there would be no impact on the ability of market participants to trade security tokens or current balances of security tokens actually held by each market participant through the facilities of DTC, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[91] Moreover, the Exchange believes that the public has an interest in exploring the use of new technology, such as blockchain technology, and that such technology may be able to help perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[92] Finally, the Exchange believes that use of anonymized wallet addresses to track end-of-day security token balances may prevent fraudulent and manipulative acts and practices, consistent with Section 6(b)(5) of the Exchange Act,[93] because obscuring the identities of the wallet address owners may make it difficult to misuse any private information associated with these wallet addresses. The Exchange believes that the proposal is reasonably designed to introduce blockchain technology in a gradual way and in coordination and cooperation with the industry, the Commission, and the existing regulatory framework.

K. Trading Security Tokens on Other National Securities Exchanges

Security tokens would be eligible for trading on other national securities exchanges that extend unlisted trading privileges (''UTP'') to them. As described above in Part II.E, security tokens would be held in ''street name'' at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (*i.e.,* NSCC and DTC respectively). As a result, security tokens would be able to trade on other exchanges and OTC in the same manner as other NMS stock. Accordingly, other exchanges would be able to extend unlisted trading privileges to security tokens in accordance with Commission rules. The end-of-day security token position balance reporting by BSTX Participants and the publication of such balance information on the blockchain does not impact the ability of security tokens to trade on other exchanges or OTC.

The Exchange proposes to include certain rules that contemplate the trading of security tokens that may be listed on other national securities exchanges.[94] Since there are currently no other national securities exchanges trading security tokens, these rules would be implemented in anticipation of other exchanges eventually listing and trading their own security tokens. BSTX recognizes that another exchange trading security tokens, or the equivalent thereof, may require BSTX to adopt certain rules specific to such other exchange in order to extend unlisted trading privileges to the other exchange's security tokens consistent with Rule 12f–5.[95]

L. Benefits of a Security Token

As described above, the proposed BSTX Rules contemplate the use of smart contract functionality to record end-of-day security token position balance information to the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange's proposal thereby represents an ancillary pairing of blockchain technology with the existing equities market infrastructure, in a manner consistent with Section 6(b)(5) and other relevant provisions of the Exchange Act, as described herein. The Commission has stated that it is ''mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . .'' [96] stating further that ''[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.'' [97] Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that ''[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.'' [98] Consistent with these statements, the Exchange believes that promoting use of the functionality of smart contracts and their ability to allocate and re-allocate security token balances across multiple

[88] *See e.g.,* BOX Rule 10000(a) and (b), Cboe BZX Rule 4.2, and IEX Rule 4.540. Broker-dealers are also subject to daily or real-time reporting obligations in a variety of other contexts. For example, pursuant to the FINRA Rule 7000 Series. *See e.g.,* FINRA Rule 7230A(b) (noting that ''Participants shall transmit trade reports to the System for transactions in Reportable Securities as soon as practicable but no later than 10 seconds after execution . . .''). Trades in municipal securities are generally required within 15 minutes of the time of trade. *See* MSRB Rule G–14(a)(ii).

[89] The Exchange does not believe that imposing the end-of-day security token reporting requirement on BSTX Participants is unfairly discriminatory or burdens competition because all market participants are free to choose whether to become a BSTX Participant or not and there is no limitation imposed by the Exchange on the ability to trade security tokens on other markets. Market participants that voluntarily choose to become BSTX Participants must comply with the rules of the Exchange, but they remain free to become a member of another exchange that supports trading of security tokens or to purchase the security tokens OTC. The Exchange further notes that it believes the end-of-day security token balance reporting process would not impose a substantial burden on BSTX Participants, because it would not require significant resources or time.

[90] 15 U.S.C. 78f(b)(5).

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *See e.g.,* proposed Rule 25040(e).

[95] 17 CFR 240.12f–5.

[96] Securities and Exchange Commission, The Impact of Recent Technological Advances on the Securities Markets (Sep. 1997), available at: *https://www.sec.gov/news/studies/techrp97.htm.*

[97] *Id.*

[98] *Id.*

addresses in connection with end-of-day security token position balance information of BSTX Participants will allow market participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that parallels current equity market infrastructure and thereby advance and protect the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.[99] As noted, because the blockchain and security token balances recorded on the Ethereum blockchain do not reflect legal ownership of the actual securities of BSTX-listed issuers, any disruption to the Ethereum blockchain, the security token architecture, or the end-of-day reporting process would have no impact on the ability of security tokens to trade on BSTX or otherwise, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[100]

III. Proposed BSTX Rules

The discussion in this Part III addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 28000.

A. General Provisions of BSTX and Definitions (Rule 17000 Series)

The Exchange proposes to adopt as its Rule 17000 Series (General Provisions of BSTX) a set of general provisions relating to the trading of security tokens and other rules governing participation on BSTX. Proposed Rule 17000 sets forth the defined terms used throughout the BSTX Rules. The majority of the proposed definitions are substantially similar to defined terms used in other equities exchange rulebooks, such as with respect to the term ''customer.'' [101] The Exchange proposes to set forth new definitions for certain terms to specifically identify systems, agreements, or persons as they relate to BSTX and as distinct from other Exchange systems, agreements, or persons that may be used in connection with the trading of other options on the Exchange.[102] The Exchange also proposes to define certain unique terms relating to the trading of security tokens, including ''security token,'' [103] and ''Wallet Manager.'' [104] The term ''Wallet Manager'' is defined to provide context to the wallet address whitelisting and end-of-day security token balance reporting processes used to update the Ethereum blockchain as an ancillary recordkeeping mechanism.[105]

In addition to setting forth proposed definitions used throughout the proposed Rules, the Exchange proposes to specify in proposed Rule 17010 (Applicability) that the Rules set forth in the Rule 17000 Series to Rule 28000 Series apply to the trading, listing, and related matters pertaining to the trading of security tokens. Proposed Rule 17010(b) provides that, unless specific Rules relating to security tokens govern or unless the context otherwise requires, the provisions of any Exchange Rule (*i.e.,* including Exchange Rules in the Rule 100 through 16000 Series) shall be applicable to BSTX Participants.[106] This is intended to make clear that BSTX Participants are subject to all of the Exchange's Rules that may be applicable to them, notwithstanding that their trading activity may be limited solely to trading security tokens. The Exchange believes that the proposed definitions set forth in Rule 17000 are consistent with Section 6(b)(5) of the Exchange Act [107] [sic] because they protect investors and the public interest by setting forth clear definitions that help BSTX Participants understand and apply Exchange Rules. Without clearly defining terms used in the Exchanges Rules and providing clarity as to the Exchange Rules that may apply, market participants could be confused as to the application of certain rules, which could cause harm to investors.

Proposed Rule 17020 sets forth the requirements to obtain a whitelisted wallet address from BSTX, and the end-of-day security token balance reporting, which are discussed in greater detail above in Parts II.G through L.

B. Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes ''BSTX Participants'' as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) Complete the BSTX Participant Application, Participation Agreement, and User Agreement; [108] (ii) be an existing Options Participant or become a Participant of the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as

[99] Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 8 (1975) (expressing Congress' finding that new data processing and communications systems create the opportunity for more efficient and effective markets). While the Exchange believes that its proposal represents an introductory step in pairing the benefits of blockchain technology with the current equity market infrastructure, other market participants and FINRA have recognized additional potential benefits to blockchain technology in various applications related to the securities markets. FINRA has stated ''[o]ne of the proposed benefits of [blockchain technology] is the ability to offer a timestamped, sequential, audit trail of transaction records. This may provide regulators and other interested parties (*e.g.,* internal audit, public auditors) with the opportunity to leverage the technology to view the complete history of a transaction where it may not be available today and enhance existing records related to securities transactions.'' Financial Industry Regulatory Authority, *Distributed Ledger Technology: Implications of Blockchain for the Securities Industry* (January 2017), *available at: https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf.* Further, Paxos Trust Company echoed similar themes in connection with its receipt of no-action relief from the Commission staff, and explained in its request letter certain benefits of blockchain technology including ''greater data accuracy and transparency, advanced security, and increased levels of availability and operational efficiency[.]'' the Exchange believes such benefits may be generally relevant to future potential applications of blockchain technology. *See* Letter from Jeffrey S. Mooney, Division of Trading and Markets, Securities and Exchange Commission to Charles Cascarilla and Daniel Burstein, Paxos Trust Company, LLC re: Clearing Agency Registration Under Section 17A(b)(1) of the Securities Exchange Act of 1934 (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[100] 15 U.S.C. 78f(b)(5).

[101] Proposed Rule 17000(a)(16) defines the term ''customer'' to not include a broker or dealer, which parallels the same definition in other exchange rulebooks. *See e.g.,* IEX Rule 1.160(j). Similarly, the Exchange proposes to define the term ''Regular Trading Hours'' as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* proposed Rule 17000(a)(28) *cf.* IEX Rule 1.160(gg) (defining ''Regular Market Hours'' in the same manner).

[102] For example, the Exchange proposes to define the term ''BSTX'' to mean the facility of the Exchange for executing transaction in security tokens, the term ''BSTX Participant'' to mean a Participant or Options Participant (as those terms are defined in the Exchange's Rule 100 Series) that is authorized to trade security tokens, and the term ''BSTX System'' to mean the automated trading system used by BSTX for the trading of security tokens. *See* proposed Rule 17000(a)(8), (11), and (14).

[103] Proposed Rule 17000(a)(30) provides that the term ''security token'' means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. The proposed definition further specifies that references to a ''security'' or ''securities'' in the Rules include security tokens.

[104] Proposed Rule 17000(a)(31) defines the term ''Wallet Manager'' as a party approved by BSTX to operate software compatible with the BSTX Protocol. *See also supra* Sections II.G and H. for a discussion of the role of a Wallet Manager.

[105] *See supra* note 60.

[106] Proposed Rule 17010 further specifies that to the extent the provisions of the Rules relating to the trading of security tokens contained in Rule 17000 Series to Rule 28000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to security token trading shall control.

[108] The BSTX Participant Application, Participation Agreement, and User Agreement are attached as Exhibits 3A, 3B, and 3C respectively.

required by the Exchange.[109] Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3–1 under the Exchange Act, comply with applicable books and records requirements, and be a member of a registered clearing agency or clear security token transactions through another BSTX Participant that is a member/participant of a registered clearing agency.[110] Finally, proposed Rule 18020 (Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

The Exchange believes that the proposed Rule 18000 Series (Participation on BSTX) is consistent with Section 6(b)(5) of the Exchange Act[111] because these proposed rules are designed to promote just and equitable principles of trade, and protect investors and the public interest by setting forth the requirements to become a BSTX Participant and specifying that associated persons of a BSTX Participant are bound by Exchange Rules. Under proposed Rule 18000, a BSTX Participant must first become an Exchange Participant pursuant to the Exchange Rule 2000 Series which the Exchange believes would help assure that BSTX Participants meet the appropriate standards for trading on BSTX in furtherance of the protection of investors.[112]

C. Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business conduct requirements for BSTX Participants that are substantially similar to business conduct rules of other exchanges.[113] The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) Just and equitable principles of trade; [114] (ii) adherence to law; [115] (iii) use of fraudulent devices; [116] (iv) false statements;[117] (v) know your customer;[118] (vi) fair dealing with customers; [119] (vii) suitability; [120] (viii) the prompt receipt and delivery of securities; [121] (ix) charges for services performed; [122] (x) use of information obtained in a fiduciary capacity; [123] (xi) publication of transactions and quotations; [124] (xii) offers at stated prices; [125] (xiii) payments involving publications that influence the market price of a security; [126] (xiv) customer confirmations; [127] (xv) disclosure of a control relationship with an issuer of security tokens; [128] (xvi) discretionary accounts; [129] (xvii) improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts; [130] (xviii) the extent to which sharing in accounts is permissible; [131] (xix) communications with customers and the public; [132] (xx) gratuities; [133] (xxi) telemarketing; [134] and (xxii) mandatory systems testing.[135] The Exchange notes that the proposed financial responsibility rules are virtually identical to those of other national securities exchanges other than changes to defined terms and certain other provisions that would not apply to the trading of security tokens on the BSTX System.[136]

[109] Proposed Rule 18000 also sets forth the Exchange's review process regarding BSTX Participation Agreements and certain limitations on the ability to transfer BSTX Participant status (*e.g.,* in the case of a change of control). In addition proposed Rule 18000(b)(2) provides that a BSTX Participant shall continue to abide by all applicable requirements of the Rule 2000 Series, which would include, for example, IM–2040–5, which specifies continuing education requirements of Exchange Participants and their associated persons.

[110] Proposed Rule 18010(b) is similar to the rules of existing exchanges. *See e.g.,* IEX Rule 2.160(c). Proposed Rule 18010(a) is also similar to the rules of existing exchanges. *See e.g.,* IEX Rule 1.160(s) and Cboe BZX Rule 17.2(a).

[111] 15 U.S.C. 78f(b)(5).

[112] The Exchange notes that the approach of requiring members of a facility of an exchange to first become members of the exchange is consistent with the approach used by another national securities exchange. *See* Cboe BZX Rule 17.1(b)(3) (requiring that a Cboe BZX options member be an existing member or become a member of the Cboe BZX equities exchange pursuant to the Cboe BZX Chapter II Series).

[113] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[114] Proposed Rule 19000 (Just and Equitable Principles of Trade) provides that no BSTX Participant, including its associated persons, shall engage in acts or practices inconsistent with just and equitable principles of trade.

[115] Proposed Rule 19010 (Adherence to Law) generally requires BSTX Participants to adhere to applicable laws and regulatory requirements.

[116] Proposed Rule 19020 (Use of Fraudulent Devices) generally prohibits BSTX Participants from effecting a transaction in any security by means of a manipulative, deceptive or other fraudulent device or contrivance.

[117] Proposed Rule 19030 (False Statements) generally prohibits BSTX Participants and their associated persons from making false statements or misrepresentations in communications with the Exchange.

[118] Proposed Rule 19040 (Know Your Customer) requires BSTX Participants to comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

[119] Proposed Rule 19050 (Fair Dealing with Customers) generally requires BSTX Participants to deal fairly with customers and specifies certain activities that would violate the duty of fair dealing (*e.g.,* churning or overtrading in relation to the objectives and financial situation of a customer).

[120] Proposed Rule 19060 (Suitability) provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.

[121] Proposed Rule 19070 (Prompt Receipt and Delivery of Securities) would generally prohibit a BSTX Participant from accepting a customer's purchase order for a security until it can determine that the customer agrees to receive the securities against payment.

[122] Proposed Rule 19080 (Charges for Services Performed) generally requires that charges imposed on customers by broker-dealers shall be reasonable and not unfairly discriminatory.

[123] Proposed Rule 19090 (Use of Information Obtained in a Fiduciary Capacity) generally restricts the use of information as to the ownership of securities when acting in certain capacities (*e.g.,* as a trustee).

[124] Proposed Rule 19100 (Publication of Transactions and Quotations) generally prohibits a BSTX Participant from disseminating a transaction or quotation information unless the BSTX Participant believes it to be bona fide.

[125] Proposed Rule 19110 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

[126] Proposed Rule 19120 (Payments Involving Publications that Influence the Market Price of a Security) generally prohibits direct or indirect payments with the aim of disseminating information that is intended to effect the price of a security.

[127] Proposed Rule 19130 (Customer Confirmations) requires that BSTX Participants comply with Rule 10b–10 of the Exchange Act. 17 CFR 240.10b–10.

[128] Proposed Rule 19140 (Disclosure of Control Relationship with Issuer) generally requires BSTX Participants to disclose any control relationship with an issuer of a security before effecting a transaction in that security for the customer.

[129] Proposed Rule 19150 (Discretionary Accounts) generally provides certain restrictions on BSTX Participants handling of discretionary accounts, such as by effecting excessive transactions or obtained authorization to exercise discretionary powers.

[130] Proposed Rule 19160 (Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts) generally prohibits BSTX Participants from making improper use of customers securities or funds and prohibits guarantees to customers against losses.

[131] Proposed Rule 19170 (Sharing in Accounts; Extent Permissible) generally prohibits BSTX Participants and their associated persons from sharing directly or indirectly in the profit or losses of the account of a customer unless certain exceptions apply such as where an associated person receives prior written authorization from the BSTX Participant with which he or she is associated.

[132] Proposed Rule 19180 (Communications with Customers and the Public) generally provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2210 as if such rule were part of the Exchange Rules.

[133] Proposed Rule 19200 (Gratuities) requires BSTX Participants to comply with the requirements set forth in BOX Exchange Rule 3060 (Gratuities).

[134] Proposed Rule 19210 (Telemarketing) requires that BSTX Participants and their associated persons comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

[135] Proposed Rule 19220 (Mandatory Systems Testing) requires that BSTX Participants comply with Exchange Rule 3180 (Mandatory Systems Testing).

[136] For example, the Exchange is not proposing to adopt a rule contained in other exchanges' business conduct rules relating to disclosures that broker-

Continued

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act [137] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges.[138]

D. Financial and Operational Rules for BSTX Participants (Rule 20000 Series)

The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges.[139] The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books and records; [140] (ii) financial reports; [141] (iii) net capital compliance; [142] (iv) early warning notifications pursuant to Rule 17a–11 under the Exchange Act; [143] (v) authority of the Chief Regulatory Officer to impose certain restrictions; [144] (vi) margin; [145] (vii) day-trading margin; [146] (viii) customer account information; [147] (ix) maintaining records of customer complaints; [148] and (x) disclosure of financial condition.[149]

The Exchange believes that the proposed Rule 20000 (Financial and Operational Rules) Series is consistent with Section 6(b)(5) of the Exchange Act [150] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping, disclosure, and related requirements designed to ensure that BSTX Participants conduct themselves in a financially responsible manner. For example, proposed Rule 20000 would require BSTX Participants to comply with existing Exchange Rule 1000, which sets forth certain recordkeeping responsibilities and the obligation to furnish these to the Exchange upon request so that the Exchange can appropriately monitor the financial condition of a BSTX Participant and its compliance with applicable regulatory requirements. Similarly, proposed Rule 20050 would set forth the margin requirements that BSTX Participants must retain with respect to customers trading in a margin account to ensure that BSTX Participants are not extending credit to customers in a manner that might put the financial condition of the BSTX Participant in jeopardy. Each of the proposed rules in the Rule 20000 Series (Financial and Operational Rules) is substantially similar to existing rules of other exchanges or incorporates an existing rule of the Exchange or another self-regulatory organization (''SRO'') by reference.

E. Supervision (Rule 21000 Series)

The Exchange proposes to adopt as its Rule 21000 Series (Supervision), six rules relating to certain supervisory requirements for BSTX Participants that are substantially similar to supervisory rules of other exchanges.[151] The Proposed Rule 21000 Series would specify supervisory requirements with respect to: (i) Enforcing written procedures to appropriately supervise the BSTX Participant's conduct and compliance with applicable regulatory requirements; [152] (ii) designation of an individual to carry out written supervisory procedures; [153] (iii) maintenance and keeping of records carrying out the BSTX Participant's written supervisory procedures; [154] (iv) review of activities of each of a BSTX Participant's offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses; [155] (v) the prevention of the misuse of material non-public

dealers give to their customers regarding the risks of effecting securities transactions during times other than during regular trading hours (*e.g.,* higher volatility, possibly lower liquidity) because executions may only occur during regular trading hours on the BSTX System. *See e.g.,* IEX Rule 3.290, Cboe BZX Rule 3.21.

[137] 15 U.S.C. 78f(b)(5).

[138] *See supra* n. 113.

[139] *See* Cboe BZX Chapter 6 rules and IEX Chapter 5 rules.

[140] Proposed Rule 20000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) requires that BSTX Participants comply with current Exchange Rule 1000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) and that BSTX Participants shall submit to the Exchange order, market and transaction data as the Exchange may specify by Information Circular.

[141] Proposed Rule 20010 (Financial Reports) provides that BSTX Participants shall comply with the requirements of current Exchange Rule 10020 (Financial Reports).

[142] Proposed Rule 20020 (Capital Compliance) provides that each BSTX Participant subject to Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1) shall comply with such rule and other financial and operational rules contained in the proposed Rule 20000 series.

[143] 17 CFR 240.17a–11. Proposed Rule 20030 (''Early Warning'' Notification) provides that BSTX Participants subject to the reporting or notifications requirements of Rule 17a–11 under the Exchange Act (17 CFR 240.17a–11) or similar ''early warning'' requirements imposed by other regulators shall provide the Exchange with certain reports and financial statements.

[144] Proposed Rule 20040 (Power of CRO to Impose Restrictions) generally provides that the Exchange's Chief Regulatory Officer may impose restrictions and conditions on a BSTX Participant subject to the early warning notification requirements under certain circumstances.

[145] Proposed Rule 20050 (Margin) sets forth the required margin amounts for certain securities held in a customer's margin account.

[146] Proposed Rule 20060 (Day Trading Margin) sets forth additional requirements with respect to customers that engage in day trading.

[147] Proposed Rule 20070 (Customer Account Information) requires that BSTX Participants comply with FINRA Rule 4512 as if such rule were part of the Exchange Rules and further clarifies certain cross-references within FINRA Rule 4512.

[148] Proposed Rule 20080 (Record of Written Customer Complaints) requires that BSTX Participants comply with FINRA Rule 4513 as if such rule were part of the Exchange Rules.

[149] Proposed Rule 20090 (Disclosure of Financial Condition) generally requires that BSTX Participants make available certain information regarding the BSTX Participant's financial condition upon request of a customer.

[150] 15 U.S.C. 78f(b)(5).

[151] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[152] Proposed Rule 21000 (Written Procedures).

[153] Proposed Rule 21010 (Responsibility of BSTX Participants) would also require that a copy of a BSTX's written supervisory procedures be kept in each office and makes clear that final responsibility for proper supervision rests with the BSTX Participant.

[154] Proposed Rule 21020 (Records).

[155] Proposed Rule 21030 (Review of Activities).

information;[156] and (vi) implementation of an anti-money laundering (''AML'') compliance program.[157] These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review and maintain records with respect to such supervision, and enforce specific procedures relating insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act[158] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant's business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest.[159] In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.[160]

F. Miscellaneous Provisions (Rule 22000 Series)

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are substantially similar to rules of other exchanges.[161] These miscellaneous provisions relate to: (i) Comparison and settlement requirements;[162] (ii) failures to deliver and failures to receive;[163] (iii) forwarding of proxy and other issuer-related materials;[164] (iv) commissions;[165] (v) regulatory services agreements;[166] and (vi) transactions involving Exchange employees.[167] These rules are designed to capture additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver proxy materials at the request of an issuer and to incorporate by reference Rule 200–203 of Regulation SHO.[168]

The Exchange believes that the proposed Rule 22000 (Miscellaneous Provisions) Series is consistent with Section 6(b)(5) of the Exchange Act[169] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants comply with additional regulatory requirements, such as Rule 203 of Regulation SHO[170] as provided in proposed Rule 22010 (Failure to Deliver and Failure to Receive), in connection with their participation on BSTX. For example, proposed Rule 22030 (Commissions) prohibits BSTX Participants from charging fixed rates of commissions for transactions on the Exchange consistent with Section 6(e)(1) of the Exchange Act.[171] Similarly, proposed Rule 22050 (Transactions involving Exchange Employees) sets forth certain requirements and prohibitions relating to a BSTX Participant providing certain financial services to an Exchange employee, which the Exchange believes helps prevent potentially fraudulent and manipulative acts and practices and furthers the protection of investors and the public interest.

G. Trading Practice Rules (Rule 23000 Series)

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), 14 rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges.[172] The proposed Rule 23000 series would specify trading practice requirements related to: (i) Market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions; and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the trading conduct of BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively higher prices or sales of a security at

[156] Proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information) generally requires BSTX Participants to enforce written procedures designed to prevent misuse of material non-public information and sets forth examples of conduct that would constitute a misuse of material, non-public information.

[157] Proposed Rule 21050 (Anti-Money Laundering Compliance Program). The Exchange already has rules with respect to Exchange Participants enforcing an AML compliance program set forth in Exchange Rule 10070 (Anti-Money Laundering Compliance Program), so proposed Rule 21050 specifies that BSTX Participants shall comply with the requirements of that pre-existing rule.

[158] 15 U.S.C. 78f(b)(5).

[159] *Id.*

[160] *See supra* n.151.

[161] *See* Cboe BZX Chapter 13 rules. *See also* IEX Rule 6.180 with respect to proposed Rule 22050 (Transactions Involving BOX Employees).

[162] Proposed Rule 22000 (Comparison and Settlement Requirements) provides that a BSTX Participant that is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity. The proposed rule would further provide that, notwithstanding this general provision, the Board may extend or postpone the time of delivery of a BSTX transaction whenever the Board determines that it is called for by the public interest, just and equitable principles of trade or to address unusual conditions. In such a case, delivery will occur as directed by the Board.

[163] Proposed Rule 22010 (Failure to Deliver and Failure to Receive) provides that borrowing and deliveries must be effected in accordance with Rule 203 of Regulation SHO (17 CFR 242.203) and incorporates Rules 200—203 of Regulation SHO by reference into the rule (17 CFR §§ 242.200–203).

[164] Proposed Rule 22020 (Forwarding of Proxy and Other Information; Proxy Voting) generally provides that BSTX Participants shall forward proxy materials when requested by an issuer and sets forth certain conditions and limitations for BSTX Participants to give a proxy to vote stock that is registered in its name.

[165] Proposed Rule 22030 (Commissions) provides that the Exchange Rules or practices shall not be construed to allow a BSTX Participant or its associated persons to agree or arrange for the charging of fixed rates commissions for transactions on the Exchange.

[166] Proposed Rule 22040 (Regulatory Service Agreement) provides that the Exchange may enter into regulatory services agreements with other SROs to assist in carrying out regulatory functions, but the Exchange shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

[167] Proposed Rule 22040 (Transactions Involving Exchange Employees) sets forth conditions and limitations on a BSTX Participant providing loans or supporting the account of an Exchange employee (*e.g.,* promptly obtaining and implementing an instruction from the employee to provide duplicate account statement to the Exchange) in order to mitigate any potential conflicts of interest that might arise from such a relationship.

[168] 17 CFR §§ 242.200–203.

[169] 15 U.S.C. 78f(b)(5).

[170] 17 CFR 242.203.

[171] 15 U.S.C. 78f(e)(1).

[172] *See* Cboe BZX Chapter 12 rules.

successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security.[173] Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.[174] Proposed Rule 23060 (Joint Activity) prohibits a BSTX Participant from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.[175]

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA 5320 and rules adopted by other exchanges,[176] and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading on the Exchange would be limited to regular trading hours.

The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges.[177] Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed in Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of $0.01 to the unexecuted held limit order. While FINRA Rule 5320.06 sets forth alternate, lower price improvement standards for securities priced below $1, the Exchange proposes to adopt a uniform price improvement requirement of $0.01 for securities traded on the BSTX System consistent with the Exchange's proposed uniform minimum price variant of $0.01 set forth in proposed Rule 25030.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed in Rule 25030(g) which would allow a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges[178] except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is in an amount other than a round lot (*i.e.,* 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for security tokens pursuant to proposed Rule 25020 is one security token. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 security tokens (*i.e.,* trading in odd-lot amounts), and the Exchange accordingly does not believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

The Exchange believes that the proposed Rule 23000 Series relating to trading practice rules is consistent with Section 6(b)(5) of the Exchange Act[179] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices that could harm investors and to promote just and equitable principles of trade. The proposed rules in the Rule 23000 Series are substantially similar to the rules of other exchanges and generally include a variety of prohibitions against types of trading activity or other conduct that could potentially be manipulative, such as prohibitions against market manipulation, fictitious transactions, and the dissemination of false information. The Exchange has proposed to exclude certain provisions from, or make certain modifications to, comparable rules of other SROs, as detailed above, in order to account for certain unique aspects related to the proposed trading of security tokens. The Exchange believes that it is consistent with applicable requirements under the Exchange Act to exclude these provisions and exceptions because they set forth requirements that would not apply to BSTX Participants trading in security tokens and are not necessary for the Exchange to carry out its functions of facilitating security token transactions and regulating BSTX Participants.

H. Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has Rules pertaining to discipline and

[173] Proposed Rule 23030 (Manipulative Transactions) specifies further prohibitions relating to potential manipulation by prohibiting BSTX Participants from, among other things, participating or having any direct or indirect interest in the profits of a manipulative operation or knowingly managing or financing a manipulative operation.

[174] Other proposed rules relating to potential manipulation include: (i) Rule 23040 (Dissemination of False Information), which generally prohibits, consistent with Exchange Rule 3080, BSTX Participants from spreading information that is false or misleading; (ii) Rule 23070 (Influencing Data Feeds), which generally prohibits transactions to influence data feeds; (iii) Rule 23080 (Trade Shredding), which generally prohibits conduct that has the intent or effect of splitting any order into multiple smaller orders for the primary purpose of maximizing remuneration to the BSTX Participant; (iv) Rule 23110 (Trading Ahead of Research Reports), which generally prohibits BSTX Participants from trading based on non-public advance knowledge of a research report and requires BSTX Participants to enforce policies and procedures to limit information flow from research personnel to trading personnel that might trade on such information; (v) Rule 23120 (Front Running Block Transactions), which incorporates FINRA Rule 5270 as though it were part of the Exchange's Rules; and (vi) Rule 23130 (Disruptive Quoting and Trading Activity Prohibited), which incorporates Exchange Rule 3220 by reference.

[175] In addition, proposed Rule 23100 (Publication of Transactions and Changes) provides that the Exchange will disseminate transaction information to appropriate data feeds, BSTX participants must provide information necessary to facilitate the dissemination of such information, and that an Exchange official shall be responsible for approving corrections to any reports transmitted over data feeds.

[176] *See e.g.,* Cboe BZX Rule 12.6.

[177] *See e.g.,* Cboe BZX Rule 12.6.07.

[178] *See e.g.,* Cboe BZX Rule 12.5.05.

[179] 15 U.S.C. 78f(b)(5).

suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System. The Exchange also proposes to adopt as Rule 24010 a minor rule violation plan with respect to transactions on BSTX.[180]

Proposed Rule 24000 incorporates by reference existing rules that have already been approved by the Commission.

I. Trading Rules and the BSTX System (Rule 25000 Series)

1. Rule 25000—Access to and Conduct on the BSTX Marketplace

The Exchange proposes to adopt Rule 25000 (Access to and Conduct on the BSTX Marketplace) to set forth rules relating to access to the BSTX System and certain conduct requirements applicable to BSTX Participants. Specifically, proposed Rule 25000 provides that only BSTX Participants, including their associated persons, that are approved for trading on the BSTX System shall effect any transaction on the BSTX System. Proposed Rule 25000(b) generally requires that a BSTX Participant maintain a list of authorized traders that may obtain access to the BSTX System on behalf of the BSTX Participant, have procedures in place reasonably designed to ensure that all authorized traders comply with Exchange Rules and to prevent unauthorized access to the BSTX System, and to provide the list of authorized traders to the Exchange upon request. Proposed Rule 25000(c) and (d) restate provisions that are already set forth in Exchange Rule 7000, generally providing that BSTX Participants shall not engage in conduct that is inconsistent with the maintenance of a fair and orderly market or the ordinary and efficient conduct of business, as well as conduct that is likely to impair public confidence in the operations of the Exchange. Examples of such prohibited conduct include failure to abide by a determination of the Exchange, refusal to provide information requested by the Exchange, and failure to adequately supervise employees. Proposed Rule 25000(f) provides the Exchange with authority to suspend or terminate access to the BSTX System under certain circumstances.

The Exchange believes that proposed Rule 25000 is consistent with Section 6(b)(5) of the Exchange Act [181] because it is designed to protect investors and the public interest and promote just and equitable principles of trade by ensuring that BSTX Participants would not allow for unauthorized access to the BSTX System and would not engage in conduct detrimental to the maintenance of fair and orderly markets.

2. Rule 25010—Days/Hours

Proposed Rule 25010 sets forth the days and hours during which BSTX would be open for business and during which transactions may be effected on the BSTX System. Under the proposed rule, transactions may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time. The proposed rule also specifies certain holidays BSTX would be not be open (*e.g.,* New Year's Day) and provides that the Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or such person's designee who is a senior officer of the Exchange, shall have the power to halt or suspend trading in any security tokens, close some or all of BSTX's facilities, and determine the duration of any such halt, suspension, or closing, when such person deems the action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[182] by setting forth the days and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

3. Rule 25020—Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one security token. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act [183] because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading of security tokens on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.[184]

4. Rule 25030—Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for security tokens shall be $0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for security tokens and promotes compliance with Rule 612 of Regulation NMS.[185] Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than $0.01 if that bid or offer or order is priced equal to or greater than $1.00 per share. Where a bid or offer or order is priced less than or equal to $1.00 per share, the minimum acceptable increment is $0.0001. Proposed Rule 25030 sets a uniform minimum price variant for all security tokens of $0.01 irrespective of whether the security token is trading below $1.00.

5. Rule 25040—Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed security tokens and non-BSTX-listed security tokens. For BSTX-listed security tokens, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begin at 9:30 a.m. ET.[186] Similar to how the Exchange's opening process works for options trading, BSTX would disseminate a theoretical opening price (''TOP'') to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.[187] Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) ''Paired Tokens,'' which is the quantity of security tokens that would execute at the TOP; (ii) the ''Imbalance Quantity,'' which is the number of security tokens that may not be matched with other orders at the TOP at the time

[180] The proposed additions to the Exchange's minor rule violation plan pursuant to proposed Rule 25010 are discussed below in Part IV.

[181] 15 U.S.C. 78f(b)(5).

[182] 15 U.S.C. 78f(b)(5).

[183] 15 U.S.C. 78f(b)(5).

[184] *See e.g.,* IEX Rule 11.180.

[185] 17 CFR 242.611.

[186] As a result, orders marked IOC submitted during the Pre-Opening Phase will be rejected by the BSTX System. *See* proposed Rule 25040(a)(7).

[187] The TOP can only be calculated where the BSTX Book is crossed during the Pre-Opening Phase. *See* proposed Rule 25040(a)(2).

of dissemination; and (iii) the ''Imbalance Side,'' which is the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, ''Broadcast Information'').[188] Broadcast Information will be recalculated and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Tokens to change. With respect to priority during the opening match for all security tokens, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed security token will be opened by calculating the optimum number of security tokens that could be matched at a price, taking into consideration all the orders on the BSTX Book.[189] Proposed Rule 25040(a)(5) provides that the opening match price is the price which results in the matching of the highest number of security tokens. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting security tokens in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest security tokens in the BSTX Book, the price closest to the previous day's closing price will be selected.[190] Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time priority.[191] When the BSTX System cannot determine an opening price of a BSTX-listed security token at the start of regular trading hours, BSTX would nevertheless open the security token for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book.[192]

For initial public offerings of security tokens (''ISTOs''), the process will be generally the same as regular market openings. However, in advance of an ISTO auction (''ISTO Auction''), the Exchange shall announce a ''Quote-Only Period'' that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to the ISTO Auction.[193] The Quote-Only Period may be extended in certain cases.[194] As with regular market openings the Exchange would disseminate Broadcast Information at the commencement of the Quote Only Period, and Broadcast Information would be re-calculated and disseminated every time a new order is received or cancelled and where such event causes the TOP price or Paired Tokens to change.[195] In the event of any extension to the Quote-Only Period or a trading pause, the Exchange will notify market participants regarding the circumstances and length of the extension.[196] Orders will be matched and executed at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time.[197] Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority consistent with proposed Rule 25080, the Exchange will transition to normal trading pursuant to proposed Rule 25040(a)(6).[198]

The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause (''Halt Auctions''). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction.[199] This Quote-Only Period may be extended in certain circumstances.[200] The Exchange proposes to disseminate the same Broadcast Information as it does for an ISTO Auction and would similarly provide notification of any extension to the quote-only period as with an ISTO Auction.[201] The transition to normal trading would also occur in the same manner as ISTO Auctions, as described above.[202]

The Exchange also proposes to adopt certain contingency procedures in proposed Rule 25040(d) that would provide that when a disruption occurs that prevents the execution of an ISTO Auction the Exchange will publicly announce the Quote-Only Period for the ISTO Auction, and the Exchange will then cancel all orders on the BSTX Book and disseminate a new scheduled time for the Quote-Only Period and opening match.[203] Similarly, when a disruption occurs that prevents the execution of a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur, and all orders in the halted security token on the BSTX Book will be canceled after which the Exchange will open the security token for trading without an auction.[204]

The opening process with respect to non-BSTX-listed security tokens is set forth in proposed Rule 25040(e). Pursuant to that Rule, BSTX Participants who wish to participate in the opening process may submit orders and quotes for inclusion in the BSTX Book, but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (''Opening Process''). Orders that are canceled before the Opening Process will not participate in the Opening Process. The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO.[205] Generally, the price of the

[188] Pursuant to proposed Rule 25040(a)(3), any orders which are at a better price (*i.e.,* bid higher or offer lower) than the TOP will be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

[189] *See* proposed Rule 25040(a)(4)(ii).

[190] With respect to an initial public offering of a security token where there is no previous day's closing price, the opening price will be the price assigned to the security token by the underwriter for the offering, referred to as the ''ISTO Reference Price.'' *See* Proposed Rule 25040(a)(5)(ii)(3).

[191] *See* proposed Rule 25040(a)(6).

[192] *Id.*

[193] *See* proposed Rule 25040(b)(1).

[194] Such cases are when: (i) There is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or (iv) in the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the ISTO or of the Exchange to complete the ISTO. *See* proposed Rule 25040(b)(2).

[195] *See* proposed Rule 25040(b)(3).

[196] *See* proposed Rule 25040(b)(4). The Exchange also proposes that if a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. *Id.*

[197] *See* proposed Rule 25040(b)(5).

[198] As with the regular opening process, orders marked IOC submitted during the Pre-Opening Phase of an ISTO Auction would be rejected. *See* proposed Rule 25040(b)(6).

[199] *See* proposed Rule 25040(c)(1). Orders marked IOC submitted during the Quote-Only Period would be rejected.

[200] *See* proposed Rule 25040(c)(2). The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP (''Initial Extension Period''). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (''Additional Extension Period'') until a Halt Auction occurs. Under the proposed Rule, the Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period. *Id.*

[201] *See* proposed Rule 25040(c)(3)–(5).

[202] *Id.*

[203] *See* proposed Rule 25040(d)(1).

[204] *See* proposed Rule 25040(d)(2). The Exchange notes that these contingency procedures are substantially similar to those of another exchange (*see e.g.,* IEX Rule 11.350(c)(4)) and are designed to ensure that the Exchange has appropriate mechanisms in place to address possible disruptions that may arise in an ISTO Auction or Halt Auction, consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[205] *See* proposed Rule 25040(e)(2).

Opening Process will be at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to proposed Rule 25040(e)(4), if the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book cancelled, or executed in accordance with the terms of the order. A similar process will occur for re-opening a non-BSTX-listed security token subject to a halt.[206] The proposed opening process for security tokens listed on another exchange serves as a placeholder in anticipation of other exchanges eventually listing and trading security tokens, or the equivalent thereof, given that there are no other exchanges currently trading security tokens. The proposed process for opening security tokens listed on another exchange is similar to existing exchange rules governing the opening of trading of a security listed on another exchange.[207]

Consistent with Section 6(b)(5) of the Exchange Act,[208] the Exchange believes that the proposed process for opening trading in BSTX-listed security tokens and security tokens listed on other exchanges will promote just and equitable principles of trade and will help perfect the mechanism of a free and open market by establishing a uniform process to determine the opening price of security tokens.[209] Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in security tokens listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-listed security token, the Exchange will proceed by opening regular hours trading in the security token anyway, which is consistent with the manner in which other exchanges open trading in securities.[210] With respect to initial public offerings of security tokens and openings after a Limit Up-Limit Down halt or trading pause, BSTX proposes to use a process with features similar to its normal opening process. There are a variety of different ways in which an exchange can open trading in securities, including with respect to an initial public offering of a security token, and the Exchange believes that proposed Rule 25040 provides a simple and clear method for opening transactions that is consistent with the protection of investors and the public interest.[211] Additionally, proposed Rule 25040 applies to all BSTX Participants in the same manner and is therefore not designed to permit unfair discrimination among BSTX Participants.

6. Rule 25050—Trading Halts

BSTX proposes to adopt rules relating to trading halts[212] that are substantially similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (''LULD Plan''), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading security tokens. Below is an explanation of BSTX's approach to certain categories of orders during a trading halt:

▪ *Short Sales*—BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.

▪ *Pegged Orders*—BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.

▪ *Routable Orders*—Pursuant to proposed Rule 25130, the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange (rather than routing such order or quotation), and therefore rules relating to handling of routable orders during a trading halt have been omitted.

▪ *Limit Orders*—Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.[213]

▪ *Auction Orders, Market Orders, and FOK Orders*—BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.[214]

Pursuant to proposed Rule 25050(d), the Exchange would cancel all resting orders in a non-BSTX listed security token subject to a trading halt, reject any incoming orders in that security token, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.[215]

BSTX believes that it is in the public interest and furthers the protection of investors, consistent with Section 6(b)(5) of the Exchange Act[216] to provide for a mechanism to halt trading in security tokens during periods of extraordinary market volatility consistent with the LULD Plan. However, the Exchange has excluded rules relating to order types and other aspects of the LULD Plan that would not be supported by the Exchange, such as market orders and auction orders. The Exchange has also reserved the right in proposed Rule 25050(f) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

The Exchange believes that canceling resting order interest during a trading halt and rejecting incoming orders received during the trading halt is consistent with Section 6(b)(5) of the Exchange Act[217] because it is not designed to permit unfair discrimination among BSTX Participants. The orders and trading interest of all BSTX Participants would

[206] *See* proposed Rule 25040(e)(5).

[207] *See e.g.,* Cboe BZX Rule 11.24.

[208] 15 U.S.C. 78f(b)(5).

[209] The Exchange has not proposed to operate a closing auction at this time. As a result, the closing price of a security token on BSTX would be the last regular way transaction occurring on BSTX, which the Exchange believes is a simple and fair way to establish the closing price of a security token that does not permit unfair discrimination among customers, issuers, or broker-dealers consistent with Section 6(b)(5) of the Exchange Act. *Id.* This proposed process is consistent with the overall proposed simplified market structure for BSTX, which does not include a variety of order types offered by other exchanges such as market-on-close and limit-on-close orders. The Exchange believes that a simplified market structure, including the proposed manner in which a closing price would be determined, promotes the public interest and the protection of investors consistent with Section 6(b)(5) of the Exchange Act through reduced complexity. *Id.*

[210] *See e.g.,* BOX Rule 7070.

[211] The Exchange notes that its proposed opening, ISTO Auction, and Halt Auction processes are substantially similar to those of another exchange. *See* Cboe BZX Rule 11.23. The key differences between the Exchange's proposed processes and those of the Cboe BZX exchange are that the Exchange has substantially fewer order types, which make its opening process less complex, and that the Exchange does not proposes to use order auction collars to limit the price at which a security token opens. The Exchange does not believe that auction collars are necessary at this time because there are a variety of other mechanisms in place to prevent erroneous orders and the execution of an opening cross at an erroneous price (*e.g.,* market access controls pursuant to Rule 15c3–5 and the ability of an underwriter to request an extension to the Quote-Only Period in an ISTO Auction).

[212] The Exchange notes that rules on opening trading for non-BSTX-listed security token are set forth in proposed Rule 25040(e).

[213] *See e.g.,* Cboe BZX 11.18(e)(5)(B).

[214] IOC orders will be handled pursuant to proposed Rule 25050(g)(5).

[215] Trading would resume pursuant to proposed Rule 25040(e)(5). *See* proposed Rule 25050(g)(7).

[216] 15 U.S.C. 78f(b)(5).

[217] *Id.*

be canceled in the event of a trading halt and each BSTX Participant would be required to resubmit any orders they had resting on the order book.

7. Rule 25060—Order Entry

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders.[218] Orders that do not designate a limit price would be rejected.[219] The BSTX System would also only support two time-in-force (''TIF'') designations initially: (i) DAY; and (ii) immediate or cancel (''IOC''). DAY orders will queue during the Pre-Opening Phase, may trade during regular market hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), are canceled by the BSTX System.[220] All orders are given a default TIF of DAY. BSTX Participants may also designate orders as IOC, which designation overrides the default TIF of DAY. IOC orders are not accepted by the BSTX System during the Pre-Opening Phase. During regular trading hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System. The BSTX System will not support modification of resting orders. To change the price or quantity of an order resting on the BSTX Book, a BSTX Participant must cancel the resting order and submit a new order, which will result in a new time stamp for purposes of BSTX Book priority. In addition, all orders on BSTX will be displayed, and the BSTX System will not support hidden orders or undisplayed liquidity, as set forth in proposed Rule 25100.

Consistent with Section 6(b)(5) of the Exchange Act,[221] the Exchange believes that the proposed order entry rules will promote just and equitable principles of trade and help perfect the mechanism of a free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule sets forth a very simple exchange model whereby there is only one order type—limit orders—and two TIFs. Upon the initial launch of BSTX, there will be no hidden orders, price sliding, pegged orders, or other order type features that add complexity. The Exchange believes that creating a simplified exchange model is designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

8. Rule 25070—Audit Trail

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange's oversight functions. The proposed rule is substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (*e.g.,* exercise price) because security tokens are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[222] because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange's ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (*i.e.,* above) the best bid, unless the sell order is marked ''short exempt'' pursuant to Regulation SHO.

9. Rule 25080—Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation SHO, Regulation NMS, and the LULD Plan, in a manner consistent with the rulebooks of other national securities exchanges.[223]

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act [224] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for security token transactions. Numerous other exchanges similarly operate a price-time priority structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in effect must occur at a price above the best bid unless the order is market ''short exempt,'' is consistent with the Exchange Act because it is intended promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

10. Rule 25090—BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange, however may set default values for this control. The proposed rule also provides a means by which all of a BSTX

[218] The BSTX System will also accept incoming Intermarket Sweep Orders (''ISO'') pursuant to proposed Rule 25060(c)(2). ISOs must be limit orders, are ineligible for routing, may be submitted with a limit price during Regular Trading Hours, and must have a time-in-force of IOC. Proposed Rule 25060(c)(2) is substantially similar to rules of other national securities exchanges. *See e.g.,* Cboe BZX Rule 11.9(d).

[219] Proposed Rule 25060(c)(1).

[220] Proposed Rule 25060(d)(1).

[221] 15 U.S.C. 78f(b)(5).

[222] 15 U.S.C. 78f(b)(5).

[223] *See e.g.,* Cboe BZX Rule 11.13(a)(2)–(3) governing regular trading hours.

[224] 15 U.S.C. 78f(b)(5).

Participant's orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order's price is more than a designated percentage away from the National Best Bid or Offer in the marketplace. Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels.

The Exchange believes the proposed risk controls in Rule 25090 are consistent with Section 6(b)(5) of the Exchange Act [225] because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

11. Rule 25100—Trade Execution, Reporting, and Dissemination of Quotations

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX system. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an ''automated market center'' within the meaning of Regulation NMS and will display ''automated quotations'' at all times except in the event of a system malfunction.[226] In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.[227] BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies, and procedures of a registered clearing agency and shall settle on a T+1 basis (*i.e.,* trade date plus one additional business day) where permitted under the rules, policies, and procedures of the relevant registered clearing agency. However, pursuant to proposed Rule 25100(d), the BSTX Participants that are party to the trade may agree to a shorter or longer settlement cycle as may be permitted by the relevant registered clearing agency and where they have so agreed shall communicate that agreement to the Exchange in a manner consistent with the Exchange's procedures. Rule 25100(e) obliges BSTX Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX Participants to satisfy these obligations.[228]

The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act [229] because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale transaction information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act because it will foster cooperation with persons engaged in clearing and settling transactions in security tokens, consistent with Section 6(b)(5) of the Exchange Act.[230]

12. Rule 25110—Clearly Erroneous

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX (''Official'').[231] BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official.[232] Under proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the

[225] 15 U.S.C. 78f(b)(5).

[226] 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an ''automated trading center'' displaying ''automated quotations'' relates to whether or not an exchange's quotations may be considered protected under Regulation NMS. *See* Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to security tokens.

[227] 17 CFR 242.602.

[228] These proposed provisions are substantially similar to those of exchanges. *See e.g.,* Nasdaq Rule 4627 and IEX Rule 10.250.

[229] 15 U.S.C. 78f(b)(5).

[230] *Id.*

[231] A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous will be removed from the Consolidated Tape. Proposed Rule 25110(a).

[232] Proposed Rule 25110(b). The Official may also consider certain ''outlier'' transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60) minutes after the transaction. Proposed Rule 2511(d).

''Reference Price'' [233] by an amount that equals or exceeds specified ''Numerical Guidelines.'' [234] The Official may consider additional factors in determining whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions.[235] Similar to other exchanges 'clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system disruption or malfunction, on a BSTX Officer's (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days.[236] Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided such appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed.[237] The Chief Regulatory Officer's determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act,[238] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act.[239] The proposed rule is substantially similar to the clearly erroneous rules of other exchanges.[240] For example, proposed Rule 25110 does not include provisions related to clearly erroneous transactions for routed orders because orders for security tokens will not route to other exchanges.[241] Security tokens would also only trade during regular trading hours (*i.e.,* 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in: (i) Leverage ETF/ETNs; and (ii) unlisted trading privileges securities that are subject to an initial public offering.[242]

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act [243] because it promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official's determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange's Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.[244] In addition, proposed Rule 25110(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange's clearly erroneous determination.

To the extent security tokens become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act [245] at such future date.

13. Rule 25120—Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.[246] Specifically, proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to a ''covered security'' [247] at a price that is less than or equal to the current

[233] The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).

[234] The proposed Numerical Guidelines are 10% where the Reference Price ranges from $0.00 to $25.00, 5% where the Reference Price is greater than $25.00 up to and including $50.00, and 3% where the Reference Price ranges is greater than $50. Proposed Rule 25110(c)(1).

[235] Proposed Rule 25110(c)(1).

[236] *See* proposed Rule 25110(f)–(j). These provisions are virtually identical to similar provisions of other exchanges' clearly erroneous rules other than by making certain administrative edits (*e.g.,* replacing the term ''security'' with ''security token'').

[237] Determinations by an Official pursuant to proposed Rule 25110(f) relating to system disruptions or malfunctions may not be appealed if the Official made a determination that the nullification of transactions was necessary for the maintenance of a fair and orderly market or the protection of invests and the public interest. Proposed Rule 25110(d)(2).

[238] 15 U.S.C. 78f(b)(5).

[239] *Id.*

[240] *See e.g.,* Cboe BZX Rule 11.17. Similar to other exchanges' comparable rules, proposed Rule 25110 provides BSTX with the ability to determine clearly erroneous trades that result from a system disruption or malfunction, a BSTX Official acting on his or her own motion, trading halts, multi-day trading events, multi-stock events involving five or more (but less than twenty) securities whose executions occurred within a period of five minutes or less, multi-stock events involving twenty or more securities whose executions occurred within a period of five minutes or less, and securities subject to the LULD Plan.

[241] Other exchange clearly erroneous rules reference removing trades from the Consolidated Tape. Because security token transactions will be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the ''Consolidated Tape'' and provides that clearly erroneous security token transactions will be removed from ''all relevant data feeds disseminating last sale information for security token transactions.'' *See* proposed Rule 25110(a).

[242] The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. *See* IEX Rule 11.270. With respect to leveraged ETFs/ETNs, the Exchange does not expect to support trading of such products at this time, so the Exchange does not believe it is necessary to include provisions related to them.

[243] 15 U.S.C. 78f(b)(5).

[244] *See* BOX Rule 7170(n).

[245] 15 U.S.C. 78s.

[246] *See e.g.,* IEX Rule 11.290.

[247] Proposed Rule 25120(b) provides that the terms ''covered security,'' ''listing market,'' and ''national best bid'' shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).

national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security's closing price on the listing market as of the end of Regular Trading Hours on the prior day (the ''Trigger Price''). The proposed rule further specifies the duration of the ''Short Sale Price Test'' and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.[248]

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,[249] because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,[250] and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price on the primary listing market on the prior day.[251] Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

14. Rule 25130—Locking or Crossing Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.[252] Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX participants from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange notes that there may be no other national securities exchanges trading security tokens upon the launch of BSTX that may be displaying protected quotations. Notwithstanding that there may be no other away markets displaying a protected quotation when trading on BSTX commences, the Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

The Exchange believes proposed Rule 25130 is consistent with Section 6(b)(5) of the Exchange Act [253] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by ensuring that the Exchange prevents display of quotations that lock or cross any protected quotation in an NMS stock, in compliance with applicable provisions of Regulation NMS.

15. Rule 25140—Clearance and Settlement: Anonymity

Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

The Exchange believes that proposed Rule 25140 is consistent with Section 6(b)(5) of the Exchange Act [254] because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Proposed Rule 25140 is similar to rules of other exchanges relating to clearance and settlement.[255]

J. Market Making on BSTX (Rule 25200 Series)

The BSTX Market Making Rules (Rules 25200–25240) provide for registration and describe the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration and obligations of Designated Market Makers (''DMMs'') in a given security token, allocation of a DMM to a particular security token, and parameters for business combinations of DMMs.

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange's discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker's registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.[256]

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each security token in which it is registered as a Market Maker.[257] The Exchange proposes that such quotes must be entered within a certain percentage, called the ''Designated Percentage,'' of the National Best Bid (Offer) price in such security token (or last sale price, in the event there is no National Best Bid (Offer)) on the Exchange.[258] The Exchange proposes that the Designated Percentage would be 30%.[259] The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market makers with respect to Tier 2 NMS stocks (as defined under the LULD plan).[260] The Exchange

[248] Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1) that if a covered security did not trade on BSTX on the prior trading day, BSTX's determination of the Trigger Price shall be based on the last sale price on the BSTX System for that security token on the most recent day on which the security token traded.

[249] 15 U.S.C. 78f(b)(5).

[250] 17 CFR 242.200(g).

[251] 17 CFR 242.201(b)(1).

[252] *See* IEX Rule 25130.

[253] 15 U.S.C. 78f(b)(5).

[254] 15 U.S.C. 78f(b)(5).

[255] *See e.g.* IEX Rule 11.250.

[256] Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

[257] *See* proposed Rule 25210(a)(1).

[258] *See* proposed Rule 25210(a)(1)(ii)(A).

[259] *See* proposed Rule 25210(a)(1)(ii)(B).

[260] *See* NYSE American Rule 7.23E(a)(1)(B)(iii) (providing that, other than during certain time periods around the market open and close, the Designated Percentage for Tier 2 NMS stocks priced below $1.00 is 30% and for Tier 2 NMS stocks priced above $1.00 is 28%).

believes that the proposed Designated Percentage for quotation obligations of Market Makers would be sufficient to ensure that there is adequate liquidity sufficiently close to the National Best Bid or Offer (''NBBO'') in security tokens and to ensure fair and orderly markets. The Exchange notes that pursuant to proposed Rule 25210(a)(1)(iii), there is nothing to preclude a Market Maker from entering trading interest at price levels that are closer to the NBBO, so Market Makers have the ability to quote must closer to the NBBO than required by the Designated Percentage requirement if they so choose.

The Exchange proposes in Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM's quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the ''Defined Limit,'' in a security token for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that security token. The Exchange proposes that the Defined Limit shall be 31.5%.[261] Under the proposed Rules, a Market Maker's quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange.[262] Under the proposed Market Maker and DMM Rules, Market Makers and DMMs' two-sided quotation obligations must be maintained for a quantity of a ''normal unit of trading'' which is defined as one security token.[263] The Exchange believes that security tokens may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one security token will be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation.

The Exchange notes that proposed Rule 25210 is substantially similar to NYSE American Rule 7.23E, with the exceptions of: (i) The modified normal unit of trading, Designated Percentage, and Defined Limit (as discussed above); (ii) specifying that the minimum quotation increment shall be $0.01; and (iii) specifying that Market Maker quotations must be firm for their displayed size and automatically executable. The Exchange believes that the additional specifications with respect to the minimum quotation increment and firm quotation requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25220 sets forth the registration requirements for a DMM. Under proposed Rule 25220, a DMM must be a registered Market Maker and be approved as a DMM in order to receive an allocation of security tokens pursuant to proposed Rule 25230, which is described below.[264] For security tokens in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all security tokens in which such Participant serves as DMM.[265] The proposed Rule provides, among other things, that a there will be no more than one DMM per security token and that a DMM must maintain information barriers between the trading unit operating as a DMM and the trading unit operating as a BSTX Market Maker in the same security token (to the extent applicable).[266] The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker[267] and similar to the same process for DMMs on other exchanges.[268] The Exchange notes that proposed Rule 25220 is substantially similar to NYSE American Rule 7.24E with the exception that the Exchanges proposes to add a provision stating that the Exchange is not required to assign a DMM if the security token has an adequate number of BSTX Market Makers assigned to such security token. The purpose of this requirement is to acknowledge the possibility that a security token need not necessarily have a DMM provided that each security token has been assigned at least three active Market Makers at initial listing and two Market Makers for continued listing, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular security token. Proposed Rule 25230(a) sets forth the basic eligibility criteria for a when a security token may be allocated to a DMM, providing that this may occur when the security token is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the security token.[269] Proposed Rule 2530(a) also specifies that a DMM's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange and specifies that a DMM must meet with the quotation requirements set forth in proposed Rule 25220(c) (DMM obligations). The proposed Rule further specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.[270]

Proposed Rule 25230(b) sets forth the manner in which a DMM may be selected and allocated a security token. Under proposed Rule 25230(b), an issuer may select its DMM directly, delegate the authority to the Exchange to selects its DMM, or may opt to proceed with listing without a DMM, in which case a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing must be assigned to its security token consistent with proposed Rule 26106. Proposed Rule 25230(b) further sets forth provisions relating to the interview between the issuer and DMMs, the Exchange selection by delegation, and a requirement that a DMM serve as a DMM for a security token for at least one year unless

[261] *See* proposed Rule 25210(a)(1)(ii)(3).

[262] *See* proposed Rule 25210(b) and (c). Pursuant to proposed Rule 25310(d), a BSTX Market Maker, other than a DMM, may apply for a temporary withdrawal from its Market Maker status provided it meets certain conditions such a demonstrating legal or regulatory requirements that necessitate its temporary withdrawal.

[263] *See* proposed Rule 25210(a)(1).

[264] *See* proposed 25220(b). DMMs would be approved by the Exchange pursuant to an application process an [sic].

[265] *See* proposed Rule 25220(c).

[266] *See* proposed Rule 25220(b).

[267] *See* proposed Rule 25210(d).

[268] *See e.g.,* NYSE American Rule 7.24E(b)(4).

[269] As previously noted, pursuant to proposed Rule 26106, a security token may, in lieu of having a DMM assigned to it, have a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing to be eligible for listing on the Exchange. Consequently, a security token might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM later.

[270] *See* proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).

compelling circumstances exist for which the Exchange may consider a shorter time period. Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(1)–(3), with the exception that the Exchange may shorten the one year DMM commitment period in compelling circumstances.[271] Proposed Rule 25230(b) further sets forth specific provisions related to a variety of different issuances and types of securities, including spin-offs or related companies, warrants, rights, relistings, equity security token listing after preferred security token, listed company mergers, target security tokens, and closed-end management investment companies.[272] Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)–(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similarly to corresponding provisions in NYSE American Rule 7.25E(c). Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.[273] Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a security token as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)–(f).

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the Exchange will use to evaluate a proposed combination, and the timing for a decision by the Exchange, subject to the Exchange's right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

The Exchange believes that the proposed Market Making Rules set forth in the Rule 25200 Series are consistent with Section 6(b)(5) of the Exchange Act[274] because they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that the proposed Rules are substantially similar to the market making rules of other exchanges, as detailed above,[275] and that all BSTX Participants are eligible to become a Market Maker or DMM provided they comply with the proposed requirements.[276] The proposed Market Maker Rules set forth the quotation and related expectations of BSTX Market Makers which the Exchange believes will help ensure that there is sufficient liquidity in security tokens. Although the corresponding NYSE American rules upon which the proposed Rules are based provide for multiple tiers and classes of stocks that were each associated with a different Designated Percentage and Defined Limit, the Exchange has collapsed all such classes in to one category and provided a single Designated Percentage of 30% and Defined Limit of 31.5% for all security token trading on BSTX. The Exchange believes that simplifying the Rules in this manner can reduce the potential for confusion and allows for easier compliance and will still adequately serve the liquidity needs of investors of security token investors, which the Exchange believes promotes the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[277]

The Exchange has also proposed that the minimum quotation size of Market Makers will be one security token. As noted above, the Exchange believes that security tokens may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one security token would be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation. The Exchange believes that adopting quotation requirements and parameters that are appropriate for the nature and types of securities that will trade on the Exchange will promote the protection of investors and the public interest by assuring that the Exchange Rules are appropriately tailored to its market.

K. BSTX Listing Rules (Rule 26000 and 27000 Series)

The BSTX Listing Rules, which include the Rule 26000 and 27000 Series, have been adapted from, and are substantially similar to, Parts 1–12 of the NYSE American LLC Company Guide.[278] Except as described below, each proposed Rule in the BSTX 26000 and 27000 series is substantially similar to a Section of the NYSE American Company Guide.[279] Below is further detail.

- The BSTX Listing Rules (26100 series) are based on the NYSE American Original Listing Requirements (Sections 101–146).[280]
- The BSTX Original Listing Procedures (26200 series) are based on the NYSE American Original Listing Procedures (Sections 201–222).
- The BSTX Additional Listings Rules (26300 series) are based on the NYSE American Additional Listings Sections (Sections 301–350).
- The BSTX Disclosure Policies (26400 series) are based on the NYSE American Disclosure Policies (Sections 401–404).

[271] The Exchange believes that providing the Exchange with flexibility to shorten the one year commitment period is appropriate to accommodate unforeseen events or circumstances that might arise with respect to a DMM, such as a force majeure event, preventing a DMM from being able to carry out its functions.

[272] *See* proposed Rule 25230(b)(4)–(11).

[273] In addition, proposed Rule 25230(c)(2) sets forth provisions that allow for the Exchange's CEO to immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer when the DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market.

[274] 15 U.S.C. 78f(b)(5).

[275] *See* NYSE American Rule 7, Section 2.

[276] In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[277] 15 U.S.C. 78f(b)(5).

[278] All references to various ''Sections'' in the discussion of these Listing Rules refer to the various Sections of the NYSE American Company Guide.

[279] The Exchange notes that while the numbering of BSTX's Listing Rules generally corresponds to a Section of the NYSE American LLC Company Guide, BSTX did not integrate certain Sections of the NYSE American Company Guide that the Exchange deemed inapplicable to its operations, such as with respect to types of securities which the Exchange is not proposing to make eligible for listing (*e.g.,* foreign issuers, other than those from Canada). Further, the Exchange formulated a small amount of new rules to reflect requirements relating to the use of blockchain technology as an ancillary recordkeeping mechanism, as described more fully herein. The Exchange also proposes to modify cross-references in the proposed Listing Rules to accord with its Rules.

[280] Pursuant to proposed Rule 26135, all securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. 15 U.S.C. 78q–1.

• The BSTX Dividends and Splits Rules (26500 series) are based on the NYSE American Dividends and Stock Splits Sections (Sections 501–522).

• The BSTX Accounting; Annual and Quarterly Reports Rules (26600 series) are based on the NYSE American Accounting; Annual and Quarterly Reports Sections (Sections 603–624).

• The BSTX Shareholders' Meetings, Approval and Voting of Proxies Rules (26700 series) are based on the NYSE American Shareholders' Meetings, Approval and Voting of Proxies Sections (Sections 701–726).[281]

• The BSTX Corporate Governance Rules (26800 series) are based on the NYSE American Corporate Governance Sections (Sections 801–809).

• The BSTX Additional Matters Rules (26900 series) are based on the NYSE American Additional Matters Sections (Sections 920–994).

• The BSTX Suspension and Delisting Rules (27000 series) are based on the NYSE American Suspension and Delisting Sections (Sections 1001–1011).

• The BSTX Guide to Filing Requirements (27100 series) are based on the NYSE American Guide to Filing Requirements (Section 1101).

• The BSTX Procedures for Review of Exchange Listing Determinations (27200 series) are based on the NYSE American Procedures for Review of Exchange Listing Determinations (Sections 1201–1211).

Notwithstanding that the proposed BSTX Listing Rules are substantially similar to those of other exchanges, BSTX proposes certain additions or modifications to these rules specific to its market. For example, BSTX proposes to add definitions that apply to the proposed BSTX Listing Rules. The definitions set forth in proposed Rule 26000 are designed to facilitate understanding of the BSTX Listing Rules by market participants. Increased clarity may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[282]

With respect to initial listing standards, which begin at proposed Rule 26101, the Exchange proposes to adopt listing standards that are substantially similar to the NYSE American listing rules.[283] The Exchange believes that adopting listing rules similar to those in place on other national securities exchanges will facilitate more uniform standards across exchanges, which helps foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[284] Market participants that are already familiar with NYSE American's listing standards will already be familiar with most of the substance of the proposed listing rules. The Exchange also believes that adopting proposed listing standards that closely resemble those of NYSE American may also foster competition among listing exchanges for companies seeking to publicly list their securities. The Exchange is proposing an addition (relative to the NYSE American listing rules) to the initial listing standards for preferred security tokens.[285] Specifically, the Exchange proposes an additional standard for preferred security tokens to list on the Exchange based on NASDAQ Rule 5510.[286] The Exchange believes a proposed rule providing an additional initial listing standard for preferred security tokens consistent with a similar provision of NASDAQ would expand the possible universe of issuances that would be eligible to list on the Exchange to include preferred security tokens. The Exchange believes that such a rule would help remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act by giving issuers an additional means by which it could list a different type of security (*i.e.,* a preferred security token) and investors the opportunity to trade in such preferred security tokens.[287] Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers.

In certain instances, BSTX proposes to add additional provisions not currently provided for in the NYSE American LLC Company Guide that are specific to security tokens. For example, pursuant to proposed Rule 26230(a) (Security Token Architecture Responsibility and Audit), prior to approving a security token for trading on BSTX, the Exchange would conduct an audit of the security token's architecture to ensure compliance with the BSTX Protocol as outlined in Rule 26138.[288] The purpose of this requirement is to ensure that the design and structure of a prospective BSTX-listed company's security token is compatible with the BSTX Protocol for purposes of facilitating updates to the blockchain as an ancillary recordkeeping mechanism. The Exchange may use third party service providers that have demonstrated sufficient technical expertise in blockchain technology and an understanding of the BSTX Protocol to conduct this audit on behalf of the Exchange. To the extent an issuer looking to list its shares on BSTX as security tokens failed the audit by BSTX of its security token architecture, the issuer would not meet the requirements of BSTX's listing rules and would therefore not be permitted to list its shares on BSTX until it successfully passed the security token audit.[289]

[281] The Exchange notes that the proposed fees for certain items in the proposed Listing Rules (*e.g.,* proxy follow-up mailings) are the same as those charged by NYSE American. *See e.g.,* proposed IM–26722–8 *cf.* NYSE American Section 722.80.

[282] 15 U.S.C. 78f(b)(5).

[283] *See* NYSE American Section 101. The Exchange understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of SEC Rule 3a51–1. 17 CFR 240.3a51–1. Initial listings of securities that do not meet such thresholds and are not subject to the relief provided to NYSE American would qualify as ''penny stocks'' and would be subject to additional regulation. BSTX notes that it is not seeking relief related to SEC Rule 3a51–1 and therefore has clarified proposed Rule 26101(a)(2) to ensure that issuers have at least one year of operating history. BSTX will also require new listings pursuant to proposed Rule 26102 to have a public distribution of 1 million security tokens, 400 public security token holders, and a minimum market price of $4 per security token. These provisions meet the requirements in SEC Rule 3a51–1 and are consistent with the rules of other national securities exchanges. *See e.g.,* Nasdaq Rule 5510. The quantitative thresholds specified in Rule 26102 are also reflected in the Sample Underwriter's Letter that is Exhibit 3M to this proposal. In addition, the Exchange notes that proposed Rule 26140, which governs the additional listing requirements of a company that is affiliated with the Exchange, is based on similar provisions in NYSE American Rule 497 and IEX 14.205.

[284] 15 U.S.C. 78f(b)(5).

[285] *See* proposed Rule 26103.

[286] *See* proposed Rule 26103(b)(2). Preferred Security Token Distribution Standard 2 requires that a preferred security token listing satisfy the following conditions: Minimum bid price of at least $4 per security token; at least 10 Round Lot holders; at least 200,000 Publicly Held Security Tokens; and Market Value of Publicly Held Security Tokens of at least $3.5 million.

[287] 15 U.S.C. 78f(b)(5).

[288] Proposed Rule 26230 further provides that an applicant that is denied pursuant to this section may appeal the decision via the process outlined in the Rule 27200 Series.

[289] The Exchange expects that some issuers may choose to use an outside vendor to help build their security token in a manner that complies with the BSTX Security Token Protocol. The BSTX Security Token Protocol is open-source, so there is no need to use any particular vendor over another. The Exchange understands that there are numerous technology companies that offer these services, and issuers would be free to select one of their choosing.

Further, the Exchange proposes that Rule 26230(b) would provide that a listed company (*i.e.,* issuer) remains responsible for ensuring that its security token remains compatible with the BSTX Protocol and accurately reflects the number of shares outstanding. The Exchange recognizes that, in certain circumstances, it may be necessary for a listed company to modify certain aspects of the smart contract corresponding to a security token. For example, in the case of a stock split, a listed company may need to increase the total supply of security tokens as programmed into its security token smart contract. Proposed Rule 26230(b) would provide that notice of any such modification of the smart contract corresponding to a security token (*e.g.,* to increase the total supply) must be provided to the Exchange at least five calendar days in advance of implementation to allow the Exchange to audit the proposed modification.[290] While the Exchange believes that five calendar days will provide sufficient time for it to ensure that a security token is appropriately updated in advance of any implementation, the Exchange recognizes that there could conceivably be circumstances in which a change takes longer than expected to implement. Accordingly, the Exchange proposes that Rule 26230(b) would also provide that, to the extent additional time is needed to appropriately implement the modification, the Exchange may exercise its authority to suspend the ancillary recordkeeping process pursuant to Rule 17020(e). The Exchange notes that the primary circumstances under which a modification to a smart contract corresponding to a security token may be necessary is where there is a change to the total supply of the security token, which could occur in the case of a stock split, a reverse stock split, a buy-back, or a dividend in kind. The Exchange notes that any delay in the implementation of a change to a smart contract that corresponds to a security token shall in no way impact the record date or ex-dividend date for any dividend, distribution, or other action. The Exchange believes that proposed Rule 26230 would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act,[291] because it facilitates the ancillary recordkeeping mechanism for BSTX-listed security tokens which is a first step toward the potential integration of blockchain technology to securities transactions. Without ensuring that BSTX-listed companies' security tokens are compatible with the BSTX Protocol, the use of blockchain technology as an ancillary recordkeeping mechanism could be impaired.

With respect to the definitions in proposed Rule 26000, these are designed to facilitate understanding of the BSTX Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Listing Rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[292]

The Exchange also proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.[293] The Exchange believes that these additional disclosure and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are 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, consistent with Section 6(b)(5) of the Exchange Act.[294]

The Exchange's proposed Rules provide additional flexibility for listed companies in choosing how liquidity would be provided in their listings by allowing listed companies to meet either the DMM Requirement or Active Market Maker Requirement for initial listing and continued trading.[295] Pursuant to proposed Rule 26205, a company may choose to be assigned a DMM by the Exchange or to select its own DMM.[296] Alternatively, a company may elect, or the Exchange may determine, that, in lieu of a DMM, a minimum of three (3) market makers would be assigned to the security token at initial listing; such requirement may be reduced to two (2) market makers following the initial listing, consistent with proposed Rule 26106. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[297] The Commission has previously approved exchange rules providing for three market makers to be assigned to a particular security upon initial listing and only two for continued listing.[298] In accordance with these previously approved rules, the Exchange believes proposed Rule 26205 would ensure fair and orderly markets and would facilitate the provision of sufficient liquidity for security tokens.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a ''specialist,'' since

[290] The Exchange expects that it will work with issuers to help ensure that there security tokens comply with the BSTX Protocol. However, as with all Exchange Rules, failure to comply could result in potential suspension and delisting in accordance with the Rule 27000 Series.

[291] *Id.*

[292] *Id.*

[293] *See* Proposed Rule 26502, which requires, among other things, a listing company to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

[294] *Id.*

[295] *See* proposed Rule 26205. BSTX-listed security tokens must meet the criteria specified in proposed Rule 26106, which provides that unless otherwise provided, all security tokens listed pursuant to the BSTX Listing Standards must meet one of the following requirements: (1) The DMM Requirement whereby a DMM must be assigned to a given security token; or (2) the Active Market Maker Requirement which states that (i) for initial inclusion the security token must have at least three registered and active Market Makers, and (ii) for continued listing, a security token must have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

[296] Exchange personnel responsible for managing the listing and onboarding process will be responsible for determining to which DMM a security token will be assigned. As provided in proposed Rule 26205, the Exchange makes every effort to see that each security token is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. Similarly, the Exchange anticipates that these same personnel will be responsible for answering questions relating to the Exchange's listing rules pursuant to proposed Rule 26994 (New Policies). The Exchange notes that certain provisions in the NYSE American Listing Manual contemplate a ''Listing Qualifications Analyst'' that would perform a number of these functions. The Exchange is not proposing to adopt provisions that specifically contemplate a ''Listing Qualifications Analyst,'' but expects to have personnel that will perform the same basic functions, such as advising issuers and prospective issuers with respect to the BSTX Listing Rules.

[297] *Id.*

[298] *See e.g.,* IEX Rule 14.206.

BSTX will not have a specialist,[299] or references to certificated equities, since security tokens will be uncertificated equities.[300] As another example, NYSE American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.[301] In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.[302] In its proposed Rules, the Exchange has not included certain form letters related to proxy rules that are included in the NYSE American rules;[303] instead, these forms will be included in the BSTX Listing Supplement.[304] The Exchange is not proposing to adopt provisions relating to future priced securities at this time.[305] In addition, the Exchange is not proposing to allow for listing of foreign companies, other than Canadian companies,[306] or to allow for issuers to transfer their existing securities to BSTX.[307] Similarly, the Exchange is not proposing at this time to support security token debt securities, so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt securities [308] or the trading of units.[309] The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (*e.g.,* by not including provisions relating to instruments that will not trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.[310]

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional security tokens and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in security tokens.[311] The Exchange believes that disallowing fractional shares reduces complexity. By extension, the requirement to provide cash in lieu of fractional shares simplifies the process related to share transfer and tracking of share ownership. The Exchange believes that this simplification promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[312]

Proposed BSTX Rule 26130 (Original Listing Applications) would require listing applicants to furnish a legal opinion that the applicant's security token is a security under applicable United States securities laws. Such a requirement provides assurance to the Exchange that security token trading relates to appropriate asset classes. The Exchange believes that this Rule promotes just and equitable principles of trade and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[313]

The Exchange proposes to adopt corporate governance listing standards as its Rule 26800 series that are substantially similar to the corporate governance listing standards set forth in Part 8 of the NYSE American Listing Manual. However, it includes certain clarifications, most notably that certain proposed provisions are not intended to restrict the number of terms that a

[299] *See e.g.,* NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.

[300] *See e.g.,* NYSE American Section 117 including a clause relating to paired securities for which ''the stock certificates of which are printed back-to-back on a single certificate''). Similarly, the Exchange has proposed to replace certain references to the ''Office of General Counsel'' contained in certain NYSE American Listing Rule (*see e.g.,* Section 1205) with references to the Exchange's ''Legal Department'' to accommodate differences in BSTX's organizational structure. *See* proposed Rule 27204. As another example, proposed Rule 27205 refers to the Exchange's ''Hearing Committee'' as defined in Section 6.08 of the Exchange's By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.

[301] *See* proposed Rule 26623.

[302] Specifically, proposed Rule 26720 would provide that participants must comply with Rules 26720 through 26725 and BSTX's Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American's corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy voting (*e.g.,* requiring that a member state the actual number of shares for which a proxy is given—NYSE American Rule 578) or, in some cases, relate to certificated securities (*e.g.,* NYSE American Rule 579), which would be inapplicable to the Exchange since it proposes to only list uncertificated securities. The Exchange believes that it does not need to propose to adopt parallel rules corresponding to NYSE American Rules 578–585 at this time and notes that other listing exchanges do not appear have corresponding versions of these NYSE American Rules. *See e.g.,* Cboe BZX Rules. The Exchange believes that proposed Rule 26720 and the Exchange's other proposed Rules governing proxies, including those referenced in proposed Rule 26720, are sufficient to govern BSTX Participants' obligations with respect to proxies.

[303] The forms found in NYSE American Section 722.20 and 722.40 will be included in the BSTX Listing Supplement.

[304] The BSTX Listing Supplement would contain samples of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are intended to serve as examples and not as prescribed forms. Participants would be permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients. Pursuant to proposed Rule 26212, the BSTX Listing Supplement would also include a sample application for original listing, which the Exchange has included as Exhibit 3G. In addition, proposed Rule 26350 states that the BSTX Listing Supplement will include a sample cancellation notice; the Exchange expects such notice to be substantially in the same form as NYSE American's sample notice in NYSE American Section 350. Other examples of items that would appear in the BSTX Listing Supplement include certain certifications to be completed by the CEO of listed companies pursuant to proposed Rule 26810(a) and (c), and forms of letters to be sent to clients requesting voting instructions and other letters relating to proxy votes pursuant to proposed IM–26722–2 and IM–26722–4. The Exchange expects that these proposed materials in the BSTX Listing Supplement will be substantially similar to the corresponding versions of such samples used by NYSE American. The purpose of putting these sample letters and other information into the BSTX Listing Supplement rather than directly in the rules is to improve the readability of the Rules.

[305] *See e.g.,* NYSE American Section 101, Commentary .02. The Exchange is also not proposing to adopt a parallel provision to NYSE American Section 950 (Explanation of Difference between Listed and Unlisted Trading Privileges) because the Exchange believes that such provision is not necessary and contains extraneous historical details that are not particularly relevant to the trading of security tokens. The Exchange notes that numerous other listing exchanges do not have a similar provision to NYSE American Section 950. *See e.g.,* IEX Listing Rules.

[306] *See* proposed Rule 26109. Because the Exchange does not propose to allow foreign issuers of security tokens, it does not propose to adopt a parallel provision to NYSE American Section 110 and other similar provisions relating to foreign issuers—*e.g.,* NYSE American Section 801(f).

[307] Consequently, the Exchange does not propose to adopt a parallel provision to NYSE American Section 113 at this time.

[308] *See e.g.,* NYSE American Sections 1003(b)(iv) and (e).

[309] *See e.g.,* NYSE American Sections 106(f), 401(i), and 1003(g).

[310] 15 U.S.C. 78f(b)(5).

[311] The Exchange also proposes certain conforming changes in Rule 26503 (Form of Notice) to reiterate that fractional interests in security tokens are not permitted by the Exchange.

[312] 15 U.S.C. 78f(b)(5).

[313] *Id.*

director may serve [314] and that, if a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.[315] The Exchange also notes that, unlike the current NYSE American rules upon which the proposed Rules are based, the proposed Rules on corporate governance do not include provisions on asset-asset backed securities and foreign issues (other than those from Canada), since the Exchange does not proposed to allow for such foreign issuers to list on BSTX at this time.

The Exchange proposes to adopt additional listing rules as its Rule 26900 series that are substantially similar to the corporate governance listing standards set forth in Part 9 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certificated securities, since security tokens listed on BSTX will be uncertificated.

The Exchange proposes to adopt suspension and delisting rules as its Rule 27000 series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The proposed rules do not include concepts from the baseline NYSE American rules regarding foreign, fixed income securities, or other non-equity securities because the Exchange is not proposing to allow for listing of such securities at this time.[316]

The Exchange believes that the proposals in the Rule 26800 to Rule 27000 Series, which are based on the rules of NYSE American with the differences explained above, are designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Further, the differences in the proposals compared to the analogous NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. Therefore, the Exchange believes its proposals are consistent with Section 6(b)(5) of the Exchange Act.[317]

L. Fees (Rule 28000 Series)

The Exchange proposes to set forth as its Rule 28000 Series (Fees) the Exchange's authority to prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate.[318] As provided in proposed Rule 28000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange's facilities.[319] Proposed Rule 28010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 28000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange's authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 28000 Series (Fees) is also consistent with Sections 6(b)(3) of the Exchange Act [320] because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among BSTX Participants, issuers and other persons using the Exchange's facilities. The Exchange notes that the proposed Rule 28000 Series is substantially similar to the existing rules of another exchange.[321] The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX in advance of the launch of BSTX.

IV. Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in the Rule 12000 Series of the Exchange's current Rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange's Minor Rule Violation Plan (''MRVP'') specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) under the Exchange Act [322] requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[323] The Exchange's MRVP includes the policies and procedures set forth in Exchange Rule 12140 (Imposition of Fines for Minor Violations).

The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange's MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation

[314] *See* proposed Rule 26802(d).

[315] *See* proposed Rule 26801(b).

[316] As with all sections of the proposed rules, references to ''securities'' have been changed to ''security tokens'' where appropriate and, in the Rule 27000 series, certain references have been conformed from the baseline NYSE American provisions to account for the differences in governance structure and naming conventions of BSTX.

[317] 15 U.S.C. 78f(b)(5).

[318] As described above, recording information to the Ethereum blockchain requires payment of gas by the individual or entity who desires to post such a record. The payment of gas will be performed by the Wallet Manager as a service provider to the Exchange carrying out the function of updating the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange does not plan to charge a fee to cover the costs associated with gas and updating the Ethereum blockchain. The Exchange also notes that gas costs are typically negligible and anticipates actual monthly gas expenditures to be of a de minims amount.

[319] Proposed Rule 28000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.

[320] 15 U.S.C. 78f(b)(5).

[321] *See* Cboe BZX Rules 15.1 and 15.2.

[322] 17 CFR 240.19d–1(c)(1).

[323] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered ''final'' for purposes of Section 19(d)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

Obligations of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges.[324] Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act,[325] which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act.[326]

This proposal to include the rules listed in Rule 24010 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d–1(c)(2) under the Exchange Act,[327] because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

V. Amendments to Existing BOX Rules

Due to the new BSTX trading facility and the introduction of trading in security tokens, a type of equity security, on the Exchange, the Exchange proposes to amend those Exchange Rules that would apply to BSTX Participants, but that currently only contemplate trading in options. Therefore, the Exchange is seeking to amend the following Exchange Rules, each of which is set forth in Exhibit 5B:

• *Rule 100(a) (Definitions) ''Options Participant'' or ''Participant'':* The Exchange proposes to change the definition of ''Options Participant or Participant'' to ''Participant'' to reflect Options Participants and BSTX Participants and to amend the definition as follows: ''The term 'Participant' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an 'Options Participant' and 'BSTX Participant.' ''

• *Rule 100(a) (Definitions) ''Options Participant'':* The Exchange proposes to add a definition of ''Options Participant'' that would be defined as follows: ''The term 'Options Participant' is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange.'' [328]

• *Rule 2020(g)(2) (Participant Eligibility and Registration):* The Exchange proposes to delete subsection (g)(2) and replace it with the following: ''(2) persons associated with a Participant whose functions are related solely and exclusively to transactions in municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange.'' [329]

• *Rule 2060 (Revocation of Participant Status or Association with a Participant):* The Exchange proposes to amend Rule 2060 to refer to ''securities transactions'' rather than ''options securities transactions.''

• *Rule 3180(a) (Mandatory Systems Testing):* The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.

• *Rule 7130(a)(2)(v) Execution and Price/Time Priority:* The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term ''Request for Quote'' or ''RFQ'' under the Rules after the proposed renumbering.

• *Rule 7150(a)(2) (Price Improvement Period):* The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.

• *Rule 7230 (Limitation of Liability):* The Exchange proposes to amend the references in Rule 7230 to ''Options Participants'' to simply ''Participants.''

• *Rule 7245(a)(4) (Complex Order Price Improve Period):* The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term ''Professional'' after the proposed renumbering.

• *IM–8050–3:* The Exchange proposes to update the cross reference to Rule 100(a)(55) to refer to Rule 100(a)(56), which defines the term ''quote'' or ''quotation'' after the proposed renumbering.[330]

• *Rule 11010(a) ''Investigation Following Suspension'':* The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to ''in BOX options contracts'' and to modify the word ''position'' with the word ''security'' as follows: '' . . . the amount owing to each and a complete

[324] *See e.g.,* IEX Rule 9.218 and Cboe BZX Rule 8.15.01.

[325] 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

[326] 15 U.S.C. 78f(b)(7).

[327] 17 CFR 240.19d–1(c)(2).

[328] In addition, as a result of these new defined terms, the Exchange proposes to renumber definitions set forth in Rule 100(a) to keep the definitions in alphabetically order.

[329] In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add greater specificity to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. *See e.g.,* IEX Rule 2.160(m).

[330] Current Exchange Rule 100(a)(55) defines the term ''Quarterly Options Series,'' but the intended reference in IM–8050–3 was the definition of ''quote'' or ''quotation.'' The term ''quote'' or ''quotation'' is currently defined in Rule 100(a)(56), but is proposed to be renumbered as Rule 100(a)(57).

list of each open long and short security position maintained by the Participant and each of his or its Customers.''

• *Rule 11030 (Failure to Obtain Reinstatement):* The Exchange proposes to amend Rule 11030 to replace the reference to ''Options Participant'' to simply ''Participant.''

• *Rule 12030(a)(1) (Letters of Consent):* The Exchange proposes to amend subsection (a)(1) of Rule 12030 to replace the reference to ''Options Participant'' to simply ''Participant.''

• *Rule 12140 (Imposition of Fines for Minor Rule Violations):* The Exchange proposes to amend Rule 12140 to replace references to ''Options Participant'' to simply ''Participant.'' In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange's MRVP. New paragraph (f) of Rule 12140 would provide: ''(f) Transactions on BSTX. Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).''

The Exchange believes that the proposed amendments to the definitions set forth in Rule 100 are consistent with Section 6(b)(5) of the Exchange Act [331] because they protect investors and the public interest by setting forth clear definitions that help BOX and BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchange Rules clearly, market participants could be confused as to the application of certain rules, which could cause harm to investors.

The Exchange believes that the proposed amendments to the other Exchange Rules detailed above are consistent with Section 6(b)(5) of the Exchange Act [332] because the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. The Exchange believes that the proposed rule change enables the Exchange to continue to enforce the Exchange's rules. The Exchange notes that none of the proposed changes to the current Exchange rulebook would materially alter the application of any of those Rules, other than by extending them to apply to BSTX Participants and trading on the BSTX System. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. Further, the Exchange believes that, by ensuring the rulebook accurately reflects the intention of the Exchange's rules, the proposed rule change reduces potential investor or market participant confusion.

VI. Forms To Be Used in Connection With BSTX

In connection with the operation of BSTX, the Exchange proposes to uses a series of new forms to facilitate becoming a BSTX Participant and for issuers to list their security tokens. These forms have been attached hereto as Exhibits 3A–3N. Each are described below.

A. BSTX Participant Application

Pursuant to proposed Rule 18000(b), in order to become a BSTX Participant, an applicant must complete a BSTX Participant Application, which is attached as Exhibit 3A. The proposed BSTX Participant Application requires the applicant to provide certain basic information such as identifying the applicants name and contact information, Designated Examining Authority, organizational structure, and Central Registration Depository (''CRD'') number. The BSTX Participant Application also requires applicants to provide additional information including certain beneficial ownership information, the applicant's current Form BD, an organization chart, a description of how the applicant receives orders from customers, how it will send orders to BSTX, and a copy of written supervisory procedures and information barrier procedures.

In addition, the BSTX Participant Application allows applicants to indicate whether they are applying to be a BSTX Market Maker or a Designated Market Maker. Applicants wishing to become a BSTX Market Maker or Designated Market Maker must provide certain additional information including a list of each of the applicant's trading representatives (including a copy of each representative's Form U4), a copy of the applicant's written supervisory procedures relating to market making, a description of the source and amount of the applicant's capital, and information regarding the applicant's other business activities and information barrier procedures.

B. BSTX Participant Agreement

Pursuant to Exchange Rule 18000(b), to transact business on BSTX, prospective BSTX Participants must complete a BSTX Participant Agreement. The BSTX Participant Agreement is attached as Exhibit 3B. The BSTX Participant Agreement provides that a BSTX Participant must agree with the Exchange as follows:

1. Participant agrees to abide by the Rules of the Exchange and applicable bylaws, as amended from time to time, and all circulars, notices, interpretations, directives and/or decisions adopted by the Exchange.

2. Participant acknowledges that BSTX Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange.

3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.

4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant's application, including termination of membership with another SRO.

These provisions of the BSTX Participant Agreement and others therein are generally designed to reflect the Exchange's SRO obligations to regulate BSTX Participants. Accordingly, these provisions contractually bind a BSTX Participant to comply with Exchange rules, acknowledge the Exchange's oversight and jurisdiction, authorize the Exchange to disclose information regarding the Participant to any governmental agency or SRO and acknowledge the obligation to update any and all Application contained in the Participant's application.

C. BSTX User Agreement

In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement, attached as Exhibit 3C, includes provisions related to the term of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX, proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification,

[331] 15 U.S.C. 78f(b)(5).

[332] *Id.*

termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange's website (*boxoptions.com*).

D. BSTX Security Token Market Designated Market Maker Selection Form

In accordance with proposed Rule 25230(b)(1), BSTX will maintain the BSTX Security Token Designated Market Maker Selection Form, which is attached as Exhibit 3D. The issuer may select its DMM from among a pool of DMMs eligible to participate in the process. Within two business days of the issuer selecting its DMM, it will use the BSTX Security Token Market Designated Market Maker Selection form to notify BSTX of the selection. The form must be signed by a duly authorized officer as specified in proposed Rule 25230(b)(1).

E. Clearing Authorization Forms

In accordance with proposed Rule 18010, BSTX Participants that are not members/participants of a registered clearing agency must clear their transactions through a BSTX Participant that is a member of a registered clearing agency. A BSTX Participant clearing through another BSTX Participant would do so using, as applicable, either the BSTX Clearing Authorization (non-Market Maker) form (attached as Exhibit 3E) or the BSTX Participant Clearing Authorization (Market Maker) form (attached as Exhibit 3F). Each form would be maintained by BSTX and each form specifies that the BSTX Participant clearing on behalf of the other BSTX Participant accepts financial responsibility for all transactions on BSTX that are made by the BSTX Participant designated on the form.

F. BSTX Listing Applications

The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the Exchange, as applicable (collectively, ''listing documentation''). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of security tokens. All listing documentation will be available on the Exchange's website (*boxoptions.com*). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b–4.[333]

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (attached as Exhibit 3G) or the BSTX Additional Listing Application (attached as Exhibit 3H) to apply for the listing of security tokens on BSTX.[334] The BSTX Original Listing Application provides information necessary, and in accordance with Section 12(b) of the Exchange Act,[335] for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of security tokens. Relevant factors regarding the company and securities to be listed would determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange's regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company's SEC filings.

2. For original listing applications only, corporate contact information including the company's Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange's regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number of security tokens outstanding or offered, total security tokens unissued, but reserved for issuance, date authorized, purpose of security tokens to be issued, number of security tokens authorized, and information relating to payment of dividends. This information is required of all applicants listing security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

4. For original listing applications only, information regarding the company's transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange's regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange's regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.

6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.

7. For original listing applications only, type of security token listing, including the type of transaction (initial public offering of a security token, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other details related to the transaction, including the name and contact information for the investment banker/financial advisor contacts. This information is necessary in order for the

[333] The Exchange will not submit a rule filing if the changes made to a document are solely typographical or stylistic in nature.

[334] Pursuant to proposed Exchange Rule 26130, an applicant seeking the initial listing of its security token must also provide a legal opinion that the applicant's security token is a security under applicable United States securities laws.

[335] 15 U.S.C. 78l(b).

Exchange's regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange's minimum listing requirements, that the Exchange has broad discretion regarding the listing of any security token and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer's security token inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange's listing standards for listing on the BSTX Security Token Market, it does not necessarily mean that its application will be approved. This information is necessary in order for the Exchange's regulatory staff to assess whether an Applicant Issuer is qualified for listing.

9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the aforementioned individuals as part of the eligibility review process. This regulatory review information is necessary in order for the Exchange's regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, security token design affirmation, listing application checklist and underwriter's letter. This documentation is necessary in order to support the Exchange's regulatory staff listing qualification review (corporate governance affirmation, listing application checklist and underwriter's letter) and to effectuate the listed company's agreement to the terms of listing (listing agreement).

11. For additional listing applications only, transaction details, including the purpose of the issuance, total security tokens, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any security tokens in the future above the amount they are currently applying for. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

13. For additional listing applications only, information for a technical original listing, including reverse security token splits and changes in states of incorporation. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

14. For additional listing applications only, information for a forward security token split or security token dividend, including forward security token split ratios and information related to security token dividends. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order to determine the rights associated with the security tokens.

15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review.

16. For additional listing applications only, reconciliation for technical original listing, including security tokens issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

G. Checklist for Original Listing Application

In order to assist issuers seeking to list its security tokens on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, attached as Exhibit 3I, provides that issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, BSTX security token design affirmation, underwriter's letter (for an initial public offering of a security token only) and relevant SEC filings (*e.g.,* 8–A, 10, 40–F, 20–F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

H. BSTX Security Token Market Listing Agreement

Pursuant to proposed Exchange Rule 26132, to apply for listing on the Exchange, a company must execute the BSTX Security Token Market Listing Agreement (the ''Listing Agreement''), which is attached as Exhibit 3J. Pursuant to the proposed Listing Agreement, a company agrees with the Exchange as follows:

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.

2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed security tokens or in the rights, benefits, and privileges of the holders of such security tokens.

3. Company understands that the Exchange may remove its security tokens from listing on the BSTX Security Token Market, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1 and 2 of this agreement.

4. In order to publicize the Company's listing on the BSTX Security Token Market, the Company authorizes the Exchange to use the Company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the

Exchange with the Company's current corporate logos, website address, trade names, and trade/service marks and with any subsequent changes to those logos, trade names and marks. The Listing Agreement further requires that the Company specify a telephone number to which questions regarding logo usage should be directed.

5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of use by the Exchange or, any affiliate or facility of the Exchange (''Corporations'') of the Company's corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.

6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.

7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.

8. Company agrees to pay when due all fees associated with its listing of security tokens on the BSTX Security Token Market, in accordance with the Exchange's rules.

9. Company agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.

The various provisions of the Listing Agreement are designed to accomplish several objectives. First, clauses 1–3 and 6–8 reflect the Exchange's SRO obligations to assure that only listed companies that are compliant with applicable Exchange rules may remain listed. Thus, these provisions contractually bind a listed company to comply with Exchange rules, provide notification of any corporate action or other event that will cause the company to cease to be in compliance with Exchange listing requirements, evidence the company's understanding that it may be removed from listing (subject to applicable procedures) if it fails to be in compliance or notify the Exchange of any event of noncompliance, furnish the Exchange with requested information on demand, pay all fees due and file all required periodic reports with the SEC. Clauses four and five contain standard legal representations and agreements from the listed company to the Exchange regarding use of its logo, trade names, trade/service markets, and trading symbols as well as potential legal claims against the Exchange in connection thereto.

I. BSTX Security Token Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Token Market Corporate Governance Affirmation, attached as Exhibit 3K, enables a company to confirm to the Exchange that it is in compliance with the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Token Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Token Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

J. Security Token Design Affirmation for the BSTX Security Token Market

In accordance with proposed Rule 26138, in order for a security token to be admitted to dealings on BSTX, such security token must follow the BSTX Security Token Protocol. The BSTX Security Token Protocol will be provided via Regulatory Circular and posted on the Exchange's website. The Exchange has included an overview of the BSTX Security Token Protocol as Exhibit 3N. The Security Token Design Affirmation, attached as Exhibit 3L, enables a company to affirm to the Exchange that it is in compliance with the applicable standards. Companies are required to submit a Security Token Design Affirmation upon initial listing on the Exchange. This Security Token Design Affirmation assists the Exchange's staff in verifying that an issuer's security tokens meet the requirements of the BXTS security token protocol.

K. Sample Underwriter's Letter

In accordance with proposed Rule 26101, an initial public offering of a security token must meet certain listing requirements. The Exchange seeks to require the issuer's underwriter to execute a letter setting forth the details of the offering, including the name of the offering and why the offering meets the criteria of the BSTX rules. This information, set forth in the proposed Sample Underwriter's Letter and attached as Exhibit 3M, is necessary to assist the Exchange's regulatory staff in assessing the offering's compliance with BSTX listing standards for an initial public offering of a security token.

L. BSTX Security Token Protocol Summary Overview

BSTX Rule 26138 requires that a BSTX listed company's security tokens must comply with the BSTX Security Token Protocol to trade on BSTX. Exhibit 3N provides fundamental information related to the Ethereum blockchain and background information on the functions, configurations, and events of the Asset Smart Contract of the BSTX Security Token Protocol. Exhibit 3N also provides information on the Registry and Compliance features of the BSTX Security Token Protocol.

VII. Regulation

In connection with the operation of BSTX, the Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.[336] Specifically, the Exchange will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System. This Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants, just as it does for options regulation. The Exchange will perform security token listing regulation, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of security token trading on the BSTX System.

Section 17(d) of the Exchange Act[337] and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,[338] the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial

[336] 15 U.S.C. 78f.

[337] 15 U.S.C. 78q(d).

[338] 17 CFR 240.17d–1.

aspects of that broker-dealer's regulatory oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.[339]

Rule 17d–2 under the Exchange Act[340] permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (''common members''). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.[341] The Exchange may choose to join certain Rule 17d–2 agreements such as the agreement allocating responsibility for insider trading rules.[342]

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange's options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to BSTX. Finally, as it does with options, the Exchange will perform automated surveillance of trading on BSTX for the purpose of maintaining a fair and orderly market at all times and monitor BSTX to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating ''clearly erroneous trades'' pursuant to proposed Rule 25110. The Exchange shall also oversee the onboarding and application process for BSTX Participants as well as compliance by issuers of security tokens with the applicable initial and continuing listing requirements, including compliance with the BSTX Protocol.[343]

VIII. NMS Plans

The Exchange intends to join the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan Governing the Process of Selecting a Plan Processor, and the applicable plans for consolidation and dissemination of market data. The Exchange is already a participant in the NMS plan related to the Consolidated Audit Trail. Consistent with Section 6(b)(5) of the Exchange Act,[344] the Exchange believes that joining the same set of NMS plans that all other national securities exchanges that trade equities must join fosters cooperation and coordination with other national securities exchanges and other market participants engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,[345] in general and with Section 6(b)(5) of the Exchange Act,[346] in particular, in that it is designed 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 it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

The Exchange believes that BSTX will benefit individual investors, other market participants, and the equities market generally. The Exchange proposes to establish BSTX as a facility of the Exchange that would trade equities in a similar manner to how equities presently trade on other exchanges. However, BSTX would also require reporting of end-of-day security token balances to the Exchange in order to facilitate the use of blockchain technology as an ancillary recordkeeping mechanism. The Exchange believes that using blockchain technology as an ancillary recordkeeping mechanism that operates in parallel with the traditional trading, recordkeeping, and clearance and settlement structures that market participants are familiar with is an important first step toward exploring the potential uses and benefits of blockchain technology in securities transactions. The entry of an innovative competitor such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of security tokens using a price-time priority model and the clearance and settlement of security tokens will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an ancillary recordkeeping mechanism in connection with listed equity securities.

In order to implement the use of blockchain technology as an ancillary recordkeeping mechanism, the Exchange proposes two requirements pursuant to proposed Rule 17020 to: (i) Obtain a wallet address through BSTX to which end-of-day security token

[339] *See* Exchange Rule 2020(a) (requiring that a Participant be a member of another registered national securities exchange or association).

[340] 17 CFR 240.17d–2.

[341] Exchange Act Release No. 85046 (February 4, 2019), 84 FR 2643 (February 7, 2019).

[342] Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018).

[343] *See* proposed Exchange Rules 26230 (Security Token Architecture Audit) and 26138 (BSTX Security Token Protocol).

[344] 15 U.S.C. 78f(b)(5).

[345] 15 U.S.C. 78a *et seq.*

[346] 15 U.S.C. 78f(b)(5).

balances may be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism; and (ii) requiring BSTX Participants to report their end-of-day security token balances to BSTX to facilitate updates to the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect changes in ownership as a result of trading security tokens.

The Exchange believes that the proposed address whitelisting and end-of-day security token balance reporting requirement is consistent with the Exchange Act, and Section 6(b)(5) [347] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens and does not unfairly discriminate among BSTX Participants, all of whom are subject to the same wallet address and end-of-day reporting requirement. The requirement to obtain a wallet address is a one-time, minimal obligation similar to obtaining an MPID or other market participant identifier that is applicable to each BSTX Participant. The end-of-day security token balance reporting obligation would be used to update the Ethereum blockchain as an ancillary recordkeeping mechanism, which the Exchange believes would be a first step in demonstrating the potential use of blockchain technology in connection with securities transactions. The Exchange does not propose to charge a fee in connection with either of these requirements. As discussed in greater detail above,[348] the Exchange believes that these proposed requirements are consistent with the Exchange Act as they are necessary to facilitate the blockchain-based ancillary recordkeeping mechanism and are consistent with authority that the Commission has already approved for exchanges regarding furnishment of records by members of the exchange. The Exchange believes that blockchain technology offers potential benefits to investors, and while such benefits may not be immediately evident while the blockchain is used only as ancillary recordkeeping mechanism, the Exchange believes that a measured and gradual introduction of blockchain technology is a useful way to explore these potential benefits that is consistent with the protection of investors and the public interest.

The Exchange also believes that the proposed rule change is consistent with Section 11A of Exchange Act which sets forth the Commission's authority to establish and maintain a national market system.[349] In setting forth the Commission's authority to establish a national market system, Congress expressly contemplated that the national market system ''may include use of subsystems for particular types of securities with unique trading characteristics.'' [350] The Exchange has proposed here a type of security (*i.e.,* security tokens) that trade, clear, and settle entirely within the scope and using the same processes as the existing national market system, but that pursuant to the proposed BSTX Rules would have the unique characteristic of an end-of-day security token balance reporting process as an ancillary recordkeeping function using the ''subsystem'' of blockchain technology.[351] The clear intent of Congress was to provide for a national market system that could include such ''securities with unique trading characteristics.'' For these reasons the Exchange believes that the proposed rule change is consistent with Section 11A of the Exchange Act.

Finally, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the BSTX Rules would not be designed to regulate by virtue of any authority conferred by the Exchange Act matters that are not related to the purposes of the Exchange Act or the administration of the Exchange. Congress adopted Section 2 of the Exchange Act to set forth the reasons for the necessity of the Exchange Act, which expressly include that ''transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions *and of practices and matters related thereto,* including . . . *to require appropriate reports*[.]'' [352] [emphasis added.] The Exchange Act and rules of self-regulatory organizations, including national securities exchanges and national securities associations, include reporting requirements that regulate and control matters and practices related to securities transactions conducted on securities exchanges and in the over-the-counter markets. For example, all of the U.S. options exchanges and FINRA maintain rules approved by the Commission that require their member broker-dealers to prepare and submit daily large options position reports to a third-party administrator that maintains a large options position reporting system.[353] These large option positions reports are not reports regarding the trading or clearance and settlement of securities transactions themselves but, instead, are reports that are related to end-of-day positions of the members of the options exchange and/or FINRA in a particular class of standardized or over-the-counter securities option. As described above, the proposed BSTX Rules regarding the ancillary recordkeeping process would similarly require BSTX Participants to provide reports regarding their end-of-day positions in security tokens. Also as described above, the Exchange believes that the requirements regarding the ancillary recordkeeping process will promote the use of the functionality of smart contracts and their ability to allocate and re-allocate security token balances across multiple addresses in connection with end-of-day security token position balance information of BSTX Participants such that the requirements will allow market participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that parallels current equity market infrastructure and thereby advances and protects the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.[354]

[347] 15 U.S.C. 78f(b)(5).

[348] *See supra* Parts II.G. through J for further discussion regarding why these proposed requirements are consistent with the Exchange Act.

[349] 15 U.S.C. 78k–1.

[350] 15 U.S.C. 78k–1(a)(2).

[351] The Exchange notes that to the extent the Commission believes that the ancillary recordkeeping process regarding security tokens under the proposed BSTX Rules is not a ''unique trading characteristic'' of security tokens for purposes of Section 11A of the Exchange Act insofar as it does not directly relate to ''trading'' of security tokens, then there would not be any concern with respect to security tokens regarding consistency with Section 11A. In other words, either the ancillary recordkeeping process is a unique trading characteristic of security tokens as explicitly contemplated by Congress as part of the national market system or it is not a unique trading characteristic of security tokens because they will trade, clear, and settle the same as all other NMS stock. In the latter case, security tokens would be consistent with Section 11A just like all other NMS stock.

[352] 15 U.S.C. 78(b).

[353] *See e.g.,* FINRA Rule 2360(b)(5) and Cboe Rule 8.43.

[354] Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 8 (1975) (expressing Congress' finding that new data processing and communications systems create the opportunity for more efficient and effective markets).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange operates in an intensely competitive global marketplace for transaction services. Relying on its array of services and benefits, the Exchange competes for the privilege of providing market services to broker-dealers. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change has the potential to result in a burden on competition are with regard to the terms on which: (1) Issuers may list their securities for trading, (2) market participants that may access the Exchange and use its facilities, (3) security token transactions may be cleared and settled, (4) security token transactions occurring OTC, and (5) security token transactions occurring on other exchanges that might extend unlisted trading privileges to security tokens.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Listing Rules in the 26000 and 27000 Series that affect issuers and their ability to list security tokens for trading are based substantially on the current rules of NYSE American. The Exchange has proposed that issuers would be required to create and maintain a security token compliant with the BSTX Protocol. The Exchange recognizes that these requirements are additional to those of other exchanges. However, the Exchange does not believe this poses a burden on competition because issuers are free to choose to list on other exchanges without such requirements. The Exchange believes that these requirements may attract issuers that are interested in exploring the potentials of blockchain technology. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: Participation on BSTX (Rule 18000 Series); business conduct for BSTX participants (Rule 19000 Series); financial and operational rules for BSTX participants (Rule 20000 Series); supervision (Rule 21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC. The address whitelisting and end-of-day security token balance reporting requirements to facilitate the use of the Ethereum blockchain as an ancillary recordkeeping mechanism in proposed Rule 17020 would apply equally to all BSTX Participants and therefore would not impose any different burden on one BSTX Participant compared to another. The Exchange believes that these requirements would impose only a minimal burden on BSTX Participants that is unlikely to materially impact the competitive balance among investors and traders of security tokens.

Regarding consideration (3) above and the manner in which security token transactions may be cleared and settled, the Exchange proposes to clear and settle security tokens in accordance with the rules, policies and procedures of a registered clearing agency, similar to how the Exchange believes other exchange-listed equity securities are cleared and settled today. Therefore, BSTX's rules do not impose any burden on competition regarding the manner in which trades may be cleared or settled because market participants would be able to clear and settle security token transactions insubstantially the same manner as they already clear and settle transactions in other types of NMS stock.

With respect to consideration (4) above, as previously noted, market participants would not be limited in their ability to trade security tokens OTC because security tokens could be traded OTC and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. Thus, the Exchange does not believe that its proposal will place any new burden on competition with respect to OTC trading, given that trading, clearance and settlement will take place in the same manner as for other NMS stocks. The Exchange acknowledges that BSTX Participants would be subject to additional requirements (*i.e.,* acquiring a wallet address and end-of-day security token balance reporting pursuant to proposed Rule 17020) that are not required of non-BSTX Participants trading security tokens. The Exchange believes that these additional requirements impose only a minimal burden on BSTX Participants and should not have any material or undue burden or impact on competition between BSTX Participants and non-BSTX Participants. Acquiring a wallet address is a one-time burden that can be readily addressed by contacting the Exchange, and the end-of-day security token balance reporting requests only that the BSTX Participant, either directly or through its carrying firm, report information that it (or its carrying firm) already has available to it from DTC on a daily basis regarding the balance of security tokens held.

Finally, with respect to consideration (5) noted above regarding other exchanges extending unlisted trading privileges to security tokens, the Exchange does not believe that the proposed Rules would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Security tokens would trade, clear, and settle in the same manner as other NMS stock. Accordingly, other exchanges would be able to extend unlisted trading privileges to security tokens in accordance with Commission rules.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. In particular, the Commission seeks comment on the questions posed in the Order Instituting Proceedings previously issued by the Commission with respect to this proposed rule

change.[355] 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–2019–19 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–2019–19. 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–BOX–2019–19 and should be submitted on or before March 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[356]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04470 Filed 3–5–20; 8:45 am]

BILLING CODE 8011–01–P

[355] *See* Order Instituting Proceedings, *supra* note 8, 85 FR at 4043.

[356] 17 CFR 200.30–3(a)(12).

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Part III

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This provides the consolidated notice of all agency specific excepted authorities, approved by the Office of Personnel Management (OPM), under Schedule A, B, and C, as of June 30, 2019, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the U.S. Office of Personnel Management (OPM) to publish notice of exceptions granted under Schedule A, B, and C. Under 5 CFR 213.103(a) it is required that all Schedule A, B, and C appointing authorities available for use by all agencies to be published as regulations in the **Federal Register** (FR) and the Code of Federal Regulations (CFR). Excepted appointing authorities established solely for use by one specific agency do not meet the standard of general applicability prescribed by the **Federal Register** Act for regulations published in either the FR or the CFR. Therefore, 5 CFR 213.103(b) requires monthly publication, in the Notices section of the **Federal Register**, of any Schedule A, B, and C appointing authorities applicable to a single agency. Under 5 CFR 213.103(c) it is required that a consolidated listing of all Schedule A, B, and C authorities, current as of June 30 of each year, be published annually in the Notices section of the **Federal Register** at *www.federalregister.gov/agencies/personnel-management-office.* That notice follows. Governmentwide authorities codified in the CFR are not printed in this notice.

When making appointments under an agency-specific authority, agencies should first list the appropriate Schedule A, B, or C, followed by the applicable number, for example: Schedule A, 213.3104(x)(x). Agencies are reminded that all excepted authorities are subject to the provisions of 5 CFR part 302 unless specifically exempted by OPM at the time of approval. OPM maintains continuing information on the status of all Schedule A, B, and C appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Senior Executive Resources Services, Office of Personnel Management, 1900 E Street NW, Room 7412, Washington, DC 20415, or by calling (202) 606–2246.

The following exceptions are current as of June 30, 2019.

Schedule A

03. Executive Office of the President (Sch. A, 213.3103)

(a) Office of Administration—

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget—

(1) Not to exceed 20 positions at grades GS–5/15.

(2) Not to Exceed 34 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–14 to 15 level. No new appointments may be made under this authority after September 30, 2017.

(c) Council on Environmental Quality—

(1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved)

(g) National Security Council—

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy—

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy—

(1) Not to exceed 18 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

04. Department of State (Sch. A, 213.3104)

(a) Office of the Secretary—

(1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) (Reserved)

(b)–(f) (Reserved)

(g) Bureau of Population, Refugees, and Migration—

(1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) Bureau of Administration—

(1) (Reserved)

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) (Reserved)

05. Department of the Treasury (Sch. A, 213.3105)

(a) Office of the Secretary—

(1) Not to exceed 20 positions at the equivalent of GS–13 through GS–15 or Senior Level (SL) to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Covering no more than 100 positions supplementing permanent staff studying domestic economic and financial policy, with employment not to exceed 4 years.

(3) Not to exceed 100 positions in the Office of the Under Secretary for Terrorism and Financial Intelligence.

(4) Up to 35 temporary or time-limited positions at the GS–9 through 15 grade levels to support the organization, design, and stand-up activities for the Consumer Financial Protection Bureau (CFPB), as mandated by Public Law 111–203. This authority may be used for the following series: GS–201, GS–501, GS–560, GS–1035, GS–1102, GS–1150, GS–1720, GS–1801, and GS–2210. No new appointments may be made under this authority after July 21, 2011, the designated transfer date of the CFPB.

(b)–(d) (Reserved)

(e) Internal Revenue Service—

(1) Twenty positions of investigator for special assignments.

(f) (Reserved)

(g) (Reserved, moved to DOJ)

(h) Office of Financial Stability—

(1) Positions needed to perform investment, risk, financial, compliance, and asset management requiring unique qualifications currently not established by OPM. Positions will be in the Office of Financial Stability and the General Schedule (GS) grade levels 12–15 or Senior Level (SL), for initial

employment not to exceed 4 years. No new appointments may be made under this authority after December 31, 2012.

06. Department of Defense (Sch. A, 213.3106)

(a) Office of the Secretary—

(1)–(5) (Reserved)

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force)—

(1) Dependent School Systems overseas—Professional positions in Military Dependent School systems overseas.

(2) Positions in Attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided that—

(i) A school employee may be permitted to complete the school year; and

(ii) An employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) (Reserved)

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after September 30, 2014.

(11) Not to exceed 3,000 positions that require unique cyber security skills and knowledge to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, investigation, investigative analysis and cyber-related infrastructure inter-dependency analysis. This authority may be used to make permanent, time-limited and temporary appointments in the following occupational series: Security (GS–0080), computer engineers (GS–0854), electronic engineers (GS–0855), computer scientists (GS–1550), operations research (GS–1515), criminal investigators (GS–1811), telecommunications (GS–0391), and IT specialists (GS–2210). Within the scope of this authority, the U.S. Cyber Command is also authorized to hire miscellaneous administrative and program (GS–0301) series when those positions require unique cyber security skills and knowledge. All positions will be at the General Schedule (GS) grade levels 09–15 or equivalent. No new appointments may be made under this authority after December 31, 2017.

(c) (Reserved)

(d) General—

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical, or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences—

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University—

(1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency—

(1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisition University—

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany—

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii—

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

(k) Business Transformation Agency—

(1) Fifty temporary or time-limited (not to exceed four years) positions, at grades GS–11 through GS–15. The authority will be used to appoint persons in the following series: Management and Program Analysis, GS–343: Logistics Management, GS–346; Financial Management Programs, GS–501; Accounting, GS–510; Computer Engineering, GS–854; Business and Industry, GS–1101; Operations Research, GS–1515; Computer Science, GS–1550; General Supply, GS–2001; Supply Program Management, GS–2003; Inventory Management, GS–2010; and Information Technology, GS–2210.

(l) Special Inspector General for Afghanistan—

(1) Positions needed to establish the Special Inspector General for Afghanistan Reconstruction. These positions provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated and otherwise made available for the reconstruction of Afghanistan. These positions are established at General Schedule (GS) grade levels for initial employment not to exceed 3 years and may, with prior approval of OPM, be extended for an additional period of 2 years. No new appointments may be made under this authority after January 31, 2011.

07. Department of the Army (Sch. A, 213.3107)

(a)–(c) (Reserved)

(d) U.S. Military Academy, West Point, New York—

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and Librarian when filled by an officer of the Regular Army retired from active service, and the Military Secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved)

(g) Defense Language Institute—

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA—

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved)

(j) U.S. Military Academy Preparatory School, West Point, New York—

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas—

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

08. Department of the Navy (Sch. A, 213.3108)

(a) General—

(1)–(14) (Reserved)

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College—

(1) Professors, Instructors, and Teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and Social Counselors at the Naval Academy.

(c) Chief of Naval Operations—

(1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command

(1) All positions on vessels operated by the Military Sealift Command.

(e)–(f) (Reserved)

(g) Office of Naval Research—

(1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

09. Department of the Air Force (Sch. A, 213.3109)

(a) Office of the Secretary—

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General—

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Two hundred positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Norton and McClellan Air Force Bases, California—

(1) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado—

(1) (Reserved)

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved)

(f) Air Force Office of Special Investigations—

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Wright-Patterson Air Force Base, Ohio—

(1) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama—

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio—

(1) Civilian deans and professors.

(j) Air Force Logistics Command—

(1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) Wright-Patterson AFB, Ohio—

(1) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) Air National Guard Readiness Center—

(1) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

10. Department of Justice (Sch. A, 213.3110)

(a) General—

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved)

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in 1-year increments for the duration of the in-country program.

(7) Positions necessary throughout DOJ, for the excepted service transfer of NDIC employees hired under Schedule A, 213.3110(d). Authority expires September 30, 2012.

(b) (Reserved)

(c) Drug Enforcement Administration—

(1) (Reserved)

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) (Reserved, moved to Justice)

(e) Bureau of Alcohol, Tobacco, and Firearms—

(1) One hundred positions of Criminal Investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

11. Department of Homeland Security (Sch. A, 213.3111)

(a) (Revoked 11/19/2009)

(b) Law Enforcement Policy—

(1) Ten positions for oversight policy and direction of sensitive law enforcement activities.

(c) Homeland Security Labor Relations Board/Homeland Security Mandatory Removal Board—

(1) Up to 15 Senior Level and General Schedule (or equivalent) positions.

(d) General—

(1) Not to exceed 800 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be in the following occupations: Security (GS–0080), intelligence analysts (GS–0123), investigators (GS–1810), investigative analyst (GS–1805), and criminal investigators (GS–1811) at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after January 5, 2020 or the effective date of the completion of regulations.

(e) Papago Indian Agency—Not to exceed 25 positions of Immigration and Customs Enforcement (ICE) Tactical Officers (Shadow Wolves) in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood. (Formerly 213.3105(b)(9))

(f) U.S. Citizenship and Immigration Services—

(1) Reserved. (Formerly 213.3110(b)(1))

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9. (Formerly 213.3110(b)(2))

(3) Reserved. (Formerly 213.3110(b)(3))

(g) U.S. Immigration and Customs Enforcement—

(1) Not to exceed 200 staff positions, GS–15 and below for an emergency staff to provide health related services to foreign entrants. (Formerly 213.3116(b)(16))

(h) Federal Emergency Management Agency—

(1) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort. (Formerly 213.3195(a))

(2) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority. (Formerly 213.3195(b))

(3) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS). (Formerly 213.3195(c))

(i) U.S. Coast Guard—

(1) Reserved. (Formerly 213.3194(a))

(2) Lamplighters. (Formerly 213.3194(b))

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut. (Formerly 213.3194(c))

12. Department of the Interior (Sch. A, 213.3112)

(a) General—

(1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of

persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators, and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved)

(c) Indian Arts and Crafts Board—

(1) The Executive Director

(d) (Reserved)

(e) Office of the Assistant Secretary, Territorial and International Affairs—

(1) (Reserved)

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved)

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service—

(1) (Reserved)

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation—

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: Provided, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs—

(1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

13. Department of Agriculture (Sch. A, 213.3113)

(a) General—

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved)

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by

paragraph (i) of Sec. 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved)

(b)–(c) (Reserved)

(d) Farm Service Agency—

(1) (Reserved)

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development—

(1) (Reserved)

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved)

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service—

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, peanut, and processed and fresh fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved)

(l) Food Safety and Inspection Service—

(1)–(2) (Reserved)

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS–11 and below and non-Veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration—

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation—

(1) Executive Director

14. Department of Commerce (Sch. A, 213.3114)

(a) General—

(1)–(2) (Reserved)

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved)

(d) Bureau of the Census—

(1) Positions in support of decennial operations (including decennial pre-tests). Appointments may be made on a time limited basis that lasts the duration of decennial operations but may not exceed 7 years. Extensions beyond 7 years may be requested on a case-by-case basis

(2) Positions of clerk, field representative, field leader, and field supervisor in support of data collection operations (non-decennial operations). Appointments may be made on a permanent or a time-limited basis. Appointments made on a time limited basis may not exceed 4 years. Extensions beyond 4 years may be requested on a case-by-case basis.

(e)–(h) (Reserved)

(i) Office of the Under Secretary for International Trade—

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved)

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period not to exceed 2 years and may, with prior OPM approval, be extended for an additional 2 years.

(j) National Oceanic and Atmospheric Administration—

(1)–(2) (Reserved)

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved)

(l) National Telecommunication and Information Administration—

(1) Thirty-eight professional positions in grades GS–13 through GS–15.

15. Department of Labor (Sch. A, 213.3115)

(a) Office of the Secretary—

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved)

(d) Employment and Training Administration—

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

16. Department of Health and Human Services (Sch. A, 213.3116)

(a) General—

(1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service—

(1) (Reserved)

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved)

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved)

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved)

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(15) (Reserved)

(c)–(e) (Reserved)

(f) The President's Council on Physical Fitness—

(1) Four staff assistants.

17. Department of Education (Sch. A, 213.3117)

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

18. Environmental Protection Agency (Sch. A, 213.3118)

24. Board of Governors, Federal Reserve System (Sch. A, 213.3124)

(a) All positions

27. Department of Veterans Affairs (Sch. A, 213.3127)

(a) Construction Division—

(1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Alcoholism Treatment Units and Drug Dependence Treatment Centers—

(1) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals—

(1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Vietnam Era Veterans Readjustment Counseling Service—

(1) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

(e) Not to Exceed 75 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to non-supervisory Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–15 level. No new appointments may be made under this authority after September 30, 2017.

32. Small Business Administration (Sch. A, 213.3132)

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office of Personnel Management approval. Appointments under this authority may not be used to extend the 2-year service limit contained below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

33. Federal Deposit Insurance Corporation (Sch. A, 213.3133)

(a)–(b) (Reserved)

(c) Temporary or time-limited positions that are directly related with resolving failing insured depository institutions; financial companies; or brokers and dealers; covered by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including but not limited to, the marketing and sale of institutions and any associated assets; paying insured depositors; and managing receivership estates and all associated receivership management activities, up to termination. Time limited appointments under this authority may not exceed 7 years.

36. U.S. Soldiers' and Airmen's Home (Sch. A, 213.3136)

(a) (Reserved)

(b) Positions when filled by member-residents of the Home.

37. General Services Administration (Sch. A, 213.3137)

(a) Not to Exceed 203 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used nationwide to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–11 to 15 level. No new appointments may be made under this authority after September 30, 2017.

46. Selective Service System (Sch. A, 213.3146)

(a) State Directors

48. National Aeronautics and Space Administration (Sch. A, 213.3148)

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

55. Social Security Administration (Sch. A, 213.3155)

(a) Arizona District Offices—

(1) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) New Mexico—

(1) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Alaska—

(1) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

62. The President's Crime Prevention Council (Sch. A, 213.3162)

(a) (Reserved)

65. Chemical Safety and Hazard Investigation Board (Sch. A, 213.3165)

(a) (Reserved)

(b) (Reserved)

66. Court Services and Offender Supervision Agency of the District of Columbia (Sch. A, 213.3166)

(a) (Reserved, expired 3/31/2004)

70. Millennium Challenge Corporation (MCC) (Sch. A, 213.3170)

(a) (Reserved, expired 9/30/2007)

(b)

(1) Positions of Resident Country Director and Deputy Resident Country Director, Threshold Director and Deputy Threshold Director. The length of appointments will correspond to the length or term of the compact agreements made between the MCC and the country in which the MCC will work, plus one additional year to cover pre- and post-compact agreement related activities.

74. Smithsonian Institution (Sch. A, 213.3174)

(a) (Reserved)

(b) Smithsonian Tropical Research Institute—All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) National Museum of the American Indian—Positions at GS–15 and below requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

75. Woodrow Wilson International Center for Scholars (Sch. A, 213.3175)

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, two Social Science Program Administrators, one Middle East Studies Program Administrator, one African Studies Program Administrator, one Global Sustainability and Resilience Program Administrator, one Canadian Studies Program Administrator; one China Studies Program Administrator, and one Science, Technology and Innovation Program Administrator.

78. Community Development Financial Institutions Fund (Sch. A, 213.3178)

(a) (Reserved, expired 9/23/1998)

80. Utah Reclamation and Conservation Commission (Sch. A, 213.3180)

(a) Executive Director

82. National Foundation on the Arts and the Humanities (Sch. A, 213.3182)

(a) National Endowment for the Arts—

(1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy, or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

90. African Development Foundation (Sch. A, 213.3190)

(a) One Enterprise Development Fund Manager. Appointment is limited to four years unless extended by OPM.

91. Office of Personnel Management (Sch. A, 213.3191)

(a)–(c) (Reserved)

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

94. Department of Transportation (Sch. A, 213.3194)

(a)–(d) (Reserved)

(e) Maritime Administration—

(1)–(2) (Reserved)

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved)

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

(f) Up to 40 positions at the GS–13 through 15 grade levels and within authorized SL allocations necessary to support the following credit agency

programs of the Department: The Federal Highway Administration's Transportation Infrastructure Finance and Innovation Act Program, the Federal Railroad Administration's Railroad Rehabilitation and Improvement Financing Program, the Federal Maritime Administration's Title XI Program, and the Office of the Secretary's Office of Budget and Programs Credit Staff. This authority may be used to make temporary, time-limited, or permanent appointments, as the DOT deems appropriate, in the following occupational series: Director or Deputy Director SL–301/340, Origination Team Lead SL–301, Deputy Director/Senior Financial Analyst GS–1160, Origination Financial Policy Advisor GS–301, Credit Budgeting Team Lead GS–1160, Credit Budgeting Financial Analysts GS–1160, Portfolio Monitoring Lead SL–1160, Portfolio Monitoring Financial Analyst GS–1160, Financial Analyst GS–1160. No new appointments may be made under this authority after December 31, 2014.

95. (Reserved)

Schedule B

03. Executive Office of the President (Sch. B, 213.3203)

(a) (Reserved)

(b) Office of the Special Representative for Trade Negotiations—

(1) Seventeen positions of economist at grades GS–12 through GS–15.

04. Department of State (Sch. B, 213.3204)

(a) (1) One non-permanent senior level position to serve as Science and Technology Advisor to the Secretary.

(b)–(c) (Reserved)

(d) Seventeen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved)

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

05. Department of the Treasury (Sch. B, 213.3205)

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved)

(d) (Reserved) Transferred to 213.3211(b)

(e) (Reserved) Transferred to 213.3210(f)

06. Department of Defense (Sch. B, 213.3206)

(a) Office of the Secretary—

(1) (Reserved)

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved)

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities—

(1) Seven positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University—

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General—

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General—

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama—

(1) One Director, GM–15.

(g) Defense Security Assistance Agency—

All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

07. Department of the Army (Sch. B, 213.3207)

(a) U.S. Army Command and General Staff College—

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

08. Department of the Navy (Sch. B, 213.3208)

(a) Naval Underwater Systems Center, New London, Connecticut—

(1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) Armed Forces Staff College, Norfolk, Virginia—All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) Defense Personnel Security Research and Education Center—One Director and four Research Psychologists at the professor or GS–15 level.

(d) Marine Corps Command and Staff College—All civilian professor positions.

(e) Executive Dining facilities at the Pentagon—One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) (Reserved)

09. Department of the Air Force (Sch. B, 213.3209)

(a) Air Research Institute at the Air University, Maxwell Air Force Base, Alabama—Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1-, 2-, or 3- years indefinitely thereafter.

(b)–(c) (Reserved)

(d) Air University—Positions of Instructor or professional academic staff at the Air University associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) U.S. Air Force Academy, Colorado—One position of Director of Development and Alumni Programs, GS–301–13.

10. Department of Justice (Sch. B, 213.3210)

(a) Drug Enforcement Administration—

Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved)

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved)

(e) United States Trustees—Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

(f) Bureau of Alcohol, Tobacco, and Firearms

(1) Positions, grades GS–5 through GS–12 (or equivalent), of Criminal Investigator. Service under this authority may not exceed 3 years and 120 days.

11. Department of Homeland Security (Sch. B, 213.3211)

(a) Coast Guard.

(1) (Reserved)

(b) Secret Service—Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed:

(1) A total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203.

13. Department of Agriculture (Sch. B, 213.3213)

(a) Foreign Agricultural Service—

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General—

(1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

14. Department of Commerce (Sch. B, 213.3214)

(a) Bureau of the Census—

(1) (Reserved)

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through 12.

(b)–(c) (Reserved)

(d) National Telecommunications and Information Administration—

(1) Not to exceed 10 Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

15. Department of Labor (Sch. B, 213.3215)

(a) Administrative Review Board—Chair and a maximum of four additional Members.

(b) (Reserved)

(c) Bureau of International Labor Affairs—

(1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

17. Department of Education (Sch. B, 213.3217)

(a) Seventy-five positions, not to exceed GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

27. Department of Veterans Affairs (Sch. B, 213.3227)

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration (VA) supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

28. Broadcasting Board of Governors (Sch. B, 213.3228)

(a) International Broadcasting Bureau—

(1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

36. U.S. Soldiers' and Airmen's Home (Sch. B, 213.3236)

(a) (Reserved)

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

40. National Archives and Records Administration (Sch. B, 213.3240)

(a) Executive Director, National Historical Publications and Records Commission.

48. National Aeronautics and Space Administration (Sch. B, 213.3248)

(a) Not to exceed 40 positions of Astronaut Candidates at grades GS–11 through 15. Employment under this authority may not exceed 3 years.

50. Consumer Financial Protection Bureau (Sch. B, 213.3250)

(a) One position of Deputy Director; and one position of Associate Director of the Division of Supervision, Enforcement, and Fair Lending.

55. Social Security Administration (Sch. B, 213.3255)

(a) (Reserved)

74. Smithsonian Institution (Sch. B, 213.3274)

(a) (Reserved)

(b) Freer Gallery of Art—

(1) Not to exceed four Oriental Art Restoration Specialists at grades GS–9 through GS–15.

76. Appalachian Regional Commission (Sch. B, 213.3276)

(a) Two Program Coordinators.

78. Armed Forces Retirement Home (Sch. B, 213.3278)

(a) Naval Home, Gulfport, Mississippi—

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

82. National Foundation on the Arts and the Humanities (Sch. B, 213.3282)

(a) (Reserved)

(b) National Endowment for the Humanities—

(1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

91. Office of Personnel Management (Sch. B, 213.3291)

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Center for Leadership Development—No more than 72 positions of faculty members at grades GS–13 through GS–15. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1, 2, or 3 year increments.

Schedule C

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Agricultural Marketing Service	Special Assistant	DA190094	03/26/2019
	Animal and Plant Health Inspection Service.	Senior Advisor	DA190083	04/04/2019
	Farm Service Agency	Confidential Assistant	DA190157	06/28/2019
		Special Assistant	DA190085	03/25/2019
		State Executive Director (3)	DA180230	09/20/2018
			DA180239	09/20/2018
			DA190028	12/20/2018
		State Executive Director—California.	DA190161	06/20/2019
		State Executive Director—Washington.	DA190105	04/24/2019
		State Executive Director—Oregon	DA180231	10/02/2018
		State Executive Director—Idaho	DA190086	04/09/2019
	Food and Nutrition Service	Confidential Assistant (2)	DA190046	02/06/2019
			DA190121	05/02/2019
		Senior Policy Advisor	DA190141	05/17/2019
		Director of Intergovernmental Affairs.	DA180214	08/20/2018
	Foreign Agricultural Service	Policy Analyst	DA190109	05/14/2019
		Senior Advisor	DA190155	06/18/2019
	Natural Resources Conservation Service.	Confidential Assistant	DA180206	08/17/2018
		Policy Advisor	DA190021	12/17/2018
	Office of Communications	Deputy Director	DA190075	03/05/2019
		Deputy Press Secretary	DA190091	03/26/2019
		Press Assistant (2)	DA190047	02/22/2019
			DA180227	08/20/2018
		Press Secretary (2)	DA190150	06/11/2019
			DA180233	09/12/2018
	Office of the Assistant Secretary for Administration.	Senior Advisor	DA190087	03/25/2019
	Office of the Assistant Secretary for Congressional Relations.	Associate Director (2)	DA190061	03/05/2019
			DA180236	11/26/2018
		Chief of Staff	DA180229	09/13/2018
		Congressional and Policy Advisor (2).	DA190144	05/23/2019
			DA180250	10/04/2018
		Congressional Advisor	DA190030	12/11/2018
		Legislative Analyst (3)	DA190088	04/04/2019
			DA190069	04/12/2019
			DA190134	05/03/2019
		Policy Advisor	DA180243	09/20/2018
		Senior Congressional Advisor	DA190040	02/05/2019
		Staff Assistant	DA180255	11/26/2018
	Office of the General Counsel	Advisor (2)	DA190156	06/18/2019
			DA190011	11/26/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Secretary	Advance Associate	DA180263	11/26/2018
		Advance Lead (4)	DA190057	03/14/2019
			DA180219	08/13/2018
			DA180232	09/17/2018
			DA190020	12/17/2018
		Chief of Staff	DA190042	03/26/2019
		Confidential Assistant (4)	DA180208	07/27/2018
			DA180254	08/27/2018
			DA180221	09/20/2018
			DA180178	12/20/2018
		Deputy Chief of Staff for Outreach	DA180264	11/26/2018
		Director of Scheduling	DA180244	09/14/2018
		Policy Advisor	DA190029	12/11/2018
		Senior Advisor (5)	DA190092	03/26/2019
			DA190108	04/05/2019
			DA190146	05/24/2019
			DA190165	06/28/2019
			DA180222	09/20/2018
		Special Assistant	DA190058	02/13/2019
		White House Liaison	DA180144	07/10/2018
	Office of the Under Secretary for Farm Production and Conservation.	Policy Advisor	DA190163	06/28/2019
		Confidential Assistant	DA190013	11/28/2018
	Office of the Under Secretary for Food Safety.	Senior Advisor	DA180249	10/29/2018
	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Confidential Assistant	DA180257	10/12/2018
	Office of the Under Secretary for Marketing and Regulatory Programs.	Policy Advisor	DA180261	10/17/2018
	Office of the Under Secretary for Research, Education, and Economics.	Chief of Staff	DA190140	05/17/2019
		Staff Assistant	DA190142	05/23/2019
		Policy Advisor	DA180258	10/12/2018
	Office of the Under Secretary for Rural Development.	Confidential Assistant (5)	DA190114	04/24/2019
			DA180207	08/02/2018
			DA180224	08/02/2018
			DA180223	08/09/2018
			DA190037	12/20/2018
		Senior Advisor	DA190123	05/10/2019
	Office of Under Secretary for Natural Resources and Environment.	Staff Assistant	DA190041	02/06/2019
	Risk Management Agency	Policy Advisor	DA180198	07/27/2018
	Rural Business Service	Chief of Staff	DA190124	04/23/2019
		Confidential Assistant	DA180251	09/26/2018
	Rural Housing Service	Chief of Staff	DA190116	04/12/2019
		Confidential Assistant	DA180209	08/02/2018
		Congressional Advisor	DA190039	12/20/2018
		Policy Advisor	DA190080	03/25/2019
		Staff Assistant	DA180220	08/23/2018
		State Director—Arizona	DA190147	06/13/2019
		State Director—Florida	DA190056	04/02/2019
		State Director—Iowa	DA180195	07/03/2018
		State Director—New Jersey	DA180116	04/08/2019
	Rural Utilities Service	Policy Coordinator	DA190001	10/31/2018
APPALACHIAN REGIONAL COMMISSION.	Appalachian Regional Commission	Speechwriter	AP190001	04/04/2019
DEPARTMENT OF COMMERCE	Office of the Assistant Secretary and Director General for United States and Foreign Commercial Service.	Senior Advisor	DC190097	05/17/2019
	Office of the Assistant Secretary for Enforcement and Compliance.	Special Assistant	DC190109	06/25/2019
		Senior Advisor	DC190009	11/19/2018
	Office of the Assistant Secretary for Industry and Analysis.	Director, Office of Industry Engagement.	DC190034	01/29/2019
		Senior Advisor for Industry and Analysis.	DC180157	07/11/2018
	Office of the Assistant Secretary Legislative and Intergovernmental Affairs.	Intergovernmental Affairs Specialist	DC180151	07/03/2018
		Associate Director for Legislative Affairs.	DC180188	08/29/2018
	Bureau of Industry and Security	Policy Advisor	DC190050	02/22/2019
		Senior Advisor	DC190055	03/25/2019
		Senior Counselor	DC180182	08/20/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
	Bureau of the Census	Senior Advisor	DC190052	03/11/2019
	Office of the Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Senior Advisor for United States and Foreign Commercial Service.	DC180163	07/23/2018
		Senior Advisor and Director of Outreach.		
		Senior Advisor for External Affairs	DC190031	12/20/2018
	Office of the International Trade Administration.	Director, Office of Legislative Affairs.	DC180207	10/11/2018
		Press Secretary and Speechwriter	DC180206	10/04/2018
		Senior Advisor (2)	DC180191	09/14/2018
			DC180201	09/26/2018
		Special Assistant	DC180189	09/26/2018
	Minority Business Development Agency.	Confidential Assistant	DC190003	10/31/2018
		Special Advisor for Strategic Initiatives.	DC190018	11/30/2018
	Office of Advance, Scheduling and Protocol.	Advance Assistant	DC180180	08/23/2018
		Deputy Director of Advance	DC180174	09/17/2018
		Director of Advance, Scheduling and Protocol (2).	DC190060	03/13/2019
			DC180202	09/12/2018
		Protocol Officer	DC200011	05/22/2019
	Office of Business Liaison	Special Advisor (2)	DC180166	07/20/2018
			DC180183	08/31/2018
	Office of the Executive Secretariat	Special Assistant	DC190051	03/25/2019
		Confidential Assistant	DC190101	05/23/2019
		Deputy Director, Office of Executive Secretariat.	DC180190	08/31/2018
		Associate Director, Office of Executive Secretariat.	DC180197	09/11/2018
	Office of the General Counsel	Special Advisor (2)	DC190072	04/12/2019
			DC190088	05/14/2019
	Office of Legislative and Intergovernmental Affairs.	Confidential Assistant	DC180165	07/27/2018
		Congressional and Intergovernmental Affairs Specialist.	DC190108	06/25/2019
		Deputy Director of Legislative Affairs.	DC190106	06/25/2019
		Director of Legislative Affairs	DC180186	08/16/2018
	Office of Policy and Strategic Planning.	Policy Assistant	DC190036	02/06/2019
		Deputy Director, Office of Policy and Strategic Planning.	DC190073	04/11/2019
	Office of Public Affairs	Deputy Director of Public Affairs and Press Secretary.	DC190064	04/16/2019
		Director of Speechwriting	DC180160	07/06/2018
		Director of Speechwriting and Senior Advisor.	DC190114	06/25/2019
		Press Assistant	DC190008	10/31/2018
		Special Advisor for Communications.	DC180169	08/02/2018
		Speechwriter and Press Assistant	DC190048	02/22/2019
	Office of the Assistant Secretary for Economic Development.	Senior Advisor	DC190059	03/25/2019
		Special Advisor for External Affairs	DC190061	04/11/2019
		Director of External Affairs	DC190098	05/10/2019
		Legislative Affairs Specialist	DC190010	11/19/2018
	Office of the Assistant Secretary for Export Administration.	Special Advisor	DC180175	07/27/2018
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Confidential Assistant	DC190027	02/01/2019
		Chief of Staff for Administration	DC190045	03/06/2019
	Office of the Chief of Staff	Special Assistant	DC190056	03/13/2019
		Confidential Assistant (2)	DC190094	05/10/2019
			DC180210	10/04/2018
		Director, Center for Faith and Opportunity Initiatives.	DC190001	10/24/2018
	Office of the Deputy Assistant Secretary.	Special Assistant	DC190014	11/26/2018
	Office of the Deputy Secretary	Special Assistant	DC190012	10/31/2018
		Senior Advisor	DC190015	11/19/2018
	Office of the Director	Director of Strategic Initiatives	DC190067	04/25/2019
	Office of the General Counsel (2)	Senior Counsel for Special Projects (2).	DC190076	05/03/2019
			DC190095	05/10/2019
			DC190103	05/14/2019
		Special Advisor (2)	DC190038	02/14/2019
			DC190082	05/23/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Under Secretary	Senior Advisor (3)	DC190112	06/25/2019
			DC180154	07/03/2018
			DC180208	10/16/2018
		Special Assistant	DC180168	08/02/2018
	Office of the Under Secretary for Economic Affairs.	Special Advisor	DC190023	12/13/2018
	Office of the White House Liaison	Deputy Director, Office of the White House Liaison.	DC190069	03/12/2019
		Confidential Assistant	DC190104	06/25/2019
		Special Assistant	DC180199	10/18/2018
	Patent and Trademark Office	Special Assistant	DC190053	04/16/2019
		Deputy Chief Communications Officer (2).	DC190080	05/20/2019
			DC190113	06/28/2019
		Special Advisor for Communications.	DC190021	12/17/2018
COMMISSION ON CIVIL RIGHTS	Office of Staff Members	Special Assistant	CC190001	06/18/2019
	Office of Commissioners	Special Assistant	CC180002	06/25/2019
CONSUMER PRODUCT SAFETY COMMISSION.	Office of Commissioners	Director, Office of Legislative Affairs.	PS180005	08/29/2018
		Special Assistant	PS180009	09/11/2018
	Office of Communications	Supervisory Public Affairs Specialist (2).	PS190003	04/03/2019
			PS180008	08/29/2018
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Associate Director for Natural Resources.	EQ190001	04/16/2019
DEPARTMENT OF DEFENSE	Deputy Under Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant(East Asia)	DD190003	11/05/2018
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant(East Asia)	DD190004	11/05/2018
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (3)	DD190071	04/04/2019
			DD190120	05/17/2019
			DD190132	05/23/2019
		Special Assistant (Legislative Affairs) (2).	DD180117	07/31/2018
			DD190005	11/05/2018
	Office of the Assistant to the Secretary of Defense (Public Affairs).	Special Assistant	DD180109	07/19/2018
	Office of the Chief Management Officer.	Special Assistant	DD190144	06/13/2019
	Office of the Deputy Under Secretary for Policy.	Special Assistant (3)	DD190130	04/23/2019
			DD190076	05/10/2019
			DD190111	06/05/2019
	Office of the Director (Cost Assessment and Program Evaluation).	Special Assistant	DD180131	10/04/2018
	Office of the General Counsel	Attorney-Advisor (General)	DD190022	12/20/2018
	Office of the Secretary of Defense	Advance Officer	DD190018	11/19/2018
		Defense Fellow	DD190027	01/25/2019
		Protocol Officer (2)	DD190118	05/15/2019
			DD190021	12/20/2018
		Special Assistant	DD190119	05/14/2019
		Speechwriter	DD190123	06/03/2019
	Office of the Under Secretary of Defense (Acquisition and Sustainment.	Special Assistant	DD190143	06/11/2019
	Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).	Special Assistant (Acquisition and Sustainment).	DD190009	11/19/2018
		Special Assistant for Engineering and Technology.	DD190012	11/19/2018
	Office of the Under Secretary of Defense (Intelligence).	Special Assistant for Intelligence	DD180121	08/30/2018
		Special Assistant	DD180130	10/04/2018
	Office of the Under Secretary of Defense (Policy).	Special Assistant (6)	DD190057	02/22/2019
			DD190060	02/22/2019
			DD190078	04/23/2019
			DD190139	06/19/2019
			DD190140	06/20/2019
			DD180107	07/06/2018
	Washington Headquarters Services	Attorney-Advisor (General)	DD190031	01/25/2019
		Defense Fellow (7)	DD190017	01/23/2019
			DD190062	03/15/2019
			DD190074	04/04/2019
			DD190112	05/10/2019
			DD180125	09/12/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
			DD190002	11/15/2018
			DD190013	11/30/2018
		Special Assistant	DD190032	01/25/2019
DEPARTMENT OF THE AIR FORCE.	Office of the Assistant Secretary Air Force, Installations, Environment, and Energy.	Special Assistant	DF180032	09/06/2018
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary Army (Acquisition, Logistics and Technology).	Special Assistant (Strategy and Acquisition Reform) (2).	DW190022	03/11/2019
			DW190032	04/05/2019
	Office of the Assistant Secretary Army (Civil Works).	Special Assistant (Civil Works)	DW190042	05/23/2019
	Office of the Assistant Secretary Army (Installations, Energy and Environment).	Special Assistant (Energy and Sustainability).	DW180041	07/19/2018
	Office of the Deputy Under Secretary of Army.	Special Assistant	DW190045	06/26/2019
		Personal and Confidential Assistant.	DW180042	07/17/2018
DEPARTMENT OF EDUCATION	Department of Education	Special Assistant (Supervisory)	DB190063	02/22/2019
	Office for Civil Rights	Attorney Advisor (2)	DB190069	03/06/2019
			DB190073	04/04/2019
		Confidential Assistant (2)	DB190056	01/30/2019
			DB180052	07/17/2018
		Confidential Assistant for Policy	DB190040	01/25/2019
	Office of Career Technical and Adult Education.	Confidential Assistant (2)	DB190071	03/26/2019
			DB180064	09/20/2018
	Office of Communications and Outreach.	Confidential Assistant (9)	DB190055	02/06/2019
			DB190065	02/22/2019
			DB190064	03/04/2019
			DB190086	05/02/2019
			DB190092	05/08/2019
			DB190013	11/30/2018
			DB190028	12/12/2018
			DB190027	12/20/2018
			DB190041	12/20/2018
		Confidential Assistant (Digital)	DB190087	05/08/2019
		Director of Outreach	DB190077	04/08/2019
		Special Assistant (5)	DB190076	04/05/2019
			DB190085	05/02/2019
			DB180053	07/27/2018
			DB180056	07/31/2018
			DB190004	11/14/2018
	Office of Elementary and Secondary Education.	Confidential Assistant (3)	DB190105	06/13/2019
			DB190037	12/12/2018
			DB190044	12/20/2018
		Confidential Assistant for Policy	DB190015	11/27/2018
		Senior Advisor	DB190006	10/25/2018
	Office of Legislation and Congressional Affairs.	Confidential Assistant (4)	DB190046	01/25/2019
			DB190061	02/13/2019
			DB180054	07/30/2018
			DB190030	12/13/2018
		Director, Office of Legislation and Congressional Affairs.	DB190049	12/21/2018
		Special Assistant	DB180062	08/28/2018
			DB190032	12/11/2018
		Special Assistant (Supervisory)	DB180063	08/30/2018
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB190008	10/31/2018
		Deputy Director, Office of Educational Technology.	DB190101	05/30/2019
		Special Assistant (3)	DB190060	04/08/2019
			DB180058	08/09/2018
			DB180060	08/09/2018
	Office of Postsecondary Education	Confidential Assistant	DB180055	07/27/2018
		Special Assistant (3)	DB180061	09/27/2018
			DB190005	10/31/2018
			DB190016	12/03/2018
	Office of Special Education and Rehabilitative Services.	Confidential Assistant	DB190098	05/20/2019
		Special Assistant (2)	DB190053	01/17/2019
			DB190036	12/12/2018
	Office of the Deputy Secretary	Special Assistant	DB190012	11/26/2018
		Confidential Assistant (2)	DB190018	12/12/2018
			DB190043	12/20/2018
	Office of the General Counsel	Attorney Advisor (11)	DB190047	01/25/2019
			DB190068	03/06/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
			DB190099	05/22/2019
			DB190107	06/19/2019
			DB180066	09/20/2018
			DB190001	10/12/2018
			DB190009	10/31/2018
			DB190038	12/03/2018
			DB190033	12/13/2018
			DB190031	12/17/2018
			DB190011	12/26/2018
	Office of the Secretary	Confidential Assistant (9)	DB190019	01/25/2019
			DB190042	01/25/2019
			DB190075	03/15/2019
			DB180072	10/12/2018
			DB190003	10/24/2018
			DB190021	12/12/2018
			DB190024	12/13/2018
			DB190022	12/17/2018
			DB190023	12/17/2018
		Confidential Assistant for Policy	DB190102	06/05/2019
		Director, White House Liaison	DB190034	12/13/2018
		Special Assistant (2)	DB190020	01/17/2019
			DB190025	12/13/2018
		Special Assistant (Supervisory)	DB190062	04/08/2019
	Office of the Under Secretary	Confidential Assistant (2)	DB180069	09/20/2018
			DB190017	12/17/2018
		Confidential Assistant (Policy)	DB190088	05/08/2019
		Executive Director, Center for Faith and Opportunity Initiatives.	DB190029	12/13/2018
		Senior Advisor	DB180057	08/02/2018
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Chief of Staff	DE190119	05/02/2019
		Deputy Assistant Secretary for House Affairs.	DE190087	05/07/2019
		Deputy Assistant Secretary for Senate Affairs (2).	DE190073	03/22/2019
			DE180148	07/30/2018
		Director of Intergovernmental and External Affairs.	DE190008	11/26/2018
		Legislative Affairs Advisor (5)	DE190109	05/07/2019
			DE180093	07/03/2018
			DE180116	07/11/2018
			DE180138	07/27/2018
			DE180147	10/12/2018
		Special Assistant (3)	DE190053	02/04/2019
			DE190083	04/24/2019
			DE180144	07/10/2018
	Office of the Assistant Secretary for Electricity Delivery and Energy Reliability.	Senior Advisor (2)	DE190085	04/08/2019
			DE190135	06/25/2019
		Special Assistant (2)	DE190134	06/28/2019
			DE180137	08/29/2018
	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Senior Advisor (2)	DE190035	01/25/2019
			DE180095	07/03/2018
		Chief of Staff	DE180136	07/20/2018
	Office of the Assistant Secretary for Environmental Management.	Senior Advisor	DE180132	07/27/2018
	Office of the Assistant Secretary for Fossil Energy.	Senior Advisor for Regional Economic Development.	DE180098	09/12/2018
	Office of the Assistant Secretary for International Affairs.	Chief of Staff	DE190019	11/26/2018
		Director for the Office of Global Energy Security.	DE190166	06/20/2019
		Senior Advisor	DE180134	08/09/2018
		Special Advisor	DE180133	08/02/2018
		Special Assistant	DE190041	02/01/2019
	Office of the Assistant Secretary for Nuclear Energy.	Special Assistant	DE190090	04/23/2019
	Office of National Nuclear Security Administration.	Director of Congressional Affairs	DE190054	02/13/2019
		Special Advisor	DE190131	06/25/2019
		Director of Congressional Affairs	DE180110	07/03/2018
	Office of Cybersecurity, Energy Security and Emergency Response.	Chief of Staff	DE190037	01/25/2019
		Special Advisor	DE190137	06/26/2019
		Special Assistant (3)	DE190062	02/27/2019
			DE190076	03/19/2019
			DE190112	05/03/2019
	Office of Economic Impact and Diversity.	Senior Advisor on Minority Business.	DE180140	07/30/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
		Senior Advisor on Minority Education.	DE180146	12/21/2018
	Office of the General Counsel	Attorney Advisor	DE180135	08/17/2018
		Attorney Advisor (General)	DE180114	07/02/2018
		Deputy Chief of Staff	DE190122	05/10/2019
		Senior Oversight Advisor	DE190078	04/04/2019
		Special Assistant	DE190059	02/28/2019
	Office of Management	Deputy Staff Secretary	DE190067	03/20/2019
		Senior Advisor	DE190129	06/06/2019
		Special Advisor (2)	DE190126	06/20/2019
			DE180126	07/20/2018
		Special Assistant	DE190082	04/24/2019
	Office of Policy	Senior Advisor	DE190058	03/05/2019
		Principal Deputy Director	DE190118	04/25/2019
		Special Assistant	DE190125	06/05/2019
	Office of Public Affairs	Deputy Creative Director	DE190069	04/05/2019
		Digital Director	DE190071	03/22/2019
		Press Secretary	DE180131	07/19/2018
		Special Advisor	DE190132	06/25/2019
		Special Assistant	DE180104	07/27/2018
		Writer-Editor (Chief Speechwriter)	DE190140	06/26/2019
		Writer-Editor (Speechwriter)	DE190034	01/30/2019
	Office of Scheduling and Advance	Senior Advisor for Strategic Planning.	DE190036	01/25/2019
		Scheduling Coordinator (2)	DE180127	08/13/2018
			DE190029	12/20/2018
	Office of Science	Chief of Staff	DE190144	06/26/2019
		Senior Advisor (3)	DE190084	04/08/2019
			DE180099	07/13/2018
			DE180129	07/27/2018
	Office of Small and Disadvantaged Business Utilization.	Senior Advisor	DE190088	05/03/2019
	Office of Technology Transition	Senior Advisor	DE190060	02/28/2019
		Director and Chief Commercialization Officer.	DE180150	08/13/2018
	Office of the Chief Financial Officer	Chief of Staff (2)	DE190065	04/04/2019
			DE180154	08/28/2018
	Office of the Chief Information Officer.	Special Advisor	DE180128	07/24/2018
	Office of the Deputy Secretary	Special Advisor	DE190052	02/14/2019
		Nuclear Engineer (Senior Advisor for Nuclear Policy).	DE190061	03/15/2019
	Office of the Secretary	Special Assistant (3)	DE190057	02/28/2019
			DE190113	05/02/2019
			DE180143	08/23/2018
		White House Liaison (2)	DE190081	04/08/2019
			DE180141	07/24/2018
	Office of the Under Secretary of Energy.	Senior Advisor (2)	DE190033	01/25/2019
			DE180145	08/02/2018
		Special Assistant (2)	DE190089	04/23/2019
			DE180103	07/03/2018
ENVIRONMENTAL PROTECTION AGENCY.	Environmental Protection Agency	Special Assistant	EP190066	04/09/2019
	Office of Mission Support	Chief Sustainability Officer	EP190058	04/04/2019
		Associate Deputy Assistant Administrator for the Office of Mission Support.	EP190067	04/29/2019
	Office of Public Affairs	Deputy Associate Administrator for Regional Affairs.	EP190022	02/04/2019
		Public Affairs Specialist (2)	EP190019	01/30/2019
			EP190026	01/30/2019
		Special Advisor	EP190102	06/19/2019
		Writer (Speeches)	EP190068	05/15/2019
	Office of Public Engagement and Environmental Education.	Special Advisor for Public Engagement.	EP190055	04/08/2019
	Office of the Administrator	Advance Associate	EP190074	04/23/2019
		Deputy White House Liaison	EP180096	10/31/2018
		Director of Advance	EP180081	08/09/2018
		Senior Advisor	EP190023	01/30/2019
		Senior Advisor for Health and Human Safety.	EP190016	02/26/2019
		Senior Advisor for Oil and Gas, Regional Management and State Affairs.	EP190057	04/23/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Senior Advisor for Strategic Initiatives.	EP190005	11/26/2018
		Special Advisor	EP190076	05/23/2019
		White House Liaison (2)	EP190045	03/28/2019
			EP180072	07/02/2018
	Office of the Assistant Administrator for Air and Radiation.	Policy Advisor	EP180095	09/20/2018
	Office of the Assistant Administrator for Chemical Safety and Pollution Prevention.	Environmental Engineer	EP180090	08/23/2018
	Office of the Assistant Administrator for International and Tribal Affairs.	Director, American Indian Environmental Office.	EP190082	06/05/2019
			EP180091	08/30/2018
		Senior Advisor for the Office of International and Tribal Affairs.		
	Office of the Assistant Administrator for Land and Emergency Management.	Attorney Advisor (General)	EP190014	12/20/2018
	Office of the Assistant Administrator for Research and Development.	Confidential Assistant	EP180082	07/27/2018
	Office of the Assistant Administrator for Water.	Special Assistant	EP190009	01/30/2019
		Attorney Advisor (General)	EP190015	12/13/2018
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Attorney Advisor (General)	EP190034	02/22/2019
		Deputy Associate Administrator for the Office of Congressional and Intergovernmental Relations.	EP190070	04/16/2019
		Director for Oversight	EP190004	12/04/2018
		Director of Intergovernmental Affairs.	EP190012	11/27/2018
		House Relations Specialist	EP190061	03/29/2019
		Senate Affairs Specialist	EP190049	03/08/2019
		Special Advisor for House Relations.	EP190050	04/04/2019
		Special Advisor for Intergovernmental Relations.	EP190079	05/17/2019
		Special Advisor for the Office of Congressional Affairs.	EP180079	12/20/2018
		Special Advisor for the Office of Congressional and Intergovernmental Affairs.	EP190042	02/26/2019
		Special Assistant (2)	EP190062	04/08/2019
			EP190064	04/09/2019
	Office of the Associate Administrator for Policy.	Special Advisor for Policy and Economics.	EP190051	03/25/2019
		Policy Advisor (2)	EP190071	05/10/2019
			EP180078	07/24/2018
	Office of the Chief Financial Officer	Associate Chief Financial Officer for Policy.	EP190033	02/22/2019
		Senior Advisor for Financial Management.	EP180099	10/22/2018
	Office of the Executive Secretariat	Attorney Advisor (General)	EP190056	03/22/2019
		Special Advisor (2)	EP180089	08/23/2018
			EP180088	08/28/2018
	Office of the General Counsel	Attorney Advisor (General) (3)	EP190035	02/22/2019
			EP190038	02/28/2019
			EP180080	07/27/2018
		Special Assistant for the Office of General Counsel.	EP190059	03/19/2019
	Region II—New York, New York	Senior Advisor	EP190040	02/28/2019
	Region V—Chicago, Illinois	Senior Advisor for Water	EP190025	02/11/2019
	Region VI—Dallas, Texas	Chief of Staff	EP180093	09/20/2018
	Region VII—Lenexa, Kansas	Renewable Fuels Advisor	EP190013	12/11/2018
EXPORT-IMPORT BANK	Office of Communications	Press Secretary	EB190010	06/17/2019
	Office of External Engagement	Senior Vice President for External Engagement.	EB190011	06/18/2019
	Office of the Chairman	Director of Scheduling	EB190008	06/05/2019
	Office of the Chief of Staff	Executive Secretary (2)	EB190007	06/05/2019
			EB180009	09/12/2018
FEDERAL DEPOSIT INSURANCE CORPORATION.	Federal Deposit Insurance Corporation.	Chief of Staff	FD180003	07/16/2018
FEDERAL ENERGY REGULATORY COMMISSION.	Office of Commissioner McNamee	Senior Technical Advisor	DR190003	02/22/2019
	Office of the Chairman	Confidential Assistant	DR190007	02/13/2019
		Senior Public Affairs Specialist	DR190004	02/28/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Senior Advisor for Markets and Reliability.	DR180005	10/29/2018
		Policy Advisor	DR190001	11/06/2018
	Office of the Commissioner	Executive Assistant	DR190002	10/31/2018
FEDERAL HOUSING FINANCE AGENCY.	Office of Director	Director of External Relations	HA190001	04/23/2019
		Director of Legislative Affairs	HA190004	05/15/2019
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.	Federal Mine Safety and Health Review Commission.	Confidential Assistant (2)	FR190002	02/26/2019
			FR180002	10/01/2018
GENERAL SERVICES ADMINISTRATION.	National Capital Region	Special Assistant	GS190027	04/17/2019
	Northwest/Arctic Region	Senior Advisor	GS190015	02/06/2019
	Office of Congressional and Intergovernmental Affairs.	Congressional Policy Analyst (2)	GS190014	01/30/2019
			GS190008	11/26/2018
		Policy Advisor	GS180047	10/29/2018
	Office of the General Counsel	Senior Counsel	GS190034	06/25/2019
	Office of Governmentwide Policy	Senior Advisor for Governmentwide Policy.	GS190012	12/20/2018
	Office of Strategic Communication	Speechwriter	GS190028	05/15/2019
		Senior Communications Advisor	GS180037	07/10/2018
	Office of the Administrator	Confidential Assistant	GS190019	04/04/2019
		Staff Assistant	GS190029	05/30/2019
		Special Assistant	GS190007	11/19/2018
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Administration for Children and Families.	Advisor	DH190091	03/26/2019
		Chief of Staff (2)	DH190075	02/27/2019
			DH180218	07/19/2018
		Communications Director	DH190203	06/25/2019
		Director of Legislative Affairs	DH190057	01/28/2019
		Senior Advisor	DH190105	04/12/2019
		Senior Advisor for Communications	DH190070	02/11/2019
	Office of the Administration for Community Living.	Advisor	DH190059	02/12/2019
	Agency for Healthcare Research and Quality.	Advisor	DH190094	04/12/2019
	Centers for Disease Control and Prevention.	Director of Communications	DH190080	03/14/2019
	Centers for Medicare and Medicaid Services.	Senior Advisor for External Affairs	DH190172	06/05/2019
		Senior Advisor (2)	DH190086	06/07/2019
			DH180180	07/11/2018
		Deputy Director of Communications.	DH190021	11/16/2018
	Office of Food and Drug Administration.	Director of Communications	DH190063	02/22/2019
		Advisor	DH190116	05/06/2019
		Counselor	DH190101	06/07/2019
	Office of Health Resources and Services Administration.	Senior Director, Communications	DH190155	05/21/2019
	Office of Global Affairs	Chief of Staff	DH190044	01/17/2019
		Senior Advisor	DH190043	01/25/2019
		Advisor	DH180239	09/20/2018
	Office of Intergovernmental and External Affairs.	Director of Intergovernmental Affairs.	DH190088	03/26/2019
		Regional Director, Dallas, Texas, Region VI.	DH190022	11/21/2018
		Regional Director, New York, New York, Region II.	DH180172	12/20/2018
		Senior Advisor (2)	DH190025	02/27/2019
			DH180242	09/07/2018
		Senior Advisor for External Affairs	DH190011	10/31/2018
		Special Assistant	DH190187	06/26/2019
	Office of Refugee Resettlement/Office of the Director.	Policy Advisor (2)	DH190096	06/07/2019
			DH180193	07/09/2018
		Chief of Staff	DH180196	07/09/2018
	Office of the Administrator	Senior Advisor (Substance Abuse)	DH190087	03/13/2019
	Office of the Assistant Secretary for Financial Resources.	Deputy Assistant Secretary, Congressional Relations.	DH190090	04/12/2019
		Director—Appropriations Liaison	DH190111	06/07/2019
		Director of Congressional Relations	DH190037	01/29/2019
		Policy Advisor	DH190073	03/01/2019
		Special Assistant	DH190069	04/04/2019
	Office of the Assistant Secretary for Health.	Advisor (2)	DH190117	05/22/2019
			DH180210	08/16/2018
		Chief of Staff	DH180212	07/31/2018
		Deputy Chief of Staff	DH180249	10/12/2018
		Director of Media Affairs	DH190097	03/26/2019
		Senior Advisor for Communications	DH180238	08/30/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Legislation.	Advisor	DH190035	01/25/2019
		Deputy Assistant Secretary for Legislation for Discretionary (Public Health and Science).	DH190030	12/17/2018
		Deputy Director of Oversight and Investigations.	DH180191	07/19/2018
		Director of Congressional Liaison	DH190034	01/29/2019
		Director of Oversight and Investigations.	DH180189	07/02/2018
		Policy Advisor	DH180220	10/31/2018
		Senior Deputy Director of Oversight and Investigations.	DH180253	10/15/2018
		Special Assistant (2)	DH190184	06/25/2019
			DH190185	06/25/2019
	Office of the Assistant Secretary for Preparedness and Response.	Senior Policy Advisor	DH190054	02/28/2019
	Office of the Assistant Secretary for Public Affairs.	Advisor—Strategic Communications.	DH190068	02/15/2019
		Assistant Speechwriter	DH190050	01/25/2019
		Communications Assistant	DH180235	09/13/2018
		Director of Communication Strategy and Campaigns.	DH180236	10/23/2018
		Press Assistant	DH180157	07/13/2018
		Senior Advisor and National Spokesperson.	DH190198	06/25/2019
		Special Assistant	DH180250	09/26/2018
	Office of the Deputy Secretary	Assistant	DH190067	02/11/2019
	Office of the General Counsel	Assistant	DH190085	03/13/2019
		Associate Deputy General Counsel	DH190175	06/06/2019
		Assistant Deputy General Counsel	DH190178	06/13/2019
	Office of the National Coordinator for Health Information Technology.	Senior Advisor for Health Information Technology.	DH190002	11/19/2018
	Office of the Secretary	Advance Representative	DH190029	01/25/2019
		Advisor (4)	DH190053	01/25/2019
			DH190089	04/05/2019
			DH180194	08/02/2018
			DH190026	12/11/2018
		Advisor for Value-Based Reform	DH180246	10/04/2018
		Briefing Book Coordinator and Policy Advisor.	DH190098	03/25/2019
		Deputy Scheduler	DH190110	04/17/2019
		Director of Drug Pricing Reform	DH190205	06/25/2019
		Director of Scheduling	DH190113	04/30/2019
		Senior Advisor	DH180228	09/13/2018
		Senior Policy Advisor	DH180214	07/20/2018
		Special Advisor	DH190118	06/05/2019
		Special Assistant (5)	DH180223	08/07/2018
			DH180222	08/09/2018
			DH190024	11/19/2018
			DH190062	01/29/2019
			DH190164	06/11/2019
		White House Liaison for Political Personnel, Boards and Commissions (2).	DH190200	06/21/2019
			DH180198	07/02/2018
DEPARTMENT OF HOMELAND SECURITY.	Office of Cybersecurity and Infrastructure Security Agency.	Policy Advisor (2)	DM190115	03/14/2019
			DM180280	08/23/2018
		Special Assistant	DM190119	03/26/2019
		Strategic Action Officer	DM190127	03/26/2019
	Federal Emergency Management Agency.	Special Assistant	DM190055	01/29/2019
		Director, Legislative Affairs	DM180242	07/13/2018
		Press Secretary	DM190010	10/29/2018
	Office of Assistant Secretary for Legislative Affairs.	Senior Advisor	DM190074	02/12/2019
		Legislative Advisor	DM190084	03/11/2019
		Executive Secretariat and Administrative Officer.	DM190138	04/17/2019
		Director for Strategic Legislative Communications and Engagement.	DM180262	08/17/2018
	Office of Countering Weapons of Mass Destruction.	Advisor	DM190136	04/04/2019
		Senior Advisor	DM190135	04/05/2019
		Special Assistant (3)	DM180285	05/23/2019
			DM180284	09/06/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
			DM190239	06/28/2019
	Office of Partnership and Engagement.	Associate Director, Office of Partnership and Engagement.	DM180295	09/26/2018
		Engagement Manger	DM180293	09/26/2018
		Special Assistant (3)	DM190201	05/10/2019
			DM190011	10/23/2018
			DM190007	10/29/2018
	Office of the Assistant Secretary for Policy.	Advisor	DM180294	10/09/2018
		Advisor for Immigration Policy	DM190005	10/22/2018
		Confidential Assistant for Border, Immigration and Trade Policy (2).	DM190045	12/20/2018
			DM190234	06/28/2019
		Senior Policy Advisor	DM190199	05/22/2019
		Special Assistant	DM190096	03/07/2019
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary (3)	DM190194	05/10/2019
			DM190202	05/10/2019
			DM190012	11/05/2018
		Deputy Press Secretary	DM190125	03/26/2019
		Deputy Speechwriter	DM190216	05/30/2019
		Director of Strategic Communications.	DM180296	09/18/2018
		Press Assistant	DM190021	11/20/2018
		Speechwriter	DM190016	11/06/2018
		Strategic Communications Advisor	DM190206	05/10/2019
	Office of the Chief of Staff	Advance Representative	DM190230	06/13/2019
		Briefing Book Coordinator	DM180238	08/22/2018
		Confidential Assistant (2)	DM180277	09/05/2018
			DM180307	09/27/2018
		Director of Advance and Scheduling and Chief of Protocol.	DM190141	05/30/2019
		Scheduler	DM190191	05/07/2019
		Special Assistant (2)	DM190210	05/20/2019
			DM190227	06/10/2019
	Office of the Executive Secretariat	Briefing Book Coordinator (2)	DM190027	01/19/2019
			DM190143	04/10/2019
		Advisor	DM180292	09/18/2018
	Office of the General Counsel	Special Assistant	DM180260	07/31/2018
		Oversight Counsel	DM190046	12/11/2018
	Office of the Secretary	Advance Representative	DM180248	07/19/2018
		Confidential Assistant	DM180286	09/06/2018
		Special Assistant	DM180291	09/20/2018
		White House Liaison	DM190019	11/19/2018
	Privacy Officer	Senior Advisor, Chief Privacy Officer and Chief FOIA Officer.	DM180239	07/10/2018
	Office of the United States Citizenship and Immigration Services.	Advisor	DM190091	03/11/2019
		Senior Advisor	DM190236	06/28/2019
		Advisor	DM180309	10/04/2018
	Office of the United States Customs and Border Protection.	Oversight Counsel	DM190058	12/20/2018
	Office of the United States Immigration and Customs Enforcement.	Communications Coordinator	DM190098	03/13/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Community Planning and Development.	Senior Advisor (2)	DU190043	03/14/2019
			DU190071	05/17/2019
	Office of Congressional and Intergovernmental Relations.	Senior Advisor (2)	DU190018	01/30/2019
			DU190053	04/04/2019
	Office of Fair Housing and Equal Opportunity.	Senior Advisor	DU190023	02/06/2019
	Office of Field Policy and Management.	Advisor	DU190056	04/11/2019
		Regional Administrator (2)	DU190028	02/06/2019
			DU190061	04/17/2019
		Special Assistant (3)	DU190024	02/06/2019
			DU190009	10/31/2018
			DU190014	11/30/2018
	Office of Housing	Deputy Assistant Secretary for Operations.	DU190021	12/20/2018
	Office of Policy Development and Research.	Special Policy Advisor	DU190038	02/26/2019
	Office of Public Affairs	Digital Strategy Specialist	DU180066	07/30/2018
		Deputy Assistant Secretary for Public Affairs.	DU180094	08/20/2018
		Deputy Director of Speechwriting	DU190008	10/31/2018
		Special Assistant	DU190011	11/19/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Public and Indian Housing	Policy Advisor	DU190054	04/05/2019
		Special Assistant	DU190060	04/24/2019
		Senior Advisor for Single Family Housing.	DU180087	07/24/2018
	Office of the Administration	Advance Coordinator (2)	DU190062	04/17/2019
			DU190020	12/20/2018
		Briefing Book Coordinator (2)	DU190083	06/26/2019
			DU180084	07/12/2018
		Director of Scheduling	DU190067	05/23/2019
		Scheduling and Advance Coordinator.	DU180102	08/23/2018
		Special Assistant (3)	DU180103	08/30/2018
			DU180090	08/09/2018
			DU180106	09/20/2018
	Office of the Deputy Secretary	Special Assistant (2)	DU180091	08/02/2018
			DU180097	08/17/2018
	Office of the General Counsel	Paralegal Specialist (2)	DU190036	02/22/2019
			DU190013	11/30/2018
		Senior Counsel (4)	DU190031	02/11/2019
			DU190035	02/22/2019
			DU190039	03/01/2019
			DU190072	05/23/2019
	Office of the Secretary	Deputy Chief of Staff	DU190048	03/22/2019
		Executive Assistant	DU190069	05/07/2019
		Special Assistant (2)	DU190051	03/25/2019
			DU190050	04/25/2019
		Special Policy Assistant	DU190037	02/26/2019
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Fish and Wildlife and Parks.	Counselor-Fish Wildlife and Parks	DI190052	04/24/2019
	Office of the Assistant Secretary—Indian Affairs.	Special Assistant	DI190005	12/13/2018
	Office of the Assistant Secretary—Land and Minerals Management.	Advisor	DI190021	02/13/2019
	Office of the Assistant Secretary—Policy, Management and Budget.	Special Assistant	DI190041	04/04/2019
	Office of the Assistant Secretary—Water and Science.	Senior Advisor (2)	DI190016	02/26/2019
			DI190047	04/17/2019
		Senior Advisor for Water and Science.	DI190036	03/25/2019
	Bureau of Land Management	Senior Advisor	DI190051	05/02/2019
	Bureau of Ocean Energy Management.	Senior Advisor—Bureau of Ocean Energy Management.	DI190038	04/17/2019
	Bureau of Reclamation	Senior Advisor	DI190057	05/14/2019
	Bureau of Safety and Environmental Enforcement.	Senior Advisor—Bureau of Environmental Enforcement.	DI190037	03/25/2019
	National Park Service	Special Assistant	DI190043	03/25/2019
		Assistant Director for Congressional Relations.	DI190035	04/16/2019
	Office of Congressional and Legislative Affairs.	Special Assistant—Congressional and Legislative Affairs.	DI190048	04/23/2019
		Senior Advisor	DI180105	09/26/2018
	Office of Surface Mining	Senior Advisor	DI190060	06/05/2019
	Office of the Solicitor	Counselor	DI190009	12/17/2018
	Secretary's Immediate Office	Advance Representative	DI180106	09/26/2018
		Advisor	DI190039	03/25/2019
		Assistant	DI180112	11/19/2018
		Deputy Director Intergovernmental and External Affairs.	DI190046	03/26/2019
		Deputy Director, Communications	DI190029	03/26/2019
		Deputy Press Secretary	DI190045	05/02/2019
		Deputy White House Liaison	DI190072	06/18/2019
		Press Secretary	DI180110	11/19/2018
		Press Secretary and Senior Advisor.	DI190022	03/11/2019
		Principal Deputy Director Intergovernmental and External Affairs.	DI190044	03/26/2019
		Senior Advisor	DI180072	07/19/2018
		Special Assistant (2)	DI190040	03/25/2019
			DI180104	09/26/2018
		Writer	DI190071	06/19/2019
	Office of the United States Fish and Wildlife Service.	Advisor	DI180080	09/20/2018
DEPARTMENT OF JUSTICE	Office of Antitrust Division	Chief of Staff and Senior Counsel	DJ190007	01/30/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Civil Division	Senior Counsel (2)	DJ190044	03/26/2019
			DJ190055	04/11/2019
	Office of Civil Rights Division	Senior Counsel	DJ190204	04/03/2019
		Chief of Staff and Counsel	DJ190041	04/11/2019
		Special Assistant	DJ190084	06/18/2019
		Counsel	DJ180108	08/17/2018
	Department of Justice	Chief of Staff and Counsel	DJ190080	04/24/2019
	Executive Office for United States Attorneys.	Secretary (5)	DJ190016	02/27/2019
			DJ190010	03/01/2019
			DJ190012	03/01/2019
			DJ190011	03/04/2019
			DJ190082	04/17/2019
	Office of Justice Programs	Policy Advisor	DJ190063	05/03/2019
		Senior Advisor	DJ180136	11/15/2018
	Office of Legal Policy	Attorney Advisor	DJ190057	04/26/2019
		Confidential Assistant	DJ180153	11/26/2018
		Counsel (3)	DJ190029	02/11/2019
			DJ190090	06/13/2019
			DJ180111	07/16/2018
		Intergovernmental Liaison Specialist.	DJ180113	08/02/2018
		Legislative Advisor	DJ190048	04/11/2019
		Senior Counsel (3)	DJ190081	05/22/2019
			DJ180106	07/10/2018
			DJ190046	03/20/2019
	Office of Public Affairs	Chief Speechwriter	DJ180112	07/11/2018
		Chief Speechwriter and Media Affairs Specialist.	DJ190024	12/11/2018
		Deputy Speechwriter and Media Affairs Specialist.	DJ180110	07/16/2018
		Lead Media Affairs Coordinator	DJ180148	11/05/2018
		Media Affairs Coordinator	DJ180135	09/14/2018
		Media Affairs Specialist	DJ190026	02/13/2019
		Press Assistant (2)	DJ180128	09/20/2018
			DJ180150	10/22/2018
		Principal Deputy Director	DJ180151	09/28/2018
		Public Affairs Specialist	DJ190034	03/14/2019
	Office of the Associate Attorney General.	Senior Counsel	DJ180139	10/17/2018
	Office of the Attorney General	Special Assistant	DJ190066	03/26/2019
		Director of Advance	DJ180104	07/02/2018
		Confidential Assistant	DJ180114	07/13/2018
	Office on Violence Against Women	Deputy Director for Policy	DJ200016	06/07/2019
		Special Assistant	DJ180082	07/02/2018
DEPARTMENT OF LABOR	Bureau of International Labor Affairs.	Chief of Staff	DL190007	01/25/2019
		Policy Advisor	DL180127	12/21/2018
	Office of Employee Benefits Security Administration.	Chief of Staff	DL190021	02/12/2019
		Deputy Chief of Staff	DL190110	06/25/2019
		Policy Advisor	DL190030	01/25/2019
		Senior Counsel	DL190104	06/25/2019
		Senior Policy Advisor (3)	DL190025	01/25/2019
			DL190046	03/29/2019
			DL190074	06/05/2019
		Special Assistant (2)	DL190064	05/15/2019
			DL190063	05/06/2019
		Special Assistant (Events and Operations).	DL190062	05/02/2019
	Office of Mine Safety and Health Administration.	Senior Policy Advisor	DL190082	06/10/2019
	Occupational Safety and Health Administration.	Chief of Staff	DL190018	01/25/2019
	Office of Congressional and Intergovernmental Affairs.	Case Officer (2)	DL190065	05/03/2019
			DL190094	06/10/2019
		Intergovernmental Officer	DL190096	06/19/2019
		Legislative Officer	DL190083	06/18/2019
		Senior Legislative Officer (3)	DL190027	01/25/2019
			DL190032	01/25/2019
			DL190026	02/06/2019
	Office of Disability Employment Policy.	Chief of Staff	DL190023	01/17/2019
		Special Assistant	DL190034	01/17/2019
	Office of Federal Contract Compliance Programs.	Deputy Director, Office of Federal Contract Compliance Programs.	DL180114	07/19/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Labor-Management Standards.	Special Assistant	DL190054	05/02/2019
	Office of Public Affairs	Chief of Staff	DL190069	05/23/2019
		Deputy Communications Director	DL180108	07/11/2018
		Deputy Director, Office of Public Liaison.	DL190029	01/25/2019
		Press Assistant	DL190056	05/02/2019
		Senior Advisor	DL180115	08/09/2018
		Special Assistant	DL180123	08/23/2018
		Speechwriter	DL190004	10/29/2018
	Office of the Assistant Secretary for Policy.	Chief of Staff and Senior Counsel	DL180120	08/02/2018
		Counsel and Policy Advisor (2)	DL190017	02/13/2019
			DL180126	08/30/2018
		Policy Advisor	DL190047	04/09/2019
		Senior Counsel and Policy Advisor	DL190118	06/25/2019
		Senior Counsel and Policy Advisor	DL180130	10/04/2018
		Senior Policy Advisor	DL190044	03/18/2019
		Special Assistant	DL190058	04/24/2019
	Office of the Chief Financial Officer	Chief of Staff	DL190048	03/26/2019
	Office of the Deputy Secretary	Director of Operations	DL190059	05/14/2019
		Senior Counselor	DL190037	05/22/2019
		Special Assistant and Policy Advisor.	DL190117	06/25/2019
	Office of the Secretary	Advance Lead	DL190045	03/13/2019
		Advance Representative	DL190057	05/14/2019
		Deputy Chief of Staff	DL190070	05/20/2019
		Director of Scheduling and Operations.	DL190060	05/14/2019
		Senior Advisor	DL190040	03/25/2019
		Special Assistant	DL190119	06/28/2019
		Special Assistant and Policy Advisor.	DL190113	06/25/2019
	Office of the Solicitor	Counsel (3)	DL190052	04/12/2019
			DL180122	08/28/2018
			DL190001	10/29/2018
	Office of Workers Compensation Programs.	Chief of Staff (2)	DL190014	02/06/2019
			DL190076	06/06/2019
	Office of Wage and Hour Division	Chief of Staff	DL180075	07/11/2018
		Policy Advisor	DL180110	07/11/2018
		Senior Policy Advisor (4)	DL190031	01/25/2019
			DL190020	01/28/2019
			DL190075	06/07/2019
			DL190095	06/13/2019
	Office of Women's Bureau	Deputy Director Women's Bureau	DL190011	01/29/2019
MERIT SYSTEMS PROTECTION BOARD.	Office of the General Counsel	Confidential Assistant	MP190004	02/28/2019
		Special Assistant	MP190005	02/28/2019
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Speechwriter	NN190032	06/05/2019
		Deputy Press Secretary	NN180042	08/27/2018
	Office of Legislative and Intergovernmental Affairs.	Supervisory Legislative Affairs Specialist.	NN180031	09/12/2018
		Legislative Affairs Specialist	NN190002	11/15/2018
	Office of the Administrator	Video Production Advisor	NN190021	04/15/2019
	Office of the Deputy Administrator	Special Assistant	NN190015	02/06/2019
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Confidential Assistant	NA190008	06/13/2019
		Director of Congressional Affairs	NA190010	06/20/2019
		Director of Federal Affairs	NA180004	07/30/2018
NATIONAL ENDOWMENT FOR THE HUMANITIES.	National Endowment for the Humanities.	Executive Assistant	NH190002	03/11/2019
		Staff Assistant	NH190001	10/12/2018
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Public Affairs Officer (Director Congressional and Public Affairs Officer).	NL190010	08/17/2018
		Public Affairs Officer (Director Congressional and Public Affairs Officer).	NL180010	09/05/2018
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Confidential Assistant (2)	TB180003	09/10/2018
			TB180006	10/16/2018
		Special Assistant (2)	TB190001	02/12/2019
			TB180004	09/10/2018
OFFICE OF MANAGEMENT AND BUDGET.	Office of Communications	Press Assistant	BO190026	06/13/2019
		Press Secretary (3)	BO190011	03/22/2019
			BO190032	06/19/2019
			BO190031	06/27/2019
	Office of the General Counsel	Deputy for Oversight	BO190005	01/15/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Associate General Counsel	BO190028	06/27/2019
	Office of General Government Programs.	Confidential Assistant (2)	BO190024	05/30/2019
			BO180038	09/13/2018
	Office of Health Division	Confidential Assistant	BO190014	04/25/2019
	Office of Legislative Affairs	Deputy for Legislative Affairs (Appropriations).	BO190025	06/13/2019
		Deputy for Legislative Affairs (Senate).	BO190002	11/28/2018
	Office of Natural Resource Programs.	Confidential Assistant	BO190004	12/17/2018
	Office of E-Government and Information Technology.	Confidential Assistant	BO180033	07/09/2018
	Office of Information and Regulatory Affairs.	Confidential Assistant	BO180034	08/09/2018
	Office of the Director	Confidential Assistant	BO180036	08/09/2018
		Deputy Chief of Staff	BO190021	05/10/2019
		Deputy Chief of Staff and Associate Director for Intergovernmental Affairs.	BO180037	08/23/2018
		Special Assistant (2)	BO190010	03/22/2019
			BO180035	08/22/2018
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Legislative Affairs	Legislative Analyst	QQ190008	03/14/2019
	Office of Public Affairs	Public Affairs Specialist (Speechwriter).	QQ190002	10/22/2018
		Public Affairs Specialist (Press Secretary).	QQ190001	10/25/2018
	Office of the Director	Policy Assistant	QQ180007	08/07/2018
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Congressional, Legislative, and Intergovernmental Affairs.	Congressional Relations Officer	PM190011	04/04/2019
		Legislative Analyst (3)	PM190016	04/04/2019
			PM190025	04/17/2019
			PM190040	06/30/2019
	Office of Communications	Assistant Director of Communications for Policy and Operations.	PM190022	03/27/2019
		Deputy Director, Office of Communications.	PM180051	08/17/2018
		Press Officer	PM180063	08/28/2018
		Special Assistant for Advance	PM180053	07/19/2018
		Speech Writer (2)	PM180061	08/17/2018
			PM180060	09/26/2018
	Office of the Director	Confidential Assistant (3)	PM190036	05/30/2019
			PM180046	07/31/2018
			PM180052	08/30/2018
		Special Assistant (2)	PM180041	07/17/2018
			PM190005	11/19/2018
		Strategic Analyst	PM180049	08/09/2018
		White House Liaison	PM190039	03/28/2019
	Office of the General Counsel	Attorney-Advisor (General)	PM190037	06/20/2019
		Assistant General Counsel	PM180047	07/23/2018
	President's Commission on White House Fellowships.	Associate Director	PM190023	04/23/2019
		Confidential Assistant	PM190038	08/09/2018
		Deputy Director, President's Commission on White House Fellowships.	PM190020	08/16/2018
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of Congressional Affairs	Director of Congressional Affairs	TN190002	02/22/2019
	Office of the Intergovernmental Affairs and Public Liaison.	Deputy Assistant for Intergovernmental Affairs and Public Liaison.	TN190003	04/05/2019
	Office of the Ambassador	Executive Secretary and Policy Coordinator.	TN180002	08/07/2018
PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS (TERM 3—2019).	President's Commission on White House Fellowships.	Principal Deputy Director	WH180005	08/16/2018
		Deputy Director, President's Commission on White House Fellowships.	WH180006	08/16/2018
SECURITIES AND EXCHANGE COMMISSION.	Office of Public Affairs	Deputy Director, Office of Public Affairs.	SE190007	06/24/2019
	Office of the Chairman	Confidential Assistant (2)	SE190002	01/28/2019
			SE190005	06/13/2019
		Senior Policy Adviser, Regulatory Reporting.	SE190001	12/11/2018
		Writer-Editor	SE190004	04/16/2019
SMALL BUSINESS ADMINISTRATION.	Office of Administration	Assistant	SB190001	10/22/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Capital Access	Special Assistant	SB190025	06/26/2019
		Special Advisor	SB180031	07/11/2018
	Office of Communications and Public Liaison.	Deputy Associate Administrator	SB180033	07/03/2018
		Deputy Press Secretary	SB190013	05/02/2019
		Digital Director	SB190009	02/13/2019
		Director of Strategic Communications.	SB190002	10/22/2018
	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator	SB180043	08/07/2018
		Senior Advisor	SB180036	08/23/2018
		Legislative Assistant	SB180044	08/23/2018
	Office of Entrepreneurial Development.	Special Advisor for Entrepreneurial Development.	SB180045	08/29/2018
	Office of Faith-Based and Community Initiatives.	Director of Faith Based and Community Initiatives.	SB180047	10/04/2018
	Office of Field Operations	Regional Administrator, Region VI	SB180046	10/29/2018
	Office of Investment and Innovation.	Senior Advisor	SB180037	08/23/2018
	Office of Native American Affairs	Assistant Administrator for Native American Affairs.	SB180042	08/30/2018
	Office of the Administrator	Director of Scheduling	SB190006	02/06/2019
		Scheduler	SB180041	08/09/2018
		White House Liaison	SB180038	09/26/2018
DEPARTMENT OF STATE	Bureau of African Affairs	Special Assistant	DS190003	10/29/2018
	Bureau of Arms Control, Verification, and Compliance.	Senior Advisor	DS180060	07/19/2018
	Bureau of Consular Affairs	Senior Advisor	DS190043	03/25/2019
	Bureau of Economic and Business Affairs.	Senior Advisor	DS190025	02/06/2019
		Special Assistant (2)	DS190039	02/27/2019
			DS180056	07/06/2018
		Special Representative	DS190099	05/20/2019
	Bureau of Education and Cultural Affairs.	Special Advisor	DS190030	02/04/2019
		Deputy Assistant Secretary	DS180073	08/16/2018
		Special Assistant	DS180071	08/17/2018
		Communications Director	DS190007	10/29/2018
	Bureau of Energy Resources	Senior Advisor	DS190046	03/25/2019
	Bureau of European and Eurasian Affairs.	Special Assistant	DS180067	08/02/2018
	Bureau of International Security and Nonproliferation.	Senior Advisor	DS190004	03/26/2019
	Bureau of Legislative Affairs	Deputy Assistant Secretary	DS190022	01/29/2019
		Deputy Assistant Secretary for House Affairs.	DS190049	04/10/2019
		Legislative Management Officer	DS190100	05/22/2019
		Special Assistant (3)	DS180064	08/08/2018
			DS180070	08/08/2018
			DS190009	11/21/2018
	Bureau of Near Eastern Affairs	Senior Advisor	DS190102	05/23/2019
	Bureau of Overseas Buildings Operations.	Senior Advisor	DS190071	04/11/2019
	Bureau of Political and Military Affairs.	Special Assistant	DS180065	08/02/2018
	Bureau of Public Affairs	Press Secretary	DS190033	02/13/2019
		Senior Advisor (5)	DS190016	02/14/2019
			DS190060	03/28/2019
			DS190026	04/30/2019
			DS190090	05/06/2019
			DS190017	05/30/2019
	Bureau of Western Hemisphere Affairs.	Deputy Assistant Secretary	DS190021	01/29/2019
		Senior Advisor (2)	DS190023	01/29/2019
			DS180053	07/02/2018
	Office of Policy Planning	Special Assistant (4)	DS190051	03/13/2019
			DS190045	04/09/2019
			DS190048	04/12/2019
			DS190056	04/17/2019
		Senior Advisor (2)	DS190047	04/29/2019
			DS180062	07/13/2018
		Writer-Editor (Speechwriter)(2)	DS180072	08/09/2018
			DS190001	10/22/2018
		Staff Assistant	DS190015	12/17/2018
	Office of the Chief of Protocol	Assistant Chief of Protocol (Visits)	DS190082	05/02/2019
		Protocol Officer (2)	DS190028	02/11/2019
			DS190062	04/12/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Protocol Officer (Gifts)(2)	DS190110	06/25/2019
			DS180090	09/27/2018
		Senior Protocol Officer (2)	DS190088	05/06/2019
			DS180088	09/26/2018
	Office of the Counselor	Senior Advisor	DS180063	08/02/2018
		Special Assistant	DS180076	08/23/2018
		Staff Assistant (3)	DS190092	05/20/2019
			DS180074	08/23/2018
			DS190010	11/26/2018
	Office of the Legal Adviser	Senior Advisor	DS190101	05/23/2019
	Office of the Secretary	Deputy Special Envoy and Combat Anti-Semitism.	DS190083	05/07/2019
		Senior Advisor	DS190038	03/15/2019
		Special Advisor	DS190040	03/25/2019
		Special Assistant	DS190055	03/25/2019
		Staff Assistant	DS180086	09/21/2018
		Staff Assistant (Scheduler)	DS190005	10/29/2018
		Writer-Editor (Chief Speechwriter)	DS180087	09/26/2018
	Office of the United States Global Aids Coordinator.	Senior Advisor for Strategy	DS190098	05/17/2019
	Office of the Under Secretary for Arms Control and International Security Affairs.	Senior Advisor	DS180079	08/28/2018
		Special Assistant	DS180085	09/26/2018
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Senior Advisor	DS190020	03/25/2019
		Special Assistant	DS180055	07/06/2018
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Advisor	DS190065	06/05/2019
	Office of the Under Secretary for Management.	Deputy White House Liaison (2)	DS190089	04/25/2019
			DS180081	08/30/2018
		Staff Assistant (2)	DS190084	05/02/2019
			DS180075	08/23/2018
TRADE AND DEVELOPMENT AGENCY.	Office of the Director	Senior Advisor for Communications	TD190002	04/12/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Administrator	Director of Communications (3)	DT190061	03/26/2019
			DT190057	04/12/2019
			DT190003	10/12/2018
		Director of Governmental Affairs (2).	DT190062	03/25/2019
			DT190090	06/18/2019
		Director of Governmental and Congressional Affairs.	DT190044	03/15/2019
		Director of Public Affairs	DT190047	03/19/2019
		Governmental Affairs Officer	DT190099	06/28/2019
		Senior Advisor for Policy and Infrastructure.	DT190036	03/19/2019
		Special Assistant for Governmental Affairs.	DT190051	03/18/2019
		Special Assistant for Policy, Governmental and Public Affairs (2).	DT190093	06/13/2019
			DT190094	06/14/2019
	Office of the Assistant Secretary for Budget and Programs.	Special Assistant for Budget and Programs.	DT190043	02/28/2019
	Office of the Assistant Secretary for Governmental Affairs.	Governmental Affairs Officer (3)	DT190026	03/19/2019
			DT190046	03/19/2019
			DT180089	09/27/2018
		Senior Advisor	DT180062	07/11/2018
		Senior Governmental Affairs Officer (4).	DT190021	01/25/2019
			DT190033	02/01/2019
			DT180083	09/27/2018
			DT180082	12/11/2018
	Office of the Assistant Secretary for Research and Technology.	Senior Advisor	DT190083	05/23/2019
		Senior Advisor for Economic Policy	DT190072	05/03/2019
		Senior Advisor for Research and Technology.	DT190068	05/10/2019
		Special Assistant	DT180065	07/11/2018
		Special Assistant for Research and Technology.	DT190105	06/28/2019
	Office of the Assistant Secretary for Transportation Policy.	Special Assistant for Public Engagement.	DT190037	02/27/2019
		Public Liaison Officer	DT190084	05/10/2019
		Director of Public Engagement	DT190005	12/13/2018
	Chief Information Officer	Special Assistant	DT190080	05/07/2019
	Office of Civil Rights	Senior Advisor	DT180064	07/11/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Executive Secretariat	Special Assistant	DT190054	03/27/2019
		Deputy Director	DT180070	08/15/2018
	Immediate Office of the Administrator.	Special Assistant	DT190048	03/19/2019
	Office of Government and Industry	Special Assistant for Governmental Affairs.	DT190069	05/14/2019
	Office of the Deputy Secretary	Special Assistant for Scheduling and Advance.	DT180078	08/23/2018
	Office of the Secretary	Senior Advisor (2)	DT190078	05/06/2019
			DT190007	12/17/2018
	Office of Pipeline and Hazardous Materials Safety Administration.	Director and Senior Advisor	DT190082	05/06/2019
	Office of Public Affairs	Deputy Press Secretary (3)	DT190073	05/06/2019
			DT190079	05/06/2019
			DT180071	08/23/2018
		Digital Media Manager	DT190107	06/28/2019
		Media Affairs Coordinator	DT190081	04/25/2019
		Press Secretary	DT180057	07/03/2018
		Special Assistant for Media Strategy.	DT180093	10/03/2018
		Speechwriter	DT180031	08/20/2018
	Office of the Secretary	Advisor	DT190064	03/29/2019
		Deputy Director for Scheduling and Advance.	DT180074	08/02/2018
		Deputy Director for Scheduling and Operations.	DT190045	03/04/2019
		Director for Scheduling and Advance.	DT190101	06/28/2019
		Senior Advisor for Advance	DT190053	03/13/2019
		Special Assistant	DT190089	06/18/2019
		Special Assistant for Advance (2)	DT190024	01/29/2019
			DT190098	06/28/2019
		Special Assistant for Scheduling	DT190067	04/12/2019
		Special Assistant for Scheduling and Advance.	DT190025	02/27/2019
		Special Assistant for Strategic Initiatives.	DT190009	12/13/2018
	Office of Small and Disadvantaged Business Utilization.	Public Liaison Officer	DT190004	10/31/2018
	Office of the Under Secretary of Transportation for Policy.	Senior Policy Advisor	DT190104	06/20/2019
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Economic Policy).	Special Assistant	DY190062	05/15/2019
	Office of the Assistant Secretary (Legislative Affairs).	Senior Advisor	DY190056	04/24/2019
		Special Assistant for Legislative Affairs (2).	DY180096	07/31/2018
			DY180105	08/23/2018
	Office of the Assistant Secretary (Public Affairs).	Director, Public Affairs	DY190082	06/25/2019
		Public Affairs Coordinator	DY190008	11/09/2018
		Public Affairs Specialist	DY190077	06/13/2019
		Senior Advisor and Speechwriter	DY180128	10/03/2018
		Special Assistant	DY190073	06/06/2019
		Special Assistant for Public Affairs (2).	DY190045	04/05/2019
			DY190053	04/23/2019
	Office of the Assistant Secretary for Terrorist Financing.	Senior Counselor	DY190050	04/11/2019
	Secretary of the Treasury	Advance Representative	DY200009	04/25/2019
		Assistant Director for Scheduling and Advance.	DY180117	09/06/2018
		Deputy Chief of Staff (4)	DY190047	04/08/2019
			DY190048	04/08/2019
			DY190067	05/14/2019
			DY190068	05/14/2019
		Director, Scheduling and Advance	DY190085	06/25/2019
		Special Assistant (11)	DY190023	01/29/2019
			DY190041	03/26/2019
			DY200008	04/25/2019
			DY190065	05/15/2019
			DY190066	05/15/2019
			DY190055	05/22/2019
			DY180111	08/30/2018
			DY180118	09/13/2018
			DY180123	09/21/2018
			DY180122	09/28/2018

Agency name	Organization name	Position title	Authorization No.	Effective date
			DY190010	11/09/2018
		Special Assistant and Media Affairs Coordinator.	DY180094	07/11/2018
		White House Liaison	DY180121	09/21/2018
	Office of the Under Secretary for International Affairs.	Special Assistant for International Affairs (2).	DY190072	05/30/2019
			DY180107	08/28/2018
		Special Advisor	DY180126	09/27/2018
	Office of the Under Secretary for Terrorism and Financial Intelligence.	Special Assistant	DY190061	05/14/2019
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of Commissioner Kearns	Staff Assistant	TC190002	05/03/2019
	Office of the Chairman	Confidential Assistant	TC190004	06/10/2019
DEPARTMENT OF VETERANS AFFAIRS.	Board of Veterans' Appeals	Attorney Advisor (2)	DV190059	05/06/2019
			DV180070	09/26/2018
	Office of Intergovernmental Affairs	Director State and Local Government Relations.	DV180059	08/24/2018
	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant	DV180069	10/22/2018
	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Speechwriter	DV190035	03/05/2019
		Special Assistant/Deputy Press Secretary.	DV180065	09/20/2018
	Office of the General Counsel	Counselor (Healthcare)	DV190032	02/01/2019
	Office of the Secretary and Deputy	Director, Office of Support and Mission Operations.	DV190009	10/31/2018
		Senior Advisor for Strategic Communications.	DV180050	08/24/2018
		Special Assistant	DV190014	12/11/2018
		White House Liaison (2)	DV190033	02/14/2019
			DV190013	12/11/2018

Authority: 5 U.S.C. 3301 and 3302; E.O.10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–04274 Filed 3–5–20; 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 882 and 895

Banned Devices; Electrical Stimulation Devices for Self-Injurious or Aggressive Behavior; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 882 and 895

[Docket No. FDA–2016–N–1111]

Banned Devices; Electrical Stimulation Devices for Self-Injurious or Aggressive Behavior

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is finalizing a ban on electrical stimulation devices (ESDs) for self-injurious or aggressive behavior. FDA has determined that these devices present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling. This ban includes both new devices and devices already in distribution and use; however, this ban provides transition time for those individuals currently subject to ESDs for the identified intended use to transition off ESDs under the supervision of a physician.

DATES: This rule is effective April 6, 2020. However, compliance for devices currently in use and subject to a physician-directed transition plan is required on September 2, 2020. Compliance for all other devices is required on April 6, 2020.

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 final rule 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: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring MD 20993–0002, 301–796–6527, *rebecca.nipper@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Final Rule

FDA is banning ESDs for self-injurious behavior (SIB) or aggressive behavior (AB). ESDs are aversive conditioning devices that apply a noxious electrical stimulus (a shock) to a person's skin to reduce or cease such behaviors. SIB and AB frequently manifest in the same individual, and people with intellectual or developmental disabilities exhibit these behaviors at disproportionately high rates. Notably, many such people have difficulty communicating and cannot make their own treatment decisions because of such disabilities, meaning many people who exhibit SIB or AB are part of a vulnerable population. SIB commonly includes head-banging, hand-biting, excessive scratching, and picking of the skin. However, SIB can be more extreme and result in: (1) Bleeding; (2) broken, even protruding bones; (3) blindness from eye-gouging or poking; (4) other permanent tissue damage; or (5) injuries from swallowing dangerous objects or substances. AB involves repeated physical assaults and can be a danger to the individual, others, or property. In this rule, like much of the scientific literature, we discuss SIB and AB in tandem and use the phrase ''SIB or AB'' to refer to SIB or AB or both.

Although the available data and information show that some individuals subject to ESDs exhibit an immediate interruption of the targeted behavior, the available evidence has not established a durable long-term conditioning effect or an overall-favorable benefit-risk profile for the devices. The medical literature shows that ESDs present risks of a number of psychological harms including depression, posttraumatic stress disorder (PTSD), anxiety, fear, panic, substitution of other negative behaviors, worsening of underlying symptoms, and learned helplessness (becoming unable or unwilling to respond in any way to the ESD); and the devices present the physical risks of pain, skin burns, and tissue damage.

Because the medical literature likely underreports adverse events (AEs), risks identified through other sources, such as from experts in the field, State agencies that regulate ESD use, and records from the only facility that has recently manufactured and is currently using ESDs for SIB or AB, demand closer consideration. As discussed in the proposed rule, these sources further support the risks reported in the literature and indicate that ESDs pose additional risks such as suicidality, chronic stress, acute stress disorder, neuropathy, withdrawal, nightmares, flashbacks of panic and rage, hypervigilance, insensitivity to fatigue or pain, changes in sleep patterns, loss of interest, difficulty concentrating, and injuries from falling. State-of-the-art treatments for SIB and AB further demonstrate that the risks of ESDs for SIB or AB are unreasonable.

The ESDs subject to this ban are aversive conditioning devices intended to reduce or cease SIB or AB. Aversive conditioning pairs a noxious stimulus, such as a noxious electric shock delivered to an individual's skin by an ESD, with a target behavior such that the individual begins to associate the noxious stimulus with the behavior. The intended result is that the individual ceases engaging in the behavior and, over time, becomes conditioned not to manifest the target behavior. Some ESDs are intended for other purposes, such as smoking cessation; however, the ban includes only those devices intended to reduce or eliminate SIB or AB. ESDs are not used in electroconvulsive therapy, sometimes called electroshock therapy or ECT, which is unrelated to this rulemaking.

The effects of the shock are both psychological (including suffering) and physical (including pain), each having a complex relationship with the electrical parameters of the shock. As a result, the subjective experience of the person receiving the shock can be difficult to predict. Physical reactions roughly correlate with the peak current of the shock delivered by the ESD. However, various other factors such as sweat, electrode placement, recent history of shocks, and body chemistry can physically affect the sensation. As a result, the intensity or pain of a particular set of shock parameters can vary from person to person and from

shock to shock. Possible adverse psychological reactions are even more loosely correlated with shock intensity. The shock need only be subjectively stressful enough to cause trauma or suffering. Trauma becomes more likely, for example, when the recipient does not have control over the shock or has developed a fear of future shocks, neither of which is an electrical parameter of the shock.

In light of scientific advances, out of concern for ethical treatment, and in an attempt to create generalizable interventions that work in community settings, behavioral scientists have developed safer, successful treatments for SIB and AB. The development of the functional behavioral assessment, a formalized tool to analyze and determine triggering conditions, has allowed providers to formulate and implement plans based on positive behavioral techniques. As a result, multielement positive interventions (*e.g.,* paradigms such as positive behavior support or dialectical behavioral therapy) have become state-of-the-art treatments for SIB and AB. Such interventions achieve success through environmental modification and an emphasis on teaching appropriate skills. Behavioral intervention providers may also recommend pharmacotherapy (the use of medications) as an adjunctive or supplemental method of treatment. Positive-only approaches have low risk and are generally successful even for challenging SIB and AB, in both clinical and community settings. The scientific community has recognized that addressing the underlying causes of SIB or AB, rather than suppressing it with painful shocks, not only avoids the risks posed by ESDs, but can achieve durable, long-term benefits.

Based on all available data and information, FDA has determined that the risk of illness or injury posed by ESDs for SIB or AB is substantial and unreasonable and that labeling or a change in labeling cannot correct or eliminate the unreasonable and substantial risk of illness or injury.

B. Summary of the Major Provisions of the Final Rule

This ban only includes aversive conditioning devices that apply a noxious electrical stimulus to a person's skin to reduce or cease aggressive or self-injurious behavior. The ban applies to devices already in commercial distribution and devices already sold to the ultimate (end) user, as well as devices to be sold or commercially distributed in the future. A banned device is an adulterated device, subject to enforcement action. The ban does not, however, prevent further study of such devices pursuant to an investigational device exemption, if the requirements for such are met.

C. Legal Authority

An ESD used for SIB or AB is a ''device'' as defined by the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act authorizes FDA to ban a device intended for human use by regulation if we find, on the basis of all available data and information, that such a device presents substantial deception or an unreasonable and substantial risk of illness or injury, which cannot be corrected by labeling or a change in labeling. A banned device is adulterated except to the extent it is being studied pursuant to an investigational device exemption. This final rule is also issued under the authority to issue regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

Under this final rule we are banning ESDs for SIB or AB. Because we lack sufficient information to quantify the benefits, we include a qualitative description of some potential benefits of the final rule. We expect that the rule will affect only one entity. In addition to the incremental costs this entity will incur to comply with the requirements of the final rule, the ban may create potential transfer payments of between $14 million and $15 million annually, either within the affected entity or between entities. The present value of total costs over 10 years ranges from $0 million to $44 million, with a primary estimate of $22 million at a three percent discount rate, and ranges from $0 million to $38 million, with a primary estimate of $18.8 million at a seven percent discount rate. Annualized costs range from $0 million to $5.0 million, with a primary estimate of $2.5 million at a three percent discount rate, and range from $0 million to $5.0 million, with a primary estimate of $2.5 million at a seven percent discount rate.

II. Table of Abbreviations and Acronyms

Abbreviation or acronym	What it means
AB	Aggressive behavior.
ABA	Applied behavior analysis.
ABC–I	Aberrant Behavior Checklist—Irritability (scale).
ADHD	Attention deficit hyperactivity disorder.
AE	Adverse event.
APA	American Psychiatric Association.
ASD	Autism spectrum disorder.
DBT	Dialectical behavioral therapy.
DDS	(Massachusetts) Department of Developmental Services.
DEEC	(Massachusetts) Department of Early Education and Care.
DMDD	Disruptive mood dysregulation disorder.
DPPC	(Massachusetts) Disabled Persons Protection Committee.
DSM	Diagnostic and Statistical Manual of Mental Disorders.
EA	Environmental assessment.
ESD	Electrical stimulation device.
FAS	Fetal alcohol syndrome.
FBA	Functional behavioral assessment.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FONSI	Finding of no significant impact.
GED	Graduated Electronic Decelerator.
ICD	Implantable cardioverter defibrillator.
JRC	Judge Rotenberg Educational Center, Inc.
MDD	Major depressive disorder.
NASDDDS	National Association of State Directors of Developmental Disability Services.
NDD	Neurodevelopmental disorder.
NYSED	New York State Education Department.

Abbreviation or acronym	What it means
PBS	Positive behavioral support.
PKU	Phenylketonuria.
PTSD	Post traumatic stress disorder.
SIB	Self-injurious behavior.
SIBIS	Self-Injurious Behavior Inhibiting System.
SNRI	Serotonin-norepinephrine reuptake inhibitor.
SSRI	Selective serotonin reuptake inhibitor.

III. Background and Determination

On April 25, 2016, FDA published a proposed rule to ban ESDs used to treat SIB or AB and requested comments on the proposal (81 FR 24386).[1] As explained in the proposed rule, ESDs for SIB or AB are aversive conditioning devices that apply a noxious electrical stimulus (a shock) to a person's skin to reduce or cease such behaviors. Although FDA cleared a few of these devices more than 20 years ago, due to scientific advances and ethical concerns tied to the risks of ESDs, state-of-the-art medical practice has evolved away from their use and toward various positive behavioral treatments, sometimes combined with pharmacological treatments. Only one facility in the United States has manufactured these devices or used them on individuals in recent years. As a result of this evolution in treatment over the past several decades, the available data and information on the risks and benefits of ESDs are limited.

A. Public Participation, Clarifications, and Key Changes

FDA convened a meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee (''the Panel'') on April 24, 2014 (''the Panel Meeting''), in an open public forum, to discuss issues related to FDA's consideration of a ban on ESDs for SIB or AB (see 79 FR 17155, March 27, 2014 [2]; Ref. 1). FDA is not required to hold a panel meeting before banning a device, but FDA decided to do so in the interest of gathering as much data and information as possible, from experts in relevant medical fields as well as all interested stakeholders, and in the interest of obtaining independent expert advice on the scientific and clinical matters at issue. In considering whether to ban ESDs, FDA also conducted an extensive, systematic literature review to assess the benefits and risks associated with ESDs as well as alternative treatments for patients exhibiting SIB and AB.

FDA invited interested parties to comment on the proposed rule by May 25, 2016. However, we received a request to extend the comment period and, in the **Federal Register** of May 23, 2016, we announced a 60-day extension, ending July 25, 2016 (81 FR 32258).[3] In addition to requesting comments on the proposal generally, we specifically sought comments on the determinations that the risk of illness or injury posed by ESDs for SIB or AB is unreasonable and substantial, and that labeling or a change in labeling cannot correct or eliminate the unreasonable and substantial risk of illness or injury. We also sought comments on other issues related to the proposal to ban these devices.

FDA received more than 1,500 comments from several types of stakeholders. We received hundreds of comments from parents of individuals with intellectual and developmental disabilities. We received comments from several people who have themselves manifested SIB and AB in their lifetimes. We received submissions from dozens of State agencies and their sister public-private organizations. We received comments from the affected manufacturer and residential facility, some of its employees, and parents of individual residents. State and Federal legislators also expressed interest, as did State and national advocacy groups.

For this rulemaking, we also associated the Panel Meeting docket with this action (Docket No. FDA–2014–N–0238) and considered the approximately 300 comments submitted to the Panel Meeting docket. The types of stakeholders and the concerns they raised were similar to the comments on the proposed rule, in which we discussed many of the Panel Meeting comments in detail.

The overwhelming majority of comments supported this ban. The comments in opposition to this ban were primarily from the Judge Rotenberg Center (JRC) and people affiliated with JRC; this includes comments made during the Panel Meeting and through submission of comments to the Panel Meeting docket. Specifically, these comments were from three former JRC residents, family members of individuals on whom ESDs have been used at JRC (one of the parents association comments included 32 letters from family members), a former JRC clinician, a Massachusetts State Representative, and one concerned citizen.

In its comments on the proposed rule, JRC included the hearing transcripts and exhibits from a recent Massachusetts court proceeding that considered the use of ESDs, in particular the Judge Rotenberg Center's (JRC's) graduated electronic decelerator (GED) devices. *See Judge Rotenberg Center, Inc., et al.,* v. *Comm'r of the Dep't of Developmental Servs., et al.,* Docket No. 86E–0018–GI (Bristol, Mass. Probate and Family Court, June 20, 2018) (Mass. Docket No 86E–0018–GI). Therefore, some expert testimony from these transcripts is discussed in this final rule to the extent the testimony is relevant to the risks or benefits of ESDs for SIB or AB, or to the state of the art of treatment for this patient population.[4] However, the issues in that State proceeding are different from the ones in FDA's ban proceeding, and the court's decision has no legal or scientific bearing on this ban.

The Bristol County (Massachusetts) Probate and Family Court considered whether a consent decree should be vacated based on significant changes in fact or law, in particular whether the professional consensus is that JRC's GED does not now conform to the accepted standard of care for treating individuals with intellectual and developmental disabilities. The court ultimately determined that no significant change in consensus warranted vacating the consent decree: ''the evidence at the hearing did not establish that there is a professional consensus with respect to whether Level III aversive treatment [use of ESDs]

[1] Available at *https://www.federalregister.gov/documents/2016/04/25/2016-09433/banned-devices-proposal-to-ban-electrical-stimulation-devices-used-to-treat-self-injurious-or.*

[2] Available at *https://www.federalregister.gov/documents/2014/03/27/2014-06766/neurological-devices-panel-of-the-medical-devices-advisory-committee-notice-of-meeting-request-for.*

[3] Available at *https://www.federalregister.gov/documents/2016/05/23/2016-12026/banned-devices-proposal-to-ban-electrical-stimulation-devices-used-to-treat-self-injurious-or.*

[4] Any references to hearing transcripts or hearing exhibits herein refer to transcripts and exhibits from Mass. Docket No. 86E–0018–GI.

conforms to the accepted standard of care.'' (Opinion at 48). The professional consensus regarding the accepted standard of care and such use of ESDs is not an issue in this ban. Rather, to ban a device under section 516 of the FD&C Act (21 U.S.C. 360f), FDA must determine the device presents an ''unreasonable and substantial risk of illness or injury.'' As explained in the proposed rule, in making this determination, FDA analyzes whether the risks the device poses to individuals are important, material, or significant in relation to its benefits to the public health, and FDA compares those risks and benefits to the risks and benefits posed by alternative treatments being used in current medical practice (81 FR 24386 at 24388).

Compared to the proposed rule, we have made minor changes to the codified text of the classification regulation to make clear that only ESDs, not other aversive devices for SIB or AB, are banned. We have also added text to the device type classification to make clear that this ban is not a special control. We reconsidered a few of the representations and attributions of data and information made in the proposed rule. Our explanation of these changes, as well as our explanation why the revisions did not affect our overall evaluation of the benefit-risk profile and our ultimate conclusion with respect to the substantial and unreasonable risk of illness or injury from ESDs used for SIB or AB, are in section V.C. in the corresponding comment responses.

B. FDA's Determination That ESDs for SIB or AB Present an Unreasonable and Substantial Risk of Illness or Injury

FDA considered all available data and information from a wide variety of sources, including the data and information submitted to the docket for the Panel Meeting and proposed rule: scientific literature, information and opinions from experts, information from State agencies that also regulate ESDs as well as their actions on ESDs, information from the affected manufacturer/residential facility, information from individuals subject to ESDs and their family members, and information from disability rights groups, other government entities, and other stakeholders. In weighing each piece of data and information, FDA took into account its quality, such as the level of scientific rigor supporting it, the objectivity of its source, its recency, and any limitations that might weaken its value. Thus, for example, we gave much more weight to the results of a study reported in a peer-reviewed journal by an objective author than we did to anecdotal evidence.

As discussed in detail in the comment responses in section V, although we found that certain risks had weaker support than we asserted in the proposed rule, other information submitted in comments provided greater support for other risks. We continue to find that the medical literature shows that ESDs present a number of psychological risks including depression, PTSD, anxiety, fear, panic, substitution of other negative behaviors, worsening of underlying symptoms, and learned helplessness; and the devices present the physical risks of pain, skin burns, and tissue damage. Because the medical literature suggests an underreporting of AEs, FDA carefully evaluated risks identified through other sources, such as from experts in the field, State agencies that regulate ESD use, and records from the only facility that is currently using ESDs for SIB or AB. As discussed in the proposed rule, these sources further support the risks reported in the literature and indicate that ESDs have been associated with additional risks such as suicidality, chronic stress, acute stress disorder, neuropathy, withdrawal, nightmares, flashbacks of panic and rage, hypervigilance, insensitivity to fatigue or pain, changes in sleep patterns, loss of interest, difficulty concentrating, and injuries from falling.

Although the available data and information show that some individuals subject to ESDs may exhibit an immediate interruption of the targeted behavior, the available evidence has not established a durable conditioning effect or an overall-favorable benefit-risk profile for ESDs for SIB or AB. No randomized, controlled clinical trials have been conducted, and the studies that have been conducted are very small and suffer from various limitations, including the use of concomitant treatments that make determining the cause of any behavioral changes difficult. The additional references cited in the comments on the proposed rule suffer from the same methodological and other limitations as those FDA considered previously, and the records and summaries JRC submitted regarding its residents constitute an even weaker source of evidence regarding the effectiveness of ESDs for SIB or AB.

State-of-the-art treatments for SIB and AB are positive-based behavioral approaches along with pharmacotherapy, as appropriate. The medical community now broadly recognizes that conducting careful functional assessments and addressing the underlying causes of SIB and AB rather than suppressing behaviors with shocks not only avoids the risks posed by ESDs, but can achieve durable, long-term benefits. As a result, research on the use of positive behavioral methods continues to grow; literature published since the proposed rule shows even greater success than described previously, as detailed in section V. Further, recent advancements in psychiatric research and clinical care have improved the understanding of psychiatric diagnosis and treatment, particularly in individuals with intellectual and developmental disabilities. This has facilitated the use of pharmacological treatments that reduce SIB and AB, whether the drug products target SIB or AB symptoms directly, regardless of the underlying condition, or by more indirectly reducing SIB and AB by improving the underlying condition. ESDs are only used at one facility in the United States on individuals from a small number of States, and there is evidence, including from the Massachusetts hearing, that the overwhelming majority of patients exhibiting SIB or AB throughout the country are being treated without the use of ESDs. Although positive behavioral interventions may not always be completely successful in all patients, the literature shows that they are typically successful, on their own or in conjunction with pharmacotherapy, regardless of the severity of the behavior targeted or the setting, and can achieve durable long-term results while avoiding the risks posed by ESDs.

Based on the serious risks posed by ESDs for SIB or AB, the inadequacy of data to support their effectiveness, and the positive benefit-risk profiles of the state-of-the-art alternatives for the treatment of SIB or AB, FDA has determined that the risks posed by ESDs for SIB or AB are important, material, or significant in relation to their benefits to the public health, and that ESDs present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling. FDA has decided to ban these devices under section 516 of the FD&C Act. This rule applies to devices already in distribution and use, as well as to future distribution of these devices. The vulnerable population subject to ESDs for SIB or AB, like all individuals, are entitled to the public health protections under the FD&C Act.

IV. Legal Authority

An ESD used for SIB or AB is a ''device'' as defined under section 201(h) of the FD&C Act (21 U.S.C. 321(h)). Section 516 of the FD&C Act authorizes FDA to ban a device

intended for human use by regulation if it finds, on the basis of all available data and information, that such a device presents substantial deception or an unreasonable and substantial risk of illness or injury, which cannot be corrected or eliminated by labeling or change in labeling (21 U.S.C. 360f(a)(1) and (2)). A banned device is adulterated under section 501(g) of the FD&C Act (21 U.S.C. 351(g)), except to the extent it is being studied pursuant to an investigational device exemption under section 520(g) of the FD&C Act (21 U.S.C. 360j(g)). This rule is also issued under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), which provides authority to issue regulations for the efficient enforcement of the FD&C Act.

In determining whether a deception or risk of illness or injury is ''substantial,'' FDA will consider whether the risk posed by the continued marketing of the device, or continued marketing of the device as presently labeled, is important, material, or significant in relation to the benefit to the public health from its continued marketing (see 21 CFR 895.21(a)(1)). Although FDA's device banning regulations do not define ''unreasonable risk,'' in the preamble to the final rule issuing 21 CFR part 895, FDA explained that, with respect to ''unreasonable risk,'' we will conduct a careful analysis of risks associated with the use of the device relative to the state of the art and the potential hazard to patients and users (44 FR 29214 at 29215, May 18, 1979).[5] The state of the art with respect to this rule is the state of current technical and scientific knowledge and medical practice with regard to the treatment of patients exhibiting self-injurious and aggressive behavior.

Thus, in determining whether a device presents an ''unreasonable and substantial risk of illness or injury,'' FDA analyzes the risks and the benefits the device poses to individuals, comparing those risks and benefits to the risks and benefits posed by alternative treatments being used in current medical practice. Actual proof of illness or injury is not required; FDA need only find that a device presents the requisite degree of risk on the basis of all available data and information (H. Rep. 94–853 at 19; 44 FR 29214 at 29215).

Whenever FDA finds, on the basis of all available data and information, that the device presents substantial deception or an unreasonable and substantial risk of illness or injury, and that such deception or risk cannot be, or has not been, corrected or eliminated by labeling or by a change in labeling, FDA may initiate a proceeding to ban the device (see 21 CFR 895.20). If FDA determines that the risk can be corrected through labeling, FDA will notify the responsible person of the required labeling or change in labeling necessary to eliminate or correct such risk (see 21 CFR 895.25).

FDA notes that a banned device is not barred from clinical study under an investigational device exemption pursuant to section 520(g) of the FD&C Act. However, any such study must meet all applicable requirements, including but not limited to, those for: protection of human subjects (21 CFR part 50), financial disclosure by clinical investigators (21 CFR part 54), approval by institutional review boards (21 CFR part 56), and investigational device exemptions (21 CFR part 812).

V. Comments on the Proposed Rule and FDA's Responses

In the proposed rule, in addition to seeking comment on our determination of substantial and unreasonable risk that cannot be corrected or eliminated with a change in labeling, we sought comments on other issues such as how long transitions away from ESDs for SIB or AB may take as well as the proposed effective date. We also requested comments on the proposed regulatory impact (economic) analysis. We have divided the comments and responses by subject matter, organized like the proposed rule: background information, evidence interpretation, risks of ESDs for SIB or AB, effects of ESDs on SIB or AB, state-of-the-art for the treatment of SIB or AB, labeling and correcting or eliminating risks, legal issues, and finally, transition time. Of the comments to the docket, the overwhelming majority supported a finding of substantial and unreasonable risk that cannot be corrected or eliminated with a change in labeling. The comments related to transitioning away from ESDs for SIB or AB, as well as the proposed effective date, supported no transition time and an immediate effective date. We received no comments on the proposed regulatory impact analysis.

Any comments received relating to ECT are outside the scope of this rulemaking, and consequently, we do not address those comments. We issued a Final Order on ECTs in 2018. (see 83 FR 66103, December 26, 2018).[6]

We describe and respond to the comments in this section. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received. As most of the comments support this ban without raising questions or concerns, our responses primarily relate to the few comments that do not support the ban.

A. Background Information About ESDs, SIB, and AB

(Comment 1) A comment states that FDA's characterization of behaviors associated with SIB and AB is broadly true but does not adequately convey the extreme behaviors exhibited by some individuals on whom ESDs are used. The comment states that such behaviors can put both the patients and caregivers at immediate risk of irreparable, serious, and even life-threatening injury.

(Response) FDA agrees with the commenter that in some cases the behaviors exhibited by individuals with SIB or AB are extreme and could cause serious injury to the individual or their caregiver. As stated in the proposed rule, SIB commonly includes: Head-banging, hand-biting, excessive scratching, and picking of the skin. However, SIB can be more extreme and result in bleeding; broken and even protruding bones; blindness from eye-gouging or poking; other permanent tissue damage; or injuries from swallowing dangerous objects or substances. AB involves repeated physical assaults and can be a danger to the individual, others, or property. We referred in the proposed rule to a JRC submission that states a link between SIB and death. Thus, FDA has taken into account the extremity of behaviors associated with SIB and AB.

(Comment 2) A comment states that FDA incorrectly defined the intended use population for ESDs and, in doing so, overstated the limited patient population that uses ESDs for SIB or AB. The commenter asserts that FDA has performed an erroneous benefit-risk analysis by ''improperly inflating the intended use population by orders of magnitude.''

(Response) FDA disagrees with this assertion. The commenter has incorrectly interpreted FDA's estimates,

[5] Available at *https://www.govinfo.gov/content/pkg/FR-1979-05-18/pdf/FR-1979-05-18.pdf.*

[6] Available at *https://www.federalregister.gov/documents/2018/12/26/2018-27809/neurological-devices-reclassification-of-electroconvulsive-therapy-devices-effective-date-of.*

which we explained in the proposed rule. The commenter focuses on the narrow ''patient population that uses ESD therapy for SIB and AB'' whereas FDA's estimate more broadly refers to the total number of individuals in the United States who exhibit SIB and AB (330,000) and the number of the most extreme cases (25,000), regardless of how they are treated (81 FR 24386 at 24389).

We based these numbers on the scientific literature, which shows that the prevalence of SIB in individuals with intellectual or developmental disabilities ranges from 2.6 percent to 40 percent, or 2 to 23 percent in community samples (Ref. 2). More recently, one analysis found a prevalence of SIB in a clinical population of children with developmental disabilities at 32 percent, suggesting that the actual prevalence may be at the high end of earlier estimates (Ref. 3). Further, estimates of the prevalence of AB in individuals with intellectual or developmental disabilities range as high as 52 percent, though 10 percent is more commonly reported (Ref. 2). Thus, by conservative estimates, based on a population of 330 million in which 1 to 3 percent of individuals have intellectual or developmental disabilities (and counting only them, not all people who manifest SIB or AB), at least 330,000 people in the United States manifest SIB, AB, or both; less conservative estimates are much higher (see Ref. 2).

Elsewhere in its comments, the commenter, JRC, appears to agree with FDA's estimates of 330,000 and 25,000 but explains that it enrolls an even smaller subset of the most severe, refractory residents. This represents, in its view, the totality of the intended use population for ESDs for SIB or AB, which in 2016 numbered 51 individuals from 12 States.

FDA does not contest that ESDs for SIB or AB were, in 2016, used on about 51 individuals in the United States, or that these individuals come from 12 States (in the proposed rule, FDA estimated the number of States to be 6–11 (81 FR 24386 at 24408)). Indeed, as explained in the comment responses about the state of the art, the professional field, with the sole exception of JRC, has moved beyond the use of ESDs for SIB or AB. However, FDA continues to believe that 25,000 is a reliable, conservative estimate for the number of the more extreme cases of SIB and AB in the United States. We have no evidence establishing that, of those, JRC receives the most extreme or refractory cases. The comment does not provide evidence of this other than contending that ESDs are only used after all alternative treatments have failed and offering some documentation purporting to show as much. This does not mean that JRC is unique in encountering severe cases. Rather, this shows that JRC is unique in which methods it chooses to employ. We have evidence that extreme cases are treated elsewhere in the United States without the use of ESDs, as discussed in more detail in the comment responses regarding the state of the art. Thus, in considering the number of more extreme cases in the United States compared to the limited number and geographic origins of patients subject to ESDs at JRC, we continue to believe that JRC's patients are not uniquely refractory or responsive to ESDs.

(Comment 3) A comment argues that applying the ban only to a discrete use of ESDs in one type of patient population, instead of all aversive conditioning devices, is arbitrary. The comment specifically outlines several shock aversive products and uses that FDA is not proposing to ban, including skin shock products for smoking cessation, alcohol and drug addiction, and other ''bad habits,'' shock aversives for inappropriate sexual behavior after traumatic brain injury, and shock aversives for nonsuicidal self-injury cutting behaviors. The commenter states that FDA has not provided a discussion or rationale distinguishing why the risks of skin shock are acceptable for these devices for these other conditions and not for the treatment of patients with SIB and AB. The commenter further argues that FDA's distinction based on patient control over the shocks is misplaced because in all cases, parental or guardian consent is required and obtained.

(Response) The commenter is correct in that this rule only applies to ESDs for SIB or AB and not to ESDs for other intended uses. FDA explained in the proposed rule that, although these products have parallels in technology and behavior modification strategy, products for other uses address different conditions or behaviors in different patient populations, and as a result, they present different benefit-risk profiles. We explained, for example, that many people who exhibit SIB or AB have disabilities that present vulnerabilities, such as difficulty communicating pain and other harms caused by ESDs, not likely to be present in people who use ESDs for other purposes. As a result, individuals who exhibit SIB or AB would bear a higher risk of injury or illness from the shock than, for example, smokers who choose to use an ESD to help quit smoking. Smokers can immediately communicate pain to the device's controller or remove the device themselves. They can communicate symptoms of other harms that may be caused by ESDs to their healthcare provider, which may lead to discontinuation of the device's use, or decide to stop using the device. In addition, people who exhibit SIB or AB may not be able to associate cause and effect or, as with some people with an autism spectrum disorder (ASD), they may express pain atypically or not at all.

ESDs for other intended uses also differ from ESDs for SIB or AB with respect to whether the individual subject to the shocks has control over them as well as the level of control they have. FDA recognizes that, at the facility that still uses ESDs for SIB or AB, legal consent is obtained to use the devices. However, the person who provides legal consent is typically not the person subject to the risks of the use of the device. This distinction is significant because consent does not mitigate the risk in that the person subject to the risk has no control over use of the device. For example, a person who fears future shocks could not opt out and thereby reduce the fear. Similarly, a person who experiences extreme pain or suffering could not opt out to avoid those harms in the future. FDA is not questioning the validity or importance of legal consent, but rather pointing out that legal consent does not eliminate concerns related to the shock recipients' communication difficulties and lack of control over use of the device on them.

B. Evidence Interpretation

(Comment 4) Many comments state that FDA's analysis for the proposed rule was thorough and well supported. Some of them characterize the evidence for the ban as strong and contrast that with the evidence for the effectiveness of ESDs for SIB or AB, which they characterize as weak.

(Response) FDA agrees. As we stated in the proposed rule, FDA first conducted an extensive, systematic literature review to assess the benefits and risks associated with ESDs as well as the state of the art of treatment of patients exhibiting SIB or AB. As we explained in the proposed rule, SIB and AB were considered in tandem, and these conditions presented in individuals with intellectual and developmental disabilities, such as ASD, Down syndrome, Tourette's syndrome, as well as other cognitive or psychiatric disorders and severe intellectual impairment (including a broad range of intellectual measures). The studies encompassed both children and adults.

As noted in section III.B, FDA convened the Panel Meeting on April 24, 2014, in an open public forum, to discuss issues related to FDA's consideration of a ban of ESDs for SIB or AB (see 79 FR 17155). Although FDA is not required to hold a panel meeting before banning a device, FDA decided to do so in the interest of gathering as much data and information as possible, from experts in relevant medical fields as well as all interested stakeholders, and in the interest of obtaining independent expert advice on the scientific and clinical matters at issue. Eighteen panelists with expertise in both pediatric and adult patients represented the following biomedical specialties: Psychology, psychiatry, neurology, neurosurgery, bioethics, and statistics; panelists included representatives for patients, industry, and consumers (Ref. 4). FDA provided a presentation that described the banning standard, the regulatory history of aversive conditioning devices, alternative treatments, and a summary of the benefits and risks of ESDs, including a comprehensive, systematic literature review based on the information available at that time (see generally Refs. 5 and 6). After the Panel Meeting, FDA reviewed approximately 300 comments submitted to the public docket created for the Panel Meeting (Docket No. FDA–2014–N–0238). FDA associated that docket with this rulemaking and considered those comments in this rulemaking, as appropriate.

(Comment 5) A comment asserts that FDA ignored, misrepresented, and distorted the available information and data, favoring evidence that supports the ban while dismissing evidence that supports the use of ESDs for SIB or AB.

(Response) FDA disagrees and addresses the commenter's assertions regarding specific information and data in separate comment responses in this final rule. FDA has thoroughly and fairly reviewed the available data and information, with multiple opportunities for input from stakeholders on all sides of the issue. FDA considered all additional information timely submitted to the docket in this rulemaking, including comments by the public. The public comments included data and information as well as court documents (including transcripts and exhibits) from litigation related to the use of ESDs for SIB or AB. In some cases, as explained in responses to various comments, the comments led FDA to reconsider and change its evaluations of particular sources. In other cases, the docket information repeated previously received material, thus reinforcing our evaluation. Some information was not relevant, for example, when it sought to refute a premise that FDA did not rely upon in the proposed ban.

However, FDA did not dismiss evidence that supports the use of ESDs for SIB or AB. We weighed all available data and information, taking into account its quality, such as the scientific rigor supporting it, the objectivity of its source, its recency, and any limitations that might weaken its value. Scientific rigor is greater when the study includes randomization or other controls and covers a large number of subjects. For less controlled studies, such as a case report, a greater number of study subjects across many reports will generally bolster confidence, for example, when many case reports are examined within a meta-analysis. Thus, we generally gave more weight to observations under controlled conditions than to reports of anecdotes. Similarly, peer review bolsters confidence because the process allows other experts to question or critique potential inaccuracies or errors. We generally gave more weight to the results of a study in a peer-reviewed journal than we did to non-peer-reviewed papers.

We considered the opinions of Panel members and other experts, some of whom support the use of ESDs for SIB or AB and some of whom do not. We generally gave more weight to expert opinions about scientific subjects than opinions from laypersons about scientific subjects. Although expert opinions are generally weaker scientific evidence than studies, the weight of such opinions is increased, for example, when they report data or include confirmatory or supportive citations to peer-reviewed scientific references, the subject matter is within the offeror's expertise, the opinion is based on regular professional practice or first-hand experiences, and/or the offeror is free from conflicts of interest. We considered opinions from commenters and others, including individuals at JRC, their parents, JRC staff, and JRC itself although such opinions merit relatively less weight in drawing scientific conclusions.

We explained in the proposed rule, and throughout this final rule, how this evidence relates to our conclusions and the strength of the evidence as it pertains to those conclusions. While the commenter may or may not agree with how we weighed any given piece of evidence, FDA did not ignore, misrepresent, distort, dismiss or favor evidence merely because it supported a particular result.

(Comment 6) A comment argues that FDA dismisses evidence supporting the benefits of ESDs for SIB or AB because of various weaknesses yet accepts evidence of risks that may have the same weaknesses.

(Response) FDA disagrees. FDA considered all available data and information, derived from a variety of sources and methods. As discussed in Responses 5 and 7, because the strength of different data and information—for example, from the scientific literature, experts, and various stakeholders—varied greatly, we weighed the evidence accordingly. Although the commenter may disagree with how FDA weighed the evidence, we did not dismiss evidence.

With respect to accepting evidence of risks from sources that exhibit weaknesses, we explain throughout this rulemaking that we believe AEs have been underreported and the reasons why (see Responses 26 to 28). Information submitted to FDA after the proposal supports that proposition and has helped us, upon further consideration, to update our evaluation. For example, as explained in Response 13, we believe the proposed rule understated the risk and harm of pain. We believe that the risk of pain is greater and that the harm of pain is more frequent than stated in the proposed rule.

In other cases, we explain that we evaluated particular risks consistent with our view of the weight of evidence. For example, we explain in Response 24 that the risk of seizures is not well established, in part because the information came from individuals who attributed their seizures to ESDs, lay people, as well as advocacy groups that stated shocks could trigger seizures (as opposed to, *e.g.,* peer-reviewed scientific articles). Because we did not accord this information significant weight, it did not greatly affect our evaluation of the benefit-risk profile.

As another example, the commenter argues that we have identified the risk of suicidality based on anecdotes from individuals who were subject to ESDs and that suicidality was not related specifically to ESD application. The comment highlights an individual who experienced suicidal ideation yet later credited use of the ESD for saving her life by replacing what the commenter describes as ''ineffective and harmful psychotropic medication.'' To support this risk of ESDs for SIB or AB, we explained in the proposed rule that experts in the field of behavioral science (including members of the Panel) and State agencies that regulate ESDs indicate that the devices have been

associated with short- and long-term trauma, including suicidal ideation (81 FR 24386 at 24399). Given that ESDs can also contribute to stress, anxiety, learned helplessness, and posttraumatic reactions, among other outcomes, we do not believe that it is reasonable to conclude that the risks presented by ESDs are unrelated to suicidal ideation.

The individual's belief that an ESD helped her does not speak to whether suicidal ideation is a risk posed by the device. FDA has no reason to doubt that she experienced suicidal ideation or that it stopped and she felt better. However, her statement is not strong evidence for the effects of ESDs on the processes underlying the ideation; the statement is not offered by an expert in the field and is not a result from a clinical study under controlled conditions. Such a statement, for example, does not rule out the possibility that concurrent therapies were responsible for the improvement, nor does it necessarily represent any other individual's point of view. It also does not provide any basis for concluding that state-of-the-art therapies, properly attempted and continuously administered, would not have succeeded.

In another instance, the comment criticizes FDA for using a double standard when presenting and evaluating data by quoting an expert in a media report who explained that an individual went into a catatonic condition after an ESD was used on him. However, this was one of multiple sources FDA relied on for this risk. We explained that catatonia may be an additional risk based on scientific literature that describes catatonic sit-down associated with the use of ESDs, and statements and comments from individuals on whom ESDs have been used, their family members, disability rights groups, and others. Because the statement appeared in a media report, we did we not accord it the same weight as the information in the scientific literature.

It is also important to understand that the premise of the critique—that the same type of evidence should support establishing benefits if it supports identifying risks—is flawed. For example, FDA has long recognized that isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness, but that such information may be considered, however, in identifying a device the safety and effectiveness of which is questionable (see 21 CFR 860.7(c)(2)). The same general principle applies here. While the evidence purporting to show the benefits of ESDs for SIB or AB is insufficient to establish the effectiveness of the device, the same type of evidence may provide useful risk information. For example, an isolated case report that describes an initial increase in self-mutilative behavior following ESD application indicates to FDA that an initial increase in self-mutilative behavior is a risk even though the same report would not meet the threshold of evidence to establish effectiveness. This does not mean that any type or amount of evidence is sufficient to support a risk of harm; it means only that certain evidence that may be inadequate to establish effectiveness may nonetheless be adequate to support certain risks.

(Comment 7) A comment states that, in FDA's Executive Summary for the Panel Meeting, we noted that the majority of behavioral studies identified prior to the Panel Meeting were confined to small sample sizes or case reports. The comment asserts that those limitations have not stopped FDA from relying on literature about positive behavioral support (PBS), while FDA dismisses evidence supportive of ESDs because of those same limitations.

(Response) FDA disagrees. The comment incorrectly attributes a description from the Executive Summary to materials that FDA identified after the Panel Meeting. Since the Panel Meeting, FDA identified additional information and data, including behavioral studies with larger numbers of subjects. Additionally, as explained elsewhere, although the commenter may disagree with how FDA weighed the evidence, FDA did not dismiss evidence due to small sample sizes or the fact that they were case reports. However, these factors did result in FDA assigning relatively less weight than we would to a more robust design such as a randomized controlled trial with a large number of subjects.

With respect to the evidence supportive of ESDs, the only article specifically about JRC's GED device was published in a peer-reviewed journal over a decade ago, and it studied only nine subjects at JRC (Ref. 7). Studies of ESDs more generally have been published in peer-reviewed journals, but many of them are decades old. In the intervening decades, the understanding of pathophysiology has evolved as has the ability to identify and systematically record AEs. These developments are alongside heightened peer-review standards for study and reporting. Accordingly, it is reasonable to assign these studies less weight than more modern studies.

Since the Panel Meeting, FDA identified several studies of PBS in peer-reviewed journals that include more subjects, systematically record AEs, and benefit from recent (not decades-old) knowledge. For example, a recent single meta-analysis of PBS that FDA identified after the Panel Meeting synthesized information from 423 case reports (Ref. 8), whereas JRC has stated in a comment that it only applied its GED to 269 individuals since 1990. The peer-reviewed data and information about PBS were published more recently and better reflect modern scientific advances and contemporary ethical standards of the profession. The evidence also adheres to modern, more exacting peer-review standards for study conduct and reporting. Recent studies also benefit from the improvements in functional analysis and teaching adaptive or replacement behaviors that began in the mid-1980s (see Ref. 9). Refinement and application of such knowledge increases the success of the behavioral interventions (see Ref. 10). Further, more-modern study designs that include more coded baseline and treatment data points correlate with clearer demonstrations of treatment effects (see Ref. 10). Another benefit is that relatively recent studies of behavioral treatment of SIB more often report results that are generalizable across settings (see Ref. 11). Modern study designs are also more reflective of contemporary ethics and practice, making their results more relevant to treatment (see Ref. 12, discussing outmoded nomenclature and setting to study the effects of contingent shock on body rocking). It is noteworthy that even recent meta-analyses that included punishment techniques did not include the use of ESDs (see, *e.g.,* Ref. 10); one Panel member described the modern attitude toward ESDs for SIB or AB as ''wholesale abandonment.'' To summarize the advantages of more-recent data, the quality and quantity of the available data tend to be higher, they tend to show clearer effects, and the corresponding refinement in techniques leads to greater treatment success.

Therefore, although some PBS studies rely on small sample sizes or are case reports, the overall number of subjects who have been studied is significantly larger than for ESDs for SIB or AB. More robust analysis has been conducted on these subjects, and the data and information are more recent, more reflective of scientific advances and modern ethical standards, and held to a higher peer-review standard. Thus, we believe we have appropriately weighed the evidence and disagree that we

should have considered the various studies to be of equivalent weight.

(Comment 8) A comment criticizes the 2006 New York State Education Department (NYSED) report on JRC as misleading and biased and questions FDA's reliance on the report. The comment points to an earlier NYSED report from 9 months prior that was more favorable to JRC.

(Response) FDA disagrees that the report is misleading and biased. As the 2006 report states, the NYSED undertook a review based on documentation it received subsequent to its 2005 inspections (Ref. 22). That documentation, according to NYSED, ''raised concern about JRC's use of aversive interventions, as well as recent questions from legislators.'' The 2005 Special Education Quality Assurance Nondistrict Program Review, the earlier NYSED report, was more general, focusing on ''areas of greatest significance to the health and safety and provision of special education programs and services.'' In contrast, the 2006 Observations and Findings of Out-of-State Program Visitation was specifically conceived ''to gain an understanding of the scope of the behavior intervention plans,'' paying particular attention to: (1) Health and safety issues related to the use of aversive interventions; (2) the general standard for implementing and monitoring behavior plans; (3) whether the interventions were commensurate with the individuals' behavioral difficulties; and (4) to determine if individuals were receiving interventions consistent with individualized education programs.

Although the 2005 Program Review and the 2006 Observations and Findings both examine practices at JRC, their scope and purpose are separate and distinct. Further, the 2005 document contemplated all students from New York, whereas the 2006 document considered those whose behavioral intervention plans included the use of ESDs. Thus, to the extent these documents shed light on the use of ESDs for SIB or AB, the 2006 document is more relevant than the 2005 document.

To provide context, the NYSED has itself submitted a docket comment consistent with their 2006 report (Ref. 23). Specifically, regarding the necessity of ESDs, the NYSED 2006 report relied in part on three behavioral psychologists serving as independent consultants. The NYSED in 2006 also conducted interviews with individuals at JRC. FDA believes it reasonable to give more weight to the 2006 report because, unlike the 2005 report, its objective was to examine the use of ESDs for SIB or AB, and it included evaluations from independent behavioral psychologists as well as the results of patient interviews.

(Comment 9) A comment asserts that, because FDA did not visit JRC and meet with its staff or obtain firsthand observations of residents, we did not educate ourselves on the complete facts regarding JRC's use of the device. The comment contrasts this with what it characterizes as ex parte discussions with other parties, including three former residents who approached FDA.

(Response) While FDA did not directly observe residents in JRC's facility, it did not need to do so to obtain relevant information for this rulemaking. Such observations are not necessary for FDA to understand JRC's use of ESDs or, more importantly, the risks and benefits of ESDs for SIB or AB. Such observations would not be part of a trial or study, nor would they proceed according to experimental controls that could allow observers or analysts to draw generalizable conclusions. Any observation may or may not be typical, whether by chance or, for example, because a tour at JRC's invitation would be controlled or the areas and individuals available for observation would not be representative. Elsewhere, this commenter criticizes the incorporation of anecdotal data and information; information obtained by FDA on such a tour would likely be subject to the same criticism.

Further, we have information about the residents at JRC and their views, including firsthand accounts. JRC has provided FDA with pictures and short biographies of many JRC residents. It has also provided copies of emails expressing individuals' sentiments that are favorable to JRC. During the Panel Meeting, individuals at JRC, including representatives of JRC, presented their views. FDA also conducted inspections of JRC.

While FDA had discussions with three former residents prior to issuing the proposed rule, to the extent we relied on these communications, we summarized the relevant content and provided our rationale in the proposed rule. The public had an opportunity to review this information and comment on it.

(Comment 10) A comment asserts that phone interviews conducted by FDA with individuals formerly at JRC were anecdotal and unscientific, yet the comment also claims that FDA dismissed clinical data from JRC and did not interview patients and parents who support the use of ESDs for SIB or AB. The commenter also states that FDA did not consider data from 269 individuals at JRC since 1990 and argues that such data plainly demonstrate the effects of ESDs on SIB and AB.

(Response) FDA disagrees that we dismissed any data, either clinical data from JRC or the views of individuals at JRC and parents who support the use of ESDs for SIB or AB. We explained in the proposed rule and elsewhere in this final rule how this evidence relates to our conclusions and the strength of the evidence as it pertains to those conclusions. We considered all commenters' stated opinions and weighed them appropriately when drawing scientific conclusions. FDA considered all data and information, including anecdotal evidence relating to the individuals and families with current or former experience with JRC's use of ESDs for SIB or AB. However, we agree with the commenter that anecdotal evidence should not be accorded the same weight as scientific evidence, and we weighed such evidence accordingly. Obtaining views from all perspectives, including highly personal information, proved helpful in understanding perspectives on the use of ESDs.

Although FDA did not conduct interviews with individuals currently at JRC or their parents, they have had the opportunity to submit comments in the context of the Panel Meeting and proposed rule. Two associations of family members of individuals at JRC submitted comments to the Panel Meeting docket opposing a ban (one of the comments included 32 letters from family members). At the Panel Meeting, one parent and three individuals at JRC spoke in opposition to the ban. In the docket for the proposed rule, we received a brief from JRC parents' counsel, letters through counsel from parents of individuals at JRC, as well as other individual comments opposing the ban, primarily from those associated with JRC. Additionally, a comment alluded to an editorial in a national newspaper and included copies of emails apparently meant to convey that individuals formerly at JRC are grateful for their time at JRC.

Furthermore, although the commenter may disagree with how FDA weighed the evidence, FDA did not dismiss clinical data from the manufacturer (see Response 26; see also Responses 18, 38, and 39, discussing other records). As explained elsewhere, we believe the available data and information, including that from the manufacturer, JRC, underreport AEs (see Responses 26 to 28). Noting such omissions or weaknesses in the data and information

is not to dismiss it but rather to explain why it does not necessarily show what the commenter argues, much less show as much conclusively. Likewise, as explained in Responses 33, 34, 38, and 39, we found that because of the multitude of flaws and weaknesses, the data and information provided by JRC do not establish durable effectiveness. For instance, the data do not represent *study* data but rather only resident records; the data and information fail to adequately detail behaviors prior to ESD use, formal functional assessments, important aspects of device application and data collection; and the data fail to account for effects from concurrent treatments. We disagree that we did not consider this data, and upon consideration, find the data do not demonstrate the effectiveness of ESDs for SIB or AB.

(Comment 11) A comment asserts that parent- and patient-centric perspectives deserve more weight than unnamed parents' perspectives reported to researchers who used pseudonyms for publication. The commenter prefers ''parents who communicated on the record, direct and unfiltered.''

(Response) FDA disagrees. The fact that a researcher does not identify parents by name does not make those parents' perspectives less relevant or useful. FDA notes that the same comment elsewhere states that FDA should discount certain parent- and patient-centric perspectives that disagree with the commenter, even when those parents and patients used their names and submitted their perspectives for the record. Further, the comment does not explain why the fact that a researcher does not identify an individual impacts reliability. Nevertheless, when we discussed the opinions of unnamed parents in the proposed rule, we noted that we could not conclude that the experiences reported by those who volunteered to share negative experiences were shared by others or are generally representative of families' experiences with JRC. We have weighed the perspectives with these considerations in mind.

(Comment 12) A comment criticizes FDA for relying on unsourced letters and papers and unscientific news articles with quotes from lay people.

(Response) As explained elsewhere, FDA considered opinions from experts and lay people, and we took into account whether opinions were offered by experts or supported by research, among other factors. Opinions offered by behavioral experts about the treatment of SIB and AB are afforded more weight than laypeople's opinions about the treatment of SIB and AB; those expert opinions carry yet more weight when, for example, they cite peer-reviewed research. Regarding sourcing, since all of the references that the comment critiques as unsourced were attributed to specific authors and institutions, FDA fails to understand this criticism. Additionally, the sourcing provided FDA with the information needed to determine the weight to give each reference. Each reference was available for review during the comment period, so the commenter had an opportunity to comment on their substance.

In terms of weighing the evidence from the references the commenter cites, we recognize, for example, that Dr. Donnellan wrote a letter that was not peer-reviewed. However, because Dr. Donnellan has expertise in the field, the content of the letter merits more weight than laypeople's opinions. So too does the chapter authored by Drs. LaVigna, Willis, and Donnellan because of the authors' expertise in the subject matter. Moreover, a named editor reviewed the information, which merits additional weight compared to unedited documents, even those from experts. Regarding the report from NYSED, FDA believes that agency's responsibility and expertise to assess such information, as well as draw conclusions from that information, is relevant in determining how much weight to give the report.

With respect to the news article referred to by the commenter, FDA cited it solely with respect to our assessment of the state of the art, to support the fact that one of the pioneers of ESDs publicly repudiated contingent shock for a lack of effectiveness, and not as part of our determination that the evidence fails to establish ESD effectiveness. We believe it is appropriate to cite this type of source for this limited point. Further, FDA notes that the commenter elsewhere implores FDA to heed views presented in a newspaper, including speculation by Dr. Israel, in an attempt to make a point regarding ESD effectiveness and the lack of effectiveness of alternatives (Ref. 13). In that case, the commenter relies on the newspaper article to make conclusory claims about the negative effects of removing ESDs. Even putting aside the relative weakness of this source, the newspaper article makes clear that the individual's treatment plan consisted of many elements in addition to ESDs, and that the individual subject to shocks increasingly ''could not accept the price of this improvement,'' the improvement being an average of fewer than 200 shocks per month in connection with decreased self-mutilation. We do not agree with the commenter's criticisms and elsewhere explain how we weighed various types of information differently.

C. Risks of ESDs for SIB or AB

(Comment 13) A comment argues that FDA's evaluation of the benefit-risk profile of ESD use is fundamentally flawed because the risks did not materialize into harms. The comment also argues that FDA failed to account for the risks posed by banning the device, which the comment characterizes as a ''life-saving therapy.''

(Response) FDA disagrees that we have overstated risks and have not accurately evaluated the benefit-risk profile in consideration of those risks. Risks do not need to have materialized into harms to be relevant because proof of harm is not required under the banning standard. Further, some of the risks posed by ESDs have materialized into harm, including intense pain. The commenter itself recognizes that there are potential risks associated with use of ESDs. It refers to a consent form listing some of the risks, which are consistent with FDA's analysis in the proposed rule:

> The potential physical risks associated with the GED may include temporary skin redness, which clears up within a few minutes or a few days at most, and there is a possibility that a small blister may appear. JRC rotates the placement of the electrodes to avoid superficial red marks or scaling of the skin. The psychological/behavioral risks that might be associated with the GED include anxiety (nervousness, tensing muscles) during the period between the occurrence of the behavior and the occurrence of the programmed consequence, escape responses and short-term or long-term collateral effects including: nightmares; intrusive thoughts; avoidance behaviors; marked startle responses; mistrust; depression; flashbacks of panic and rage; anger; hyper-vigilance; and insensitivity to fatigue or pain.

The form adds to the evidence in the proposed rule, among other information, that the shock ''is intended to function as a painful stimulus.'' In the proposed rule, although we provided, for example, descriptions of individuals who experienced ESDs describing the shock as ''a thousand bees stinging you in the same place for a few seconds,'' we also noted information from JRC suggesting that the electric current may not be great enough to cause pain and its statements that the shock ''may be'' painful to some patients (81 FR 24386 at 24397). Since then, behavioral experts testified in the Massachusetts hearing regarding the level of pain caused by ESDs based on their personal experience with ESD shocks. For example, they testified the shocks felt ''excruciatingly painful,'' ''extremely painful,'' ''quite

painful,'' like a ''bulging and a ruptured disc,'' and ''the most painful thing I've ever experienced.'' (Ref. 14, respectively: day 7 at 161; day 9 at 82; day 21 at 81–82; day 13 at 218.) In light of this new information from JRC and the experts in the Massachusetts hearing, we believe that the proposed rule understated pain as a harm caused by ESDs.

The pain ESDs cause is relevant because, although ESDs are intended to apply an aversive stimulus, the pain they cause to develop the aversion is nevertheless harmful. We also noted that JRC does not include pain in its discussion of AEs caused by the device, yet when JRC's Dr. Nathan Blenkush was asked directly whether the stimulus causes pain, he answered ''yes'' (81 FR 24386 at 24397; see also Ref. 15 at 123). People affiliated with JRC, including Drs. Edward Sassaman and Anthony Joseph, have stated that they observed no harms in many years of observing individuals subject to ESDs, so they appear not to consider certain adverse effects, including pain, to be harms. As stated in the proposed rule, such a view is in line with decades-old research that considered pain or discomfort to be an indicator of effectiveness (81 FR 24386 at 24397). However, this is not consistent with contemporary standards, and we conclude that pain caused by the devices is a harm. Far from overstating risks because they have not materialized into harms, FDA believes that JRC has understated realized harms, and the proposed rule understated at least the degree of harm of pain.

With regard to the risks of the ban itself, FDA has considered the risks of the use of ESDs for SIB or AB in light of the state of the art for SIB and AB and determined that they are substantial and unreasonable. In contrast, as discussed in section V.E, state-of-the-art therapies such as PBS pose little to no risk and are generally successful regardless of the severity of the target behavior. FDA acknowledges that a small subpopulation of people who manifest SIB or AB may simply have no adequate treatment option. However, this does not mean that ESDs are effective for that subpopulation or that such individuals would be harmed if ESDs were not available. Claims that the use of ESDs is necessary for some people are not supported by the available data and information.

(Comment 14) A comment asserts, while recognizing that pain has a subjective element, that the shock delivered by an ESD is not capable of physical harm to the patient, such as skin burns or other damage to the body or impairment of any bodily functions. The comment asserts that FDA's clearance of the GED–1 included review of data on pain perception levels submitted by JRC.

(Response) FDA agrees that pain has a subjective element, but disagrees with the suggestions that pain is not a physical harm, or a harm at all. As we explained in the proposed rule, although physical reactions roughly correlate with the peak current, shock intensity and its effects can also vary from person to person based on the amount of sweat on the skin, electrode placement, recent history of shocks, and body chemistry, among other factors (81 FR 24386 at 24387). Further, adverse psychological reactions are even more loosely correlated with shock intensity (see 81 FR 24386 at 24387). As such, the intensity and subjective experience will vary, including the degree to which the shock poses a risk of harm to the individual. For this reason, as discussed here and in Response 18, the subjectivity of the pain and variability of the shock intensity elevate FDA's concern regarding the risk of pain and other harms in that they make it difficult to predict the impact that a particular shock will have on a particular individual at a particular time.

Several Panel members expressed concerns regarding the difficulties and lack of understanding regarding dosing (shock intensity) and variability in individual pain thresholds from both safety and effectiveness standpoints (see, *e.g.,* Ref. 15 at 50, 89, 137, 296, 302, 326, 349). Further, although all ESDs covered by this ban present the risk of pain, some ESDs, such as JRC's GED–4, which delivers more than triple the maximum electrical current of the GED–1, present an even higher risk of pain than others. The increased current means the device is likely to cause more pain than lower current ESDs notwithstanding the element of subjectivity in the experience of pain. In addition, this physical pain may lead to psychological trauma, discussed further in Response 18.

FDA acknowledges that, in 1994, FDA found an earlier model of one of JRC's GED devices substantially equivalent to predicate aversive conditioning devices. Regardless of what data JRC may have submitted at that time or how FDA evaluated it for substantial equivalence to predicate devices in the context of a 510(k)—*i.e.,* a premarket notification submission under section 510(k) of the FD&C Act (21 U.S.C. 360(k))—we are not bound by such in a banning proceeding under section 516 of the FD&C Act. To ban a device, we consider all available data and information. The past 25 years since the clearance of that GED have yielded valuable data, analyses, and experience with ESDs for SIB or AB, as well as advancements in science and medicine. These data and information have improved our understanding of the risks posed by this type of device, including the risk of pain, as well as the diagnosis of, and treatment options for, patients that exhibit SIB or AB.

As for other physical harms, FDA disagrees that the shock strength of ESDs is not capable of producing other physical harms. In our analysis of physical risks in the proposed rule, we explained that the literature contains reports of tissue damage that ranged from burns to bruises. As discussed further in the next comment response, the literature is supported by evidence contained in numerous comments to the docket, including those from NYSED, the U.S. Department of Justice, and a former employee of JRC. Other risks that FDA identified in the scientific literature include increased frequency or bursts of self-injury and errant shocks from device misapplication or failure. In addition, FDA considered risks identified through other sources, which provide further support for the physical risks reported in the literature and indicate that ESDs are associated with additional physical risks of neuropathy and (potentially less seriously) injuries from falling (see Ref. 15 at 312, summarizing additions to list of risks).

In sum, although pain has an element of subjectivity, pain correlates roughly with the maximum electrical current output by the device. The device is intended to cause pain and is capable of causing other physical injuries under certain conditions. However, the variability of those conditions as well as the subjective element in the experience of pain make it difficult to minimize the risks of any given shock or series of shocks. Experts on the Panel echoed these concerns.

(Comment 15) One comment specifically objects to FDA's characterization of six references reporting on tissue damage or burns.

(Response) FDA has reviewed the references and agrees that two do not support the original analysis of tissue damage and burns, and we have determined that the literature cited does not by itself establish the risk of tissue damage or skin burns attributable to the use of ESDs. However, the other references together with other sources do support these risks, as we explain in the following paragraphs. Further, based on the new analysis, FDA's ultimate conclusion that the risk presented by

the device is unreasonable and substantial did not change.

We stated in the proposed rule that the literature contains many reports of tissue damage or burns from ESDs and cited several references to that effect. However, one reference that we cited did not report tissue damage or burns, and it stated that ''there was little to suggest the development of adverse side-effects'' (Ref. 16). Considering the study was conducted in 1975 and did not systematically observe or record AEs, and given that it studied only two subjects, the change to our evaluation of the benefit-risk profile is minimal. It does not affect our overall conclusion with respect to the substantial and unreasonable risks.

Another reference that we cited for the risk of tissue damage, Ref. 17, did not report tissue damage as a direct result of individual shocks applied to the skin. Instead, the reference discusses the possibility that individuals may, after extended device application, manifest SIB that eventually results in tissue damage. Although we no longer consider this reference to support the risks of skin burns or tissue damage as a direct result of ESD use, given the multiple other references that support these risks, FDA continues to find that a risk of using ESDs is skin burns or tissue damage. In our re-evaluation, we note that this source did not systematically observe and record AEs, that its conclusion about effectiveness was tentative (''might be''), and that it had a small sample size (eight individuals) with high variability. As such, the re-evaluation does not change our overall conclusion with respect to the substantial and unreasonable risks of ESDs.

The comment also criticizes FDA's characterization of Ref. 18 as providing a report of burns to the single individual it studied. The comment notes that the device was not intended for human use and that its replacement, a device intended for human use, did not cause burns because the electrodes were placed directly on the skin. Although placing electrodes directly on the skin would reduce the likelihood of electrical arcing and the risk of skin burns from arcing, this does not eliminate the risk of burns more generally; in the proposed rule, we did not attribute the risk of burns solely to electrical arcing. As we stated in the proposed rule, Dr. James Eason, a biomedical engineer, opined that ESDs intended for human use, such as the SIBIS, GED–1, and GED–4, are capable of causing superficial skin burns under certain circumstances (81 FR 24386 at 24396). Similarly, a member of the Panel noted that a 20-milliamps shock can cause a first-degree burn (Ref. 15 at 140). Further, the type of device that is banned could include technology in which the electrodes are not placed on the skin and arcing occurs. Thus, whether the electrodes are attached directly to the skin or not, we continue to believe burns or other tissue damage are risks posed by ESDs for SIB or AB.

The comment also takes issue with FDA's interpretation of Ref. 19, stating that reddened areas occurred from wearing the device and not from the shocks themselves. FDA considers reddened areas from device use to be evidence of tissue damage, although FDA considers Ref. 19 to be evidence of a minor harm. During an exchange at the Panel Meeting, some question arose over whether such damage is erythema or a first-degree burn (see Ref. 15 at 140). A representative of JRC explained that he did not know but had been told by dermatologists that it was erythema (see Ref. 15 at 141). However, he later added ''[w]ell, that depends on your definition. Is this a burn or not?'' and again referred to dermatologists' statements (Ref. 15 at 141). FDA interprets these statements to mean that some injury to the skin, although it may be minor, has occurred from use of the device, and we believe that referring to such an injury as ''tissue damage,'' as we did in the proposed rule, is accurate.

Similarly, the comment emphasizes that the tissue damage from a SIBIS reported in Ref. 20 resembled a bruise rather than a burn. According to the reference, this mark lasted about a week before it disappeared. The comment also presents a quotation from Ref. 7 that the use of GEDs resulted only in ''an occasional temporary discoloration of the surface of the skin that cleared up within a few minutes or a few days.'' As before, regardless of whether the bruise-like mark and discolorations which could last for days were burns or bruises, we consider both to be tissue damage and described them accurately in the proposed rule as temporary. As such, FDA continues to identify tissue damage or skin burns as risks.

The risk of tissue damage or skin burns is supported by additional sources. As discussed in the proposed rule, FDA reviewed complaints made to the Massachusetts Disabled Persons Protection Committee related to the use of ESDs for SIB or AB (Ref. 21, incident #49037). In 2007, the Massachusetts Department of Early Education and Care (DEEC) conducted an investigation of JRC's Stoughton Residence, where ESDs were used (Ref. 21). According to the Investigation Report, an individual reported waking up because his roommate was screaming; his roommate had been asleep but was shocked by a GED, waking him and causing him to scream. JRC staff reported that ''the skin was off of the area'' of the leg where GED shocks had been applied, that the GED was removed from the leg ''because the area . . . was too bad to keep the device,'' and either the individual who received the shocks or the staff believed a stage 2 ulcer had developed (Ref. 21).

In addition, the NYSED conducted an onsite review of JRC's behavior intervention program and ''witnessed staff rotating GED electrodes on individuals' bodies at regular intervals to 'prevent burns that may result from repeated application of the shock to the same contact point.' '' (See Ref. 22, summarized in the proposed rule, 81 FR 24386 at 24397.) Further, NYSED, in a comment submitted to the Panel Meeting, stated that they ''received numerous reports of students who have incurred physical injuries (burns, reddened marks on their skin) as a result of being shocked,'' (Ref. 23). NYSED reviewers also noted that school nurses monitor the individuals' skin for burns (Ref. 22).

We also have reports of burns from individuals formerly at JRC as well as their parents. At the Panel Meeting, one such parent described burns their child acquired from ESD applications (Ref. 15 at 203). The individuals who were interviewed by FDA staff shared their negative experiences at JRC and similarly reported burns that they attributed to the use of ESDs (see Ref. 15 at 62–63, summarizing experiences). In sum, the literature, Panel Meeting proceedings, NYSED report, and individual anecdotal reports support the conclusion that ESDs present the risk of tissue damage, including skin burns.

(Comment 16) Commenters point out instances in the proposed rule in which FDA misattributed or misstated information from certain sources regarding certain risks.

(Response) FDA has reviewed the references, and we acknowledge some misattributions and misstatements.

We have revised our analysis as follows:

(a) We stated that one risk is the intensification of an undesirable behavior known as self-restraint. We attributed this information, in part, to Ref. 24; however, this reference does not provide support for the stated observation. Nonetheless, we cited another reference for this observation, and FDA continues to regard the intensification of self-restraint as a risk from the use of ESDs for SIB or AB (Ref. 17).

(b) We stated that an adverse outcome from ESD use for SIB or AB is the manifestation of napkin-tearing, an undesirable behavior. However, upon review, we do not regard napkin-tearing as an adverse outcome. Because the risk to self and others from napkin-tearing is minimal, the removal of this adverse outcome from our evaluation of the benefit-risk profile is of little consequence and does not affect the overall conclusion with respect to the substantial and unreasonable risks of illness or injury from the use of ESDs for SIB or AB.

(c) We stated that an adverse outcome from ESD use for SIB or AB is an increase in affection seeking. However, the study indicates that affection seeking replaced ''pathological behaviors,'' meaning affection seeking was a relatively desirable effect (Ref. 25). This affects our evaluation of the benefit-risk profile in that it updates an incorrectly identified risk to be a potential benefit, meaning the profile is slightly more favorable than previously appreciated. However, considering the small magnitude of this change, and that this study was conducted in 1965 and did not systematically observe or record AEs, this change does not affect our overall conclusion with respect to the substantial and unreasonable risks.

(d) We stated that, except for the harms described elsewhere in the proposed rule, JRC maintains that it ''has not found any side effects associated with aversive conditioning'' and ''there are no confirmed reports or confirmed medical evidence that patients have any negative psychological side effects related to any discomfort experienced due to therapy with the proper use of the GED devices.'' JRC has clarified that the full sentence reads: ''JRC has not found any side effects associated with aversive conditioning except the occasional discoloration of the skin that disappears within an hour to a few days and some brief, temporary anxiety just prior to the delivery of the application.'' Because we included all of the information in this sentence elsewhere in the proposed rule, this does not affect our evaluation of the benefit-risk profile or our overall conclusion with respect to the substantial and unreasonable risks.

(Comment 17) Some comments question the validity of FDA's attribution of certain risks of implantable cardioverter defibrillators (ICDs) to ESDs. One such comment argues that risks must be considered based on the intended patient population and the purposes of the device, and there is no basis for attributing the risks of ICDs to ESDs for SIB or AB. The comment also notes that the scientific literature does not compare ESDs for SIB or AB to ICDs.

(Response) FDA agrees that the differences between ESDs and ICDs, including intended uses, prevent FDA from drawing meaningful conclusions from ICDs about the risks of ESDs. In the proposed rule, we expressly observed that the devices have drastically different intended uses, patient populations, benefit-risk profiles, and states of the art of treatments for the intended patient populations. Upon further consideration, with stakeholder input, we have determined that comparison of these devices is not enlightening for the purposes of this final rule and have updated our assessment of the risk profile of ESDs accordingly.

Despite this update, FDA has determined that risks of illness or injury posed by the use of ESDs for SIB or AB are substantial and unreasonable. In the proposed rule, FDA used the comparison with ICDs to support the risks of posttraumatic reactions, up to and including PTSD, based on the pain and corresponding distress of potential future shocks. FDA made a comparison on the basis that each device delivers an electric shock to an individual that is out of the individual's control, occurs multiple times, and is generally perceived as surprising and painful or unpleasant. As such, our comparison was narrow, limited to the particulars of such a stimulus, and yielded additional support for observations already made based on consideration of ESDs themselves. The removal of the narrow comparison from our assessment therefore does not remove the basis for identifying such risks even though it removes some support based on a device type comparison.

With regard to ESDs (considered on their own), FDA identified distress of potential future shocks in particular as a trauma that people subject to ESDs may experience, meaning that the ongoing application of ESDs compounds the risk. Although we are no longer drawing support from the narrow comparison to ICDs for this premise, we have elsewhere explained our further consideration of the evidence supporting posttraumatic reactions, up to and including PTSD. Comments to the docket supported that people subject to ESDs experience this trauma. To summarize very briefly, further consideration of that data and information has bolstered our conclusion that the repeated application of a painful stimulus such as that from an ESD, in particular when it is not within the recipient's control, contributes to and escalates the risk of developing acute and/or chronic posttraumatic reactions. (See Response 18 for more detail.) Thus, we believe the evidence for the risks of such reactions is as strong as that discussed in the proposed rule.

Further, as explained in Response 13 and elsewhere, we believe that the proposed rule understated the harm of pain. As JRC acknowledges, the shock from an ESD is intended to be painful, and the scientific literature and statements from individuals who were subject to ESDs (as well as others who have tested ESDs on themselves) indicate that the pain from such shocks is severe, and it causes distress and fear. We believe that this evidence bolsters our previous findings and suggests the pain from the device is a reasonable basis to find support for distress of future shocks from ESDs, potentially leading to posttraumatic reactions (see Response 18).

In sum, upon further consideration, we have removed the narrow comparison to ICDs from our assessment of risks, but information and data from other sources confirms and bolsters the risks of posttraumatic reactions, up to and including PTSD, based on the pain and corresponding distress of potential future shocks. As such, our overall conclusion has not changed with regard to the substantial and unreasonable risks of ESDs used for SIB or AB.

(Comment 18) A comment questions whether references support FDA's statements about psychological trauma, namely that: (1) When the recipient does not have control over the shocks and has previously received multiple such shocks, psychological trauma such as an anxiety or panic reaction can result even when the strength is relatively modest (see Ref. 26) and (2) a series of less traumatic events can cause the development of stress disorders such as PTSD (see Ref. 27; see also Ref. 26). The comment takes issue with FDA's interpretation of the references, particularly regarding current diagnostic criteria for PTSD, the nature of a Criterion A event (one of the diagnostic criteria in DSM–5), and the evidence regarding a dose-response relationship between traumatic events and manifestations of PTSD.

(Response) FDA disagrees. As discussed in Response 13, based on information submitted in comments, FDA believes it understated the harm of pain in the proposed rule. For example, one clinician, Dr. Edwin Mikkelsen, testified in the Massachusetts hearing that the shock was excruciatingly painful and should not be used on humans, that it was unconscionable,

and that it prompted the doctor to resign from the Level III certification team (Ref. 14, day 7 at 161–63, 193–94). Another clinician, Dr. James McCracken, stated that ''[t]his shock is intense. It is not a simple tickle or a buzz. It is frightening.'' (Ref. 14, day 9 at 158.) The doctor went on to describe it as extremely painful, causing involuntary movement, and that it raised very strong ethical concerns (Ref. 14, day 9 at 82, 86). Yet another clinician, Dr. Jeffrey Geller, described the shocks as quite painful, ''worse than a bee sting,'' ''much worse than a hard pinch,'' and like a ''bulging and a ruptured disc,'' causing ''writhing gyrations'' (Ref. 14, day 21 at 81–83). Dr. Jennifer Zarcone, another clinician, described the shocks as ''very painful, and I got very upset. It's probably the most painful thing I've ever experienced.'' (Ref. 14, day 13 at 217–18). In short, FDA does not believe that the pain from the shocks from ESDs currently in use is actually modest for the individuals subject to them. The intensity of pain from the shocks suggests that individuals are more likely to experience trauma that may lead to psychological symptoms.

Further, as discussed in the paragraphs that follow, regardless of how a single shock is perceived by a particular shock recipient, FDA believes that a series of shocks can be traumatic to the individual and give rise to psychological harms, including anxiety, stress reactions, learned helplessness, acute stress disorder, and even PTSD. When the recipient does not have control over the shocks and has previously received multiple such shocks, the risk may be yet greater, especially in that learned helplessness may be more likely. Finally, the vulnerability of this patient population and the circumstances of the event, including the interpersonal nature of the trauma, the ongoing nature of the shocks, and the fact that the device is attached to the recipient's body, may further increase the risk of psychological harms.

The Diagnostic and Statistical Manual of Mental Disorders (DSM) includes diagnostic criteria for PTSD; Criterion A regards the stressor event to which an individual is exposed. The current edition, DSM–5, originally published in 2013, incorporates a broader definition of a Criterion A event than previous editions: The person must be exposed to death, threatened death, actual or threatened serious injury, or threatened sexual violence through direct exposure, witnessing the trauma, learning that a relative or close friend was exposed to a trauma, or indirect exposure to aversive details, usually in the course of professional duties.

In criticizing FDA's explanation, the comment has apparently misunderstood both FDA's statements and the previously cited references with respect to how the diagnostic criteria for PTSD have evolved, and the comment mischaracterizes the necessity of a single Criterion A event and the literature's findings. The criteria have evolved such that a diagnosis of PTSD may be based on a series of events rather than a single, discrete event. Even before the DSM update, the literature had found that people exhibited the symptoms of PTSD even when a single, discrete event did not appear to cause the symptoms. The explanation of the revised diagnostic criteria, from the DSM–IV to the DSM–5, makes clear that PTSD may develop from threatened (not only actual) harm or from a series of traumatic events (not only a single, discrete event).

Thus, shocks that individually may appear modestly stressful to an observer could constitute a Criterion A stressor under the DSM–5 when multiple such shocks are administered, even though they may not have met Criterion A under prior iterations of the DSM. This is especially true when the recipient is experiencing additional vulnerabilities or circumstances discussed later in this response (*e.g.,* the interpersonal nature of the shock delivery, the attachment of the device serving as a constant threat of future shocks). This change in Criterion A relates to the argument in Ref. 26, that the previous version of Criterion A, which contemplated a single, discrete, highly traumatic event, did not in fact serve its intended gatekeeper function and was not a useful criterion because people still manifested the symptoms of PTSD without such an event as it was then defined. The revisions to the diagnostic Criterion A for PTSD were intended to bolster its effectiveness as a gatekeeper criterion by more comprehensively capturing the kinds of events that can result in PTSD symptomatology. Thus, although the commenter states that Ref. 26 ''comes to opposite conclusions,'' the conclusions of Ref. 26 and the parallel evolution of the DSM clearly support FDA's determination that a series of traumatic events, even those events that may appear modestly stressful to observers, can give rise to stress disorders, including PTSD.

Turning to the issue of dose response, as the comment points out, Ref. 26 empirically reviews evidence and ultimately questions the then-current paradigm for diagnosing PTSD, based on what the reference calls ''core assumptions,'' including that PTSD has a specific etiology and that the severity of the trauma has a strong dose-response relationship to the severity of PTSD. The authors review the evidence regarding each of these assumptions and conclude that the assumptions did not adequately account for the manifestation of many cases of PTSD, implying that the assumptions were wrong in some way.

We agree with the commenter and the authors that the dose-response relationship between the severity of the trauma and the stress disorder is weak, meaning that the severity of the symptoms or resulting disorder may not correspond with the severity of the trauma. The authors also find that people exhibited the full symptomatology of PTSD even if the trauma that caused the symptoms did not satisfy the then-current (pre-DSM–5) Criterion A. While the comment agrees with these authors and FDA that there is a weak or nonexistent dose-response relationship, it misunderstands the implication of this, which is that severe symptoms may manifest even if the trauma is not severe.

In an apparent attempt to alleviate concerns relating to psychological risks from a painful shock, the commenter elsewhere states that electrical stimulation is easily measured objectively, and implies that a psychologically harmless level can be set. First, as discussed earlier, due to the complexity of the interactions between different output settings (*e.g.,* pulse width, frequency, electrode size) and inter-individual variability in shock perception, it is difficult to define a cutoff stimulation for pain or trauma. The Panel understood this and was very concerned about the impact this variability could have. Most importantly, individuals who are subject to ESDs are repeatedly exposed to a painful stimulus, and several individuals have expressed that they were anxious and/or fearful about future shocks. Further, because the dose-response relationship between a trauma and the severity of resulting psychological symptoms is weak, it would be even more difficult to use electrical parameters to predict whether any eventual psychological symptoms will be mild or nonexistent, and FDA is unaware of data demonstrating such. (See also FDA's discussion in the proposed rule about how an individual's perception of the trauma is not reliably predicted by the electrical parameters, 81 FR 24386 at 24393–24394.) Regardless of the ability to draw such a line, the GED devices currently in use pose all of the physical and

psychological risks discussed in this rule.

The comment also apparently misunderstands FDA's reference to an article that in turn refers to an earlier edition of the DSM. The DSM–III–R, originally published in 1987, specified that the person must have witnessed or experienced a serious threat to life or physical well-being, but the current DSM–5 contemplates a wider spectrum of events that may be traumatic and other, more indirect ways to experience traumatic events, thereby broadening Criterion A. Specifically, the current version of Criterion A in the DSM–5 also allows for ''threatened'' traumas, meaning that the event has not actually occurred. Not only does an ESD patient experience the trauma of a severe pain, which can be a Criterion A event, but the device is attached to the patient's body, constantly threatening additional trauma. FDA's reference to the article helps to illustrate the evolution of the diagnostic criteria and supports the risk of developing PTSD symptoms. In short, a contemporary understanding of trauma associated with PTSD or its symptomatology supports that these are risks of receiving shocks from the devices.

Indeed, this commenter elsewhere quotes the American Psychiatric Association (APA), the publisher of the DSM, which explicitly compared the DSM–5 to the DSM–IV: ''Compared to DSM–IV, the diagnostic criteria for DSM–5 draw a clearer line when detailing what constitutes a traumatic event. Sexual assault is specifically included, for example, as is a recurring exposure that could apply to police officers or first responders'' (Ref. 28). The APA has explained that the current diagnostic criteria now accommodate trauma stemming from repetition, and the criteria now focus more on the symptoms the individual displays rather than describing the individual's subjective response to a given event. Criterion A also includes witnessing a trauma. Thus, even an individual who witnesses another receive an ESD shock is potentially at risk for developing acute stress disorder or PTSD from the experience, particularly if the witness has been sensitized by the experience of having received an ESD shock themselves. Indeed, Panel members expressed great concern about the impact on staff of using this device (see Ref. 15 at 310); this concern is heightened for individuals subject to ESDs who witness traumas of others.

The literature, including Ref. 26, discusses additional factors in the development of PTSD symptoms, such as individual vulnerabilities and resilience, and the literature distinguishes the manifestation of anxiety or stress from the development of a disorder in light of such characteristics. Psychological traumas, regardless of whether the results are characterized and diagnosed as PTSD, are more likely for vulnerable individuals, depend on the circumstances of the event, and can be more severe without effective emotional support afterward (see Ref. 26). In the case of ESDs, the individuals subject to them are generally more vulnerable because of their cognitive impairments and, in many cases, comorbid conditions. Many individuals subject to ESDs have an impaired ability to associate cause and effect, which, as we noted in the proposed rule, increases the risk of psychological harms (see 81 FR 24386 at 24395). Such vulnerable individuals are particularly susceptible to the risk of learned helplessness. Despite this, JRC does not monitor for or assess PTSD or other stress disorder symptomatology according to its records, meaning individuals are less likely to receive adequate emotional support.

While the commenter did not specifically address the portion of FDA's statement regarding the lack of control over multiple shocks, this is an additional risk factor. The risk of psychological trauma may be greater when the recipient does not have control over the shocks and has previously received multiple shocks, because learned helplessness may be more likely. An individual's inability to control receiving an aversive stimulus such as a shock from an ESD is often linked to learned helplessness (see, *e.g.,* Ref. 15 at 311, summarizing mentions of learned helplessness). Further, device malfunctions and staff's inappropriate delivery of shocks result in many noncontingent shocks being received (Ref. 15 at 59 (summarizing 53 filed complaints), 310 (concerning JRC staff)). As a Panel member stated, ''there are multiple episodes of non-contingent infliction, including malfunction of the device.'' (Ref. 15 at 310.) The risk of psychological harm increases if the shocks are delivered noncontingently or if the individual subject to the ESD is unable to understand that the shock is related to undesirable behavior. Panel members explained that this is the perfect paradigm for learned helplessness (Ref. 15 at 304).

We note that, in addition to the relationship among vulnerabilities, noncontingent delivery of shocks and psychological risks, noncontingent delivery also undermines the effectiveness of the punishment paradigm for ESDs. ESDs are intended to accomplish behavior modification through punishment. This depends on consistent, contingent delivery of shocks. Correspondingly, it also depends on the ability of the individual to associate cause and effect, *i.e.,* recognize the contingency. If shocks are delivered noncontingently, or the individual does not perceive the contingency, the treatment paradigm and potential effectiveness of the device are undermined.

Further, circumstances surrounding the application of shocks may amplify the harms. In particular, the DSM–5 states that PTSD ''may be especially severe or long-lasting when the stressor is interpersonal and intentional (*e.g.,* torture, sexual violence),'' (Ref. 29 at 274). An ESD shock is interpersonal because it comes from a person the recipient identifies as a caregiver, the shock is intentional because the monitor must activate the device, and the shocks occur repeatedly over a long period of time. Repeated ESD shocks, because of their interpersonal nature, may therefore precipitate especially severe or long-lasting symptoms.

Based on other evidence discussed in the proposed rule and received in comment responses, ESD use can be linked with DSM–5 criteria for PTSD, most clearly including Criterion A, Criterion B intrusion symptoms (intrusive distressing memories), Criterion C symptoms (persistent avoidance of stimuli associated with the traumatic event), and Criterion D symptoms (negative alterations in cognition and mood). While there are eight criteria in the DSM–5 that need to be met for a diagnosis of PTSD in a particular patient, the evidence in the record corresponding with some of these criteria is sufficient for FDA to conclude that ESDs for SIB or AB pose a risk of developing PTSD; actual occurrence of a particular harm is not necessary for FDA to determine a device presents a risk of that harm. Further, lack of information regarding some of the criteria may be due to poor recordkeeping, clinical oversight, and training of personnel at JRC to identify safety and effectiveness outcomes.

In addition to being part of a diagnosis of PTSD, the PTSD symptoms for which we have evidence are also harms on their own. For example, FDA has evidence that recipients of ESD shocks have experienced nightmares, flashbacks, avoidance, startle, hypervigilance and reexperiencing symptoms, and even the JRC training manual indicates that the following symptoms of PTSD should be monitored for: nightmares, flashbacks, avoidance,

startle, and hypervigilance. One patient reported nightmares, flashbacks, and re-experiencing symptoms as a result of the ESD administration (Ref. 15 at 63). The Panel discussed that various symptoms of PTSD, including nightmares, flashbacks, emotional distress, and intrusive thoughts, were found in individuals who have been subject to ESD shocks, although no systematic psychiatric assessment using DSM criteria was conducted for PTSD (see Ref. 15 at 154, summarizing such symptoms in people subject to ESDs). Additionally, of 53 complaints filed from 1993–2013 regarding ESD with the Massachusetts Disabled Persons Protection Committee (DPPC) that FDA reviewed, negative emotional reactions and PTSD were reported as AEs (Ref. 15 at 59). From 2010 to 2013, FDA officials were contacted by, and met with, representatives from various national disability organizations. These organizations reported at least four case reports of psychological trauma and PTSD symptoms, and stressed that alternative treatments, such as positive environmental and reinforcement strategies, have been developed and are generally successful for severe and refractory self-injury (see Ref. 5 at 72; see also Ref. 15 at 59).

If shock recipients develop PTSD symptoms, they may be more severely impacted by future shocks because they could have ''heightened sensitivity to potential threats, including ones that are related to the traumatic experience'' (Ref. 30 at 275). ''Symptom recurrence and intensification may occur in response to reminders of the original trauma, ongoing life stressors, or newly experienced traumatic events'' (Ref. 30 at 277). Reminders of past shocks, for example, seeing the staff member(s) who administered the shocks or seeing others suffering the same trauma, may contribute to re-traumatization. Significantly, the ESD itself remains attached to the individual's body, presenting a near-constant reminder of past trauma, so FDA believes there is a meaningful potential for re-traumatization subsequent to painful and traumatic stimuli such as the shocks delivered by ESDs. The testimony during the Massachusetts hearing reflected such concerns. Dr. McCracken emphasized the heightened risk of trauma from exposing a member of a vulnerable patient population to continual, painful shocks over a period of years, in many cases several years (Ref. 14, day 9 at 158–59).

FDA's review of JRC's records did not find evidence that JRC monitors for or asks about PTSD, including assessment of the cardinal symptoms of PTSD. Given the literature, the testimony about ESDs specifically, and the fact that JRC does not monitor for such harms, FDA disagrees with JRC's assertions that ESDs would not cause PTSD or PTSD symptoms, among other psychological harms. In short, the evidence indicates that shocks from an ESD can cause PTSD or several of its symptoms, and once the symptoms arise, recipients may be even more susceptible to harms from future shocks.

In sum, the literature on PTSD has evolved to recognize situations like the repeated use of ESDs, where a series of events together may be traumatic enough for some individuals to develop posttraumatic reactions, including acute stress disorder, PTSD symptomatology, and PTSD. As we explained in the proposed rule, psychological risks also include anxiety, panic reactions, learned helplessness, and other stress disorders (see, *e.g.,* 81 FR 24386 at 24393 to 24394). Manifestations of these harms may contribute to a PTSD diagnosis, but they are also harms on their own. Individuals subject to ESDs for SIB or AB also have vulnerabilities that tend to increase the risks of experiencing psychological harms. Based on the literature, modern diagnostic criteria, and expert opinion, FDA has determined that ESDs used for SIB or AB pose the risk of causing those psychological harms.

(Comment 19) One comment states that the pseudocatatonic sitdown reported in one article and described as an adverse event by FDA was an act of self-restraint and was an improvement over previous behaviors.

(Response) FDA disagrees with the comment. Entrance into a pseudocatatonic state is a risk posed by the use of ESDs. The authors of the reference proposed that the pseudocatatonic behavior was a self-protective response to avoid punishment: They ''surmised that this global muscular 'freezing' or 'melting' provided 'insurance' for the patient, preventing her from striking out and consequently being punished for doing so'' (Ref. 31). The patient became temporarily unresponsive, even upon receiving affection from caregivers. Thus, even assuming the authors were correct that the pseudocatatonic state was ''insurance'' against striking out, this does not mean that the behavior was not an adverse effect or risk. Particularly in the case of certain aggressive, non-self-injurious behavior, this change in behavior is not necessarily an improvement for the patient. Replacing aggressive behaviors such as curses, threats, or striking out against others with a lack of all responsiveness is not necessarily an improvement in the patient's wellbeing. Indeed, a Panel member made clear that generalized behavior suppression is a risk and occurs, *i.e.,* ''when experiencing a great deal of punishment, some people just stop behaving in general'' (Ref. 15 at 305; see also id. at 312). This is also concerning because less-invasive behavioral techniques such as those that are within the state of the art would not provoke responses such as a pseudocatatonic state. FDA is not persuaded that more acceptable behavior from an outsider's perspective equates to improved wellbeing for the patient. FDA continues to regard generalized behavioral suppression, such as pseudocatatonic reactions, as a risk of ESDs used for SIB or AB.

(Comment 20) One comment states that crying decreased after use of aversives in one instance where FDA claims that crying increased, citing Ref. 32.

(Response) FDA disagrees. Although Ref. 32 reports decreased crying during one phase of the study involving contingent shock, crying increased in the final treatment phase, which also involved contingent shock (Ref. 32 at 621). In addition, other studies report crying as an AE from ESDs for SIB or AB, including increases in crying during later sessions (see, *e.g.,* Ref. 33 at 117). Because crying, which can be indicative of trauma, did in fact increase in the cited reference as well as other references, FDA continues to consider increased crying as an AE associated with the use of ESDs for SIB or AB.

(Comment 21) One comment claims FDA incorrectly cites Ref. 34 to support the risk that ESDs cause temporary or long-term increases in symptoms and frequency of SIB. The comment alleges that this is a ''complete misstatement'' because in fact the authors reported a decrease in target behaviors to zero.

(Response) Regarding a temporary or long-term increase in symptoms, FDA disagrees. While the article cited states that ''[h]owever by the fifth day of Phase 1 treatment, self-mutilative behaviors were reduced to zero, and emotionality had returned to pretreatment levels,'' the article concludes by noting that the subject had ''become more incontinent during waking hours since termination of the treatment program'' (Ref. 34). Moreover, the subject's initial reaction ''was an increase in emotionality and in frequency of self-mutilative behaviors'' (Ref. 34). Accordingly, FDA believes the commenter is incorrect.

(Comment 22) One comment argues that FDA misrepresented the findings of Ref. 35 regarding the risk of undesirable

replacement behavior, given the statement in the article: ''Our experience suggests that once most SIB has been eliminated, especially if it was deliberately replaced by new, desirable behaviors, favorable qualitative changes often took place in the behavior of the patients.''

(Response) FDA disagrees. Although the article does state that favorable changes *often* took place in the patients ''*once* most SIB had been eliminated, especially *if* it was deliberately replaced by desirable behaviors,'' (Ref. 35, emphasis added), this does not mean favorable changes usually or always took place, or that most SIB was often or usually eliminated, or, most importantly, that it was often or usually replaced by desirable behaviors. Indeed, the article explains that, at one of the study sites where skin shock was used, the positive effects were temporary, and SIB returned if shocks were delivered by a different staff member or in a different room (Ref. 35). The authors observed, ''[o]ccasionally, when one type of SIB is reduced, another would appear in its place,'' and, given the likelihood of reinforcement of negative behaviors, ''the probability that a replacement behavior will be undesirable is quite high'' (Ref. 35).

In addition, one of the commenter's own references states that positive behaviors that were not the targeted behavior can be modified during treatment (Ref. 36). This information supports FDA's statement regarding undesirable replacement behavior as a risk posed by ESDs for SIB or AB.

(Comment 23) One comment states that FDA misrepresented references reporting hostility and retaliation as adverse events. The commenter views hostility and retaliation as part of those patients' preexisting behavioral history.

(Response) Upon further consideration, FDA believes that additional context will help inform the likelihood of the risk of hostility and retaliation. In Refs. 29 and 31, the patients' hostility and aggression were part of the patients' clinical presentation. In Ref. 29, the researchers state ''it is difficult to know whether [the patient's] infrequent attacks represent retaliation for the punishment,'' *i.e.,* retaliation for the aversive stimulus used to reduce AB. Nevertheless, ''viewed against the long history of this kind of behavior'' and ''the long period of time (containing many positive reinforcements) between the infrequent aversive stimuli and the assaultive incidents,'' they doubt the aversive stimulus provoked retaliation. Thus, the researchers considered hostility and retaliation hypothetical risks of the use of aversive stimuli but deemed the risks doubtful in light of additional information.

FDA cited Ref. 31 to support similar risks, specifically surrogate retaliation, threats, and warnings. However, as the researchers targeted certain aggressive behaviors, the patient progressed through ''petit' aggressions,'' less severe replacement behaviors, some of which the authors describe as ''surrogate retaliation.'' This reference therefore indicates that surrogate retaliation and threats to others, while undesirable, were improvements upon the patient's state prior to application of skin shocks.

Taken together, in these researchers' opinions, these hostile or retaliatory behaviors are not AEs from the use of ESDs for AB. However, the commenter's own literature submissions support the risk of the creation of hostility:

- Ref. 37, considerable hostility regarding the proceedings;
- Ref. 38, aggressiveness, anger, and disgust;
- Ref. 39, risk of elicited and operant aggression; and
- Ref. 40, negative reactions to authority figures.

FDA is updating its risk analysis to reflect that hostile or retaliatory behaviors in response to the use of ESDs may be a risk but is not well supported. In particular, these behaviors may be difficult to distinguish from preexisting aggression. However, this does not change our overall conclusion regarding the substantial and unreasonable risk of illness or injury from the use of ESDs for SIB or AB, which FDA reaches based on our analysis of the other risks posed by ESDs for SIB or AB such as posttraumatic reactions, pain, and other injuries, much of which has been bolstered based on comments to the proposed rule.

(Comment 24) A comment questions FDA's scientific basis for inferring that seizures or heart palpitations may result from the application of ESDs.

(Response) FDA agrees that the scientific literature does not support the link between the application of ESDs and seizures. Accordingly, FDA noted in the proposed rule that the sources for such information were individuals who attributed their seizures to the use of ESDs as well as advocacy groups that stated that the shock could trigger seizures. We then explained, on the basis of such statements, that ESDs may pose additional risks including seizures. Although this commenter explains that current would have to be applied across the brain to induce seizures, FDA notes that the biochemical pathways that contribute to seizures are not well understood. As such and given the dearth of research on the effects of ESDs, FDA continues to regard seizures as a possible additional risk, but we agree that this is not a well-established risk. Since we weighed the evidence in part according to its source and the degree of support in the scientific literature, we did not accord this information significant weight, and it does not significantly affect our evaluation of the benefit-risk profile of ESDs for SIB or AB.

With regard to the evidence of the risk of heart palpitations, FDA believes the evidence is somewhat stronger but acknowledges the risk also has not been well studied. The commenter describes the manner in which electrodes would have to be placed on the skin in order to cause palpitations as a direct result of electric current flowing through the heart. He states that, because ESD electrodes are not arranged in that way, individuals subject to ESDs should not experience palpitations. In contrast, an individual who was subject to ESDs and an expert in this field have opined that the use of one model of ESD, a GED, presents a risk of heart palpitations to the patient (Ref. 15 at 63; Ref. 41, attachment 2).

We note that people who manifest SIB or AB may have conditions or take medications that increase their predisposition for palpitations; however, the relationship between such a predisposition and the risk of this harm from the application of ESDs is speculative. As with the potential additional risk of seizures, the reports are anecdotal, so we did not accord them significant weight, and they do not significantly affect our evaluation of the benefit-risk profile.

(Comment 25) One comment objects to FDA's reliance on JRC's policy document listing possible collateral effects of ESDs because this document was created in response to a requirement from the NYSED through Corrective Action Requests to include a discussion of the collateral effects of aversive interventions in its policies, and there is no evidence ESDs caused any of these collateral effects.

(Response) FDA disagrees. The discussion of possible AEs that JRC included in its documents is consistent with the literature and NYSED's reports. It is also consistent with information identified by and submitted to FDA by individuals formerly at JRC and their parents. Specifically, NYSED received reports of AEs, which NYSED refers to as collateral effects, from the use of these devices, such as increases in aggression and increases in escape behaviors or emotional reactions. Also included were ''numerous reports of

students who have incurred physical injuries (burns, reddened marks on their skin) as a result of being shocked and for whom parents and students themselves have reported short-term and long-term trauma effects as a result of use of such devices or watching other students being shocked (*e.g.,* loss of hair, loss of appetite, suicidal ideation),'' (see Ref. 22).

In addition, based on its site visit, the NYSED criticized JRC for inadequate monitoring for AEs, which partially precipitated the Corrective Action Requests. Without adequate monitoring, JRC's statement is not persuasive when it says that ''no evidence'' shows the use of ESDs caused the ''collateral effects.'' Adequate monitoring is necessary to instill confidence in such claims. Given the reasons NYSED required the statements, the consistency with the literature and anecdotal reports, and the fact that JRC ultimately included the statements in its documents, we continue to regard this information as evidence of risks.

(Comment 26) A comment questions the validity of FDA's concerns regarding AEs and underreporting because the commenter asserts it can confidently state that no treatment with an ESD has ever resulted in a patient death or serious injury. The comment argues that FDA's position on AEs is speculative and not backed by data and that underreporting would pertain to other alternative treatments for SIB or AB.

(Response) FDA disagrees. As discussed in the proposed rule, FDA believes that the scientific literature suffers from various limitations and has likely underreported AEs associated with ESDs for a number of reasons (see 81 FR 24386 at 24935). Perhaps most importantly, the devices have been studied only on a very small number of subjects, many of whom would have difficulty communicating or otherwise demonstrating AEs, including injuries. Although FDA did not identify death as a risk of ESD use, we have reason to doubt the commenter's confidence about the lack of serious injuries related to ESD use.

For example, JRC provided no data regarding AEs in the resident summaries it submitted, and the submission includes no information to assess whether AEs were systematically planned for, tracked, or documented in any of the clinical data. A qualified clinician should have inquired about AEs with open-ended questioning at predefined times after each use of the GED; there is no indication this occurred. Therefore, these data are inconclusive regarding whether AEs occurred. As we stated in the proposed rule, 66 patient case histories spanning a 23-year period did not report any AEs, which is highly unusual over such a long time. For instance, FDA expected to read about a known case of skin damage in these histories; however, there is no mention of that event. This may be because none of these case histories included systematically defined methods for short- or long-term AE monitoring.

In the Massachusetts hearing, JRC submitted only one paper about adverse effects of ESD use (Ref. 7). The paper acknowledges that few studies have systematically investigated adverse effects, and it does not include a statistical analysis because it did not collect enough data. Dr. McCracken testified that in the literature about the use of ESDs, ''there has been almost no attempt to identify or examine side effects'' (Ref. 14, day 9 at 604). He then stated that ''concerns me. In every other field of investigation of medical treatment, this would be considered—we go to great pains to capture all of those types of side effects'' (id., referring to ''reactions such as fear, panic, vigilance, regression, attempts to avoid the shock. Basically heightened anxiety, traumatic-like symptoms.''). These support FDA's position.

There may also be an underreporting bias due to impairments with provider recognition, which is related to the difficulties individuals would have communicating or otherwise demonstrating to providers AEs including injuries (see 81 FR 24386 at 24398). SIB and AB are exhibited at disproportionately high rates by people with intellectual or developmental disabilities. Notably, many such people have difficulty communicating because of such disabilities. This difficulty is part of what makes these individuals members of a vulnerable population. Although some individuals were able to offer their opinions to FDA at the Panel Meeting, through interviews, and in the docket, most individuals at JRC currently subject to ESDs who have reported IQ scores, have scores that indicate their intellectual impairments are profound, severe, or moderate. This indicates that those individuals at JRC are, to varying degrees, vulnerable due to difficulty communicating. Thus, FDA cannot conclude that communicative individuals are representative (with respect to their communicative abilities) of other individuals subject to ESDs.

The bulk of the articles describe case reports or series, employing only retrospective reviews of clinical experience, not prospective studies. Because such retrospective reviews do not systematically plan for the identification of AEs in advance, their assessment of such has limited value. In contrast, prospective studies that include plans to observe and record AEs from the outset generally provide greater confidence in their assessment of AEs. Further, most of the research articles were published in the 1960s and 1970s, before significant advances in the ability to diagnose and classify psychological AEs such as PTSD. Most of this dated research did not adhere to modern standards for AE monitoring.

Although a ban does not require proof of harm, evidence of actual harm helps inform the analysis, so FDA extensively reviewed the available data and information for AEs associated with the use of ESDs. FDA relied on that data and information to understand specific risks and dangers that ESDs present to individuals' health (see 81 FR 24386 at 24393). FDA considered data and information from one prospective case-control study and one retrospective chart review of 60 subjects that reported AEs. Note that the case-control study did not systematically assess AEs. These references reported:

- The emergence or intensification of self-restraint;
- low-intensity SIB that eventually resulted in tissue damage;
- temporary skin discoloration that cleared up in a few minutes or days; and
- ''collateral behavior'' not reported as AEs, including emotional behaviors, tensing of the body, and attempts to grab or remove the device.

In addition, FDA considered 25 case reports or series encompassing 66 subjects that included an assessment of AE occurrences. These references reported:

- Symptom substitution, including head-snapping, and possible symptom substitution, including increased incontinence;
- escape behavior;
- possible hostility and retaliation;
- anticipatory fear and avoidance upon observing the experimenter's initial movements to deliver a shock, immediately developing fear of the device itself, and fear (phobic response) of buzzing sounds;
- aggression, including accounts of surrogate retaliation, self-aggression, lesser aggressive action, aggression fantasies, threats and warnings;
- development of episodic bursts of SIB and aggression toward others;
- crying, increases in crying, cries of pain, whimpering;
- shivering;
- statements that the shocks were painful and grimacing;
- panic;

- extreme anxiety (consisting of screaming, crying, attack, and escape attempts);
- freezing (generalized behavior suppression) including an observation of pseudocatatonic sitdown;
- initial increase in self-mutilative behavior and emotionality;
- decrease in happiness or contentment and increased dependency;
- slight local tremor in the thigh due to the shock;
- arc burns to the skin;
- lesion or bruise on the skin that resolved in 1 week and slightly reddened areas;
- flinching;
- perspiration; and
- demonstrating other undesirable behaviors, including smearing feces, spitting, stamping feet, swearing and using racial epithets, making obscene gestures, rolling eyes, and imitating others.

A later submission of 68 case reports revealed three subjects for whom AEs were noted; however, FDA is aware of at least one AE (skin burning) that did not appear in that set of reports (Ref. 5 at 69; Ref. 15 at 135–36). These documents reported:

- Urinary retention;
- arm pain;
- seizure;
- injured foot;
- angioma (an abnormal growth) below the ribs that did not need treatment;
- lipoma on arm; and
- cloudy urine specimen.

These AEs occurred while the residents were subject to an ESD, but the reports do not describe an evaluation of whether the ESDs caused or related to the AEs. Note that FDA is not identifying all of these as risks of ESDs for SIB or AB.

Ten other case reports or series did not assess AEs, and 6 articles, encompassing 11 subjects in total, noted that the researchers did not observe AEs in their subject population.

Because of the likely underreporting of AEs in the literature, FDA carefully considered the risks identified through other sources, which provide further support for the risks reported in the literature. These sources beyond the scientific literature indicate that ESDs are associated with additional risks such as suicidality, chronic stress, neuropathy, and injuries from falling (see 81 FR 24386 at 24399). Although JRC has only publicly acknowledged the risks of pain and erythema, its own documents provide evidence that aversive interventions such as ESDs are associated with several other risks, including nightmares, flashbacks of panic and rage, hypervigilance, insensitivity to fatigue or pain, changes in sleep patterns, loss of interest, difficulty concentrating, and withdrawal from usual activity (see 81 FR 24386 at 24398).

With regard to underreporting AEs pertaining to other treatments, the comment specifically refers only to pharmacotherapy. However, the studies conducted for approval of the drugs provide a better baseline to understand their risks than that available for ESDs, and the studies supplement our understanding from spontaneous postmarket reports of AEs. As a result, the possibility that the pharmacotherapy poses risks additional to those that have been reported is much less of a concern in FDA's consideration of state-of-the-art treatment for SIB or AB than is the likelihood of underreporting of AEs associated with ESDs in FDA's consideration of ESD risks. For example, to obtain drug approval for the pharmacotherapies used in relation to SIB and AB or the underlying conditions, the sponsors conducted Phase I clinical trials that included neurotypical individuals to assess the safety profiles of the drugs, meaning the subjects of the study were generally better able to communicate AEs than the individuals on whom ESDs for SIB or AB have been used. Further, such trials assessed AEs according to prospectively determined protocols. In the Phase II and Phase III trials, AEs were also systematically monitored in the intended-use population. Thus, in the case of pharmacotherapy used for SIB or AB, the safety of the drugs has been studied in formal trials that provide a much better understanding of their risks than the much more limited data that exist for ESDs.

In contrast, the safety of ESDs has not been equivalently studied. This is not to suggest that a finding of substantial equivalence to an existing device type must rely on adequate and well-controlled studies as if the sponsor sought new drug approval. Rather, it indicates to FDA that the safety profile for pharmacotherapy used in relation to SIB and AB or the underlying conditions is better understood than the safety profile of ESDs for SIB or AB, in particular that AEs are better understood. The data and analysis for such pharmacotherapies are more robust because the available data and information for ESDs suffer from various limitations discussed throughout this rulemaking, whereas the clinical studies for these drugs do not. As such, the pharmacotherapy premarket data provide a more complete understanding of risks, reducing any concern regarding underreporting of AEs.

The commenter agrees that other state-of-the-art approaches such as positive behavioral treatments pose little to no risk. As discussed in the comment responses regarding the state of the art, the only risk that FDA found to be associated with positive behavioral treatments is the potential risk of ''extinction bursts,'' an upsurge of the actual undesirable behavior, which is easily recognized and quickly mitigated by competent therapists.

(Comment 27) Quoting from Ref. 42 and Ref. 16, a comment states that ''most published accounts report few, if any, side effects from treatment'' and that ''overall, there was little to suggest the development of adverse side-effects.'' The comment argues that positive side effects are most often observed, including relief from other symptoms. The comment also argues that scientific research ''does not have a shelf life.''

(Response) FDA disagrees with the characterization of the published accounts as well as the implication that previous scientific research cannot be understood in a different way over time. FDA considered the cited references in their entirety at the proposed rule stage, including in the context of ethics and treatment options prevailing at the time the research was conducted. We note that this comment relies on research from earlier decades; both references date back to 1975, well before the development of less-invasive behavioral treatments. After considering these references in light of then-prevailing ethics and conceptions of harm, FDA is not persuaded that these references speak to modern standards of care regarding ''positive side effects.''

As to ''adverse side effects,'' we believe that these and other early studies underreported AEs for various reasons discussed in the proposed rule and other comment responses, were subject to lower peer-review standards for observation and reporting relative to modern standards, and did not have the benefit of recent decades of research into the treatment of SIB and AB. As a result, the articles quoted by the commenter have various weaknesses that undermine the commenter's position.

First, Ref. 42 notes that in its literature review ''only two articles [Refs. 40 and 43] consider in any detail the problems associated with aversion in self-injurious behavior or in the severely retarded.'' Further, ''even those accounts which have been included vary considerably in the adequacy of the information given; particular

deficiencies being the lack of adequate clinical data about the subject or the results of previous treatment and the short duration and variability in methods of recording of baseline observations, bearing in mind that self-injurious behavior tends to fluctuate in intensity over time'' (Ref. 42). The article also notes the importance of the concomitant positive behavioral program in producing positive side effects. Finally, the article concludes: ''an answer to the problems associated with aversion will not reach any rapid solution and it is therefore essential that treated cases are properly documented and reported'' (Ref. 42). Thus, the commenter's reliance on this article as support for its position that ESDs cause ''few, if any, side effects'' is not persuasive.

Similarly, the authors of Ref. 16 conclude that ''the work with this technique is still at a preliminary stage and the apparatus is not yet sufficiently trouble-free to warrant its use outside research settings.'' Thus, the commenter's reliance on this article as support for the statement that there is ''little to suggest the development of adverse side-effects'' is also unpersuasive.

Other literature submitted by the commenter supports FDA's findings of risks. For example, Ref. 39 reports risks from other studies of elicited and operant aggression, other emotional responses (*e.g.,* crying), decreases in appropriate behavior (''generalized response suppression''), escape from or avoidance of the punishing agent or situation, and caregivers' misuse of punishment (see also Ref. 44). Further, according to Ref. 39, aggression and emotional responses may be more likely to occur when the individual is exposed to unavoidable and intense aversive stimulation. Ref. 36 reports the risk of untargeted positive behavior being modified by the device. Ref. 40 includes negative reaction to authority figures, the increase in behaviors undergoing treatment, prolonged treatment potential, production of undesirable emotional states, behavioral rigidity, general disruption of cognitive processes, production of neurotic syndrome, suppression effects not specific to responses punished, and chronic emotional maladjustment. (See also Response 19 discussing pseudocatatonic states and generalized behavior suppression.) Ref. 45 discusses the risks of an unreliable apparatus, including inappropriate intensity of shock, inconsistent delivery of shock, inappropriate delay of shock, or inappropriately prolonged shocks. Ref. 46 enumerates 19 negative side effects. Another article submitted by the commenter acknowledged that few studies have systematically investigated side effects of skin shock (Ref. 47). The few studies reporting the potential benefits of the devices that were published in more recent years similarly did not systematically report AEs or include safety outcome measures (see Ref. 47).

Recent testimony from the Massachusetts hearing corroborates that AEs are understudied (Ref. 14, day 9 at 604 (McCracken)) and that certain risks are underreported and undertreated in people with developmental and intellectual disabilities (Ref. 14, day 26 at 1519–20 (Miner)). Other testimony indicates that shocks are rarely used because of negative side effects, for example, avoidance, emotional responses, and perpetuation effects (see Ref. 14, exhibit 494 (Spiegler 2014)). Similarly, JRC's own documents state that side effects (*i.e.,* risks) can include emotional reactions, aggressiveness, escape from or avoidance of the punishment situation, increased unwanted behaviors, and self-perpetuation of punishment (Ref. 38), as well as exacerbation of violent behaviors (Ref. 48).

Keeping the foregoing in mind, the quotations of Refs. 42 and 16 indicating that published accounts report few, if any, negative side effects do not fairly characterize the decades of research since 1975. In the intervening decades, clinicians have expanded what they consider to be negative side effects and have made significant advances in the ability to diagnose and classify negative psychological effects. For example, pain is itself a harm, yet earlier studies did not view the pain as a harm.

As we have explained, providers' and researchers' concerns about intentionally inflicting such conditions upon a vulnerable patient population led to advancements in behavioral therapy (see 81 FR 24386 at 24404). In fact, Ref. 42 advocated for active research to establish ''alternative forms of treatment'' because he recognized the ethical concerns presented by this treatment, particularly in a patient population that cannot give consent (Ref. 42). In the case of using ESDs for SIB or AB, the ethics of using restrictive interventions on such a population contributed to the evolution of treatments and of understanding their attendant risks.

While empirical findings may not have a ''shelf life,'' the understanding of the completeness and implications of those findings may change as science evolves, which it has with respect to assessment of risks for ESDs. Based on such evolution, for example, because the decades-old references did not consider pain, anxiety, or other such sequelae as harms—nor did researchers systematically monitor for AEs according to current standards—FDA continues to regard such references as poor indicators for the occurrence of AEs.

(Comment 28) A comment disputes FDA's position regarding AE underreporting due to communication difficulties on the part of intellectually and developmentally disabled individuals by arguing that individuals subject to ESDs ''many times'' demonstrate improved communication, and that communication can be through nonverbal means, assisted by augmentative communication devices such as a picture board.

(Response) Although FDA acknowledges that some of these individuals may demonstrate improved communication and that communication can be through nonverbal means, this does not change FDA's view that many individuals manifesting SIB or AB would have difficulty communicating AEs and injuries, verbally or otherwise, and that this likely results in underreporting of AEs. Behavioral interventions typically include elements intended to improve communication skills; this does not mean that all or most individuals will be able to adequately communicate AEs.

We also note that, although augmentative communication devices may assist staff in communicating with nonverbal individuals, this is nevertheless evidence that those individuals have difficulty communicating. The comment does not explain or give examples of how these devices compensate for difficulties communicating AEs and injuries, nor does the comment present evidence contradicting the likelihood of atypical pain expression. FDA maintains that many individuals who present with SIB or AB would have difficulty communicating or otherwise demonstrating AEs and injuries and the Panel agreed (see Ref. 15 at 54, 155, 355).

(Comment 29) One comment questions FDA's claim of researcher bias, and it notes that in some ''N-equals-1'' studies, the researcher is blinded, which eliminates the researcher's bias.

(Response) FDA discussed numerous reasons in the proposed rule that researcher bias and author conflicts of interest may have influenced study results and conclusions, for example with respect to underreporting of adverse events, 81 FR 24386 at 24395,

and regarding poor study design, 81 FR 24386 at 24400 to 24401, and this comment does not address any of them. Instead, it points to the testimony of one of its experts regarding some blinded N-equals-1 studies, a study design that combines information from single-subject trials. We note that no N-equals-1 studies have been conducted on the use of ESDs for SIB or AB. Thus, although some study designs may reduce or eliminate researcher bias, this observation does not reflect the state of research into ESDs used for SIB or AB, and FDA is not revising our views regarding bias or the reduced weight we have given biased evidence.

(Comment 30) A comment asserts that JRC uses extensive measures to ensure ESDs are applied only to refractory patients, for example, evaluating each patient with a functional behavioral assessment (FBA) performed by a JRC clinician; first attempting PBS approaches; exhausting all other options; and obtaining a prior court order with the involvement of multiple parties. In the commenter's view, FDA fails to discuss and consider these measures in the assessment of risks.

(Response) FDA disagrees with the comment's rationale on several points. First, FDA did consider these measures. However, as we explained in the proposed rule, no clinical criteria identify refractory patients, and no rigorous or systematically collected data distinguish a refractory subpopulation that does not respond to other available treatments (81 FR 24386 at 24406). Similarly, members of the Panel unanimously concluded that such a subpopulation seems to exist but is very difficult to define (81 FR 24386 at 24406). Thus, as we explained, although evidence indicates that a very small subpopulation of refractory individuals may exist, that subpopulation is difficult if not impossible to define (81 FR 24386 at 24412). We are not persuaded that JRC has successfully defined a refractory subpopulation by exhausting a selected list of options, and this undercuts the certainty in JRC's claim that its patients are uniquely refractory.

Regarding exhaustion of options, we also explained that the available evidence casts doubt on whether JRC in fact applies the devices as a last resort after adequately attempting all other measures, and the evidence shows that some patients JRC had considered to be refractory were transitioned successfully to other treatments (81 FR 24386 at 24412). As we describe in more detail in Responses 39 and 44 to 46, additional data and information cast further doubt on the adequacy of JRC's attempts at alternative treatments. In other words, this undermines claims that ESD use can be limited to a truly refractory subpopulation.

More importantly, these measures to limit use of the device to a specific subpopulation in no way reduce or eliminate the risks posed by ESDs, and the commenter does not argue they do. Even if the measures were effective, they would merely limit the number of vulnerable individuals exposed to the risks; those individuals would still be exposed to the same risks as they would be in the absence of such measures. Rather than showing risk mitigation, the commenter's statements about limiting the exposed population provide support for the severity of the risks: If as the commenter claims, the devices are low risk, such measures would not be needed. Thus, the use of such measures fails to reduce the risks even as the reliance on such measures tends to confirm the severity of the risks.

Even if the risks could be limited to a very small subpopulation, this would not alter FDA's determinations that the risks are substantial and unreasonable. This is because, as discussed in the comments regarding effects, effectiveness has not been established in any population of patients exhibiting SIB or AB. Further, as discussed in the comments regarding the state of the art, positive behavioral approaches, sometimes alongside pharmacotherapy, have generally been successful even in the most difficult cases. However small this patient population may be, these vulnerable individuals, like all individuals, are entitled to the public health protections provided in the FD&C Act.

D. Effects of ESDs on SIB and AB

(Comment 31) A comment states that FDA acknowledges ESDs have been shown to reduce SIB and AB.

(Response) In the proposed rule, FDA acknowledged that ESDs may cause the immediate interruption of SIB or AB (81 FR 24386 at 24387) if the shock is applied while the SIB or AB is occurring. We also explained that some evidence suggests ESDs reduce SIB and AB in some individuals, but this evidence cannot be generalized because the studies suffer from serious limitations such as weak design, small size, confounding factors, outdated standards for study conduct, and study-specific methodological limitations (81 FR 24386 at 24400). We are also concerned about potential bias in some of the evidence of effectiveness related to lack of peer review and conflicts of interest (81 FR 24386 at 24401). Other evidence shows that ESDs are completely ineffective for certain individuals. For these reasons, FDA concluded that the evidence is sufficient to show that ESDs may interrupt behaviors when a shock is applied, but the evidence is otherwise inconclusive and does not establish that ESDs improve the underlying condition or condition individuals to achieve durable reduction of SIB or AB for a clinically meaningful period of time (81 FR 24386 at 24399 to 24403).

(Comment 32) One comment interprets FDA's statement in the proposed rule that, ''the possibility that some patients are refractory [to other treatments] does not necessarily mean that ESDs would be an effective treatment'' to mean that FDA believes ESDs should be banned because they are not effective for every individual with SIB or AB.

(Response) FDA disagrees. The statement referred to in the comment only makes the point that the fact that one treatment does not work for a patient or group of patients does not mean that a different treatment will work. FDA understands that devices are not always effective for every individual with the condition the device is intended to treat; this is not a reason that FDA is banning ESDs.

(Comment 33) A comment argues that, although there are no randomized controlled clinical studies of ESDs for SIB or AB, the available data, including over 100 published peer-reviewed articles, among other sources, amply provide evidence of the safety and efficacy of ESDs for SIB or AB. The comment provides a table summarizing 162 references discussing the use of skin shock.

(Response) FDA disagrees. As the comment acknowledges, these data have been provided to FDA and reviewed by the Agency, and FDA has also reviewed all of the additional information provided by commenters. We weighed the evidence according to factors that we explained in the proposed rule (see 81 FR 24386 at 24393). Where FDA has reconsidered the interpretation or significance of specific sources or claims in response to comments on the proposed rule, we have explained the reevaluation and how it affects the analysis in the appropriate section of this final rule. For example, based on additional data and information, we believe the proposed rule understated the harm of pain (see Response 13), and we no longer consider affection-seeking a risk of ESDs (see Response 16(c)). In other cases, we have elaborated on the significance of certain statements identified in the available information,

for example with respect to the potential risk of seizures (see Response 24).

FDA's review of the references cited by the commenter, along with the corresponding comments, does not change our conclusion that, beyond the ability of ESDs to cause immediate interruption of the behavior at the time of shock, the evidence is otherwise inconclusive with regard to the benefits and effectiveness of ESDs for SIB or AB. We continue to conclude that the evidence does not establish that ESDs improve the underlying disorder of which SIB or AB is a symptom, or successfully achieve a durable reduction of SIB or AB for clinically meaningful periods of time by conditioning individuals' behavior.

FDA previously reviewed 44 of the 162 references highlighted by the comment, which we discussed in the Executive Summary for the Panel Meeting and the proposed rule (see 81 FR 24386 at 24393). There were few comments regarding ESD effectiveness with respect to the references previously discussed by FDA, and FDA continues to view these as we did at the proposed rule stage. Note that one reference appeared twice, meaning the total of summarized references is 161. The references that FDA had not previously reviewed are:

- 19 case reports, 10 of which (involving 17 total subjects) provide some information regarding durability of effects;
- 10 literature reviews, all of which summarize literature that FDA has already reviewed;
- 41 references with limited or no discussion of ESDs, including opinion pieces and miscellaneous documents that do not directly bear on ESD risks or effects—these have limited relevance to this rulemaking;
- 38 reports on treating conditions other than SIB or AB—these also have limited relevance to this rulemaking; and
- 9 unpublished presentations or other documents that the commenter did not provide and FDA could not locate, including two written by JRC's former director-founder that are no longer available on JRC's website.

We focused our review of these references on the 64 references (45 discussed in the proposed rule and 19 cited in comments) that discuss patient data from clinical studies on ESDs for SIB or AB. With the exception of the one case-control study discussed in the proposed rule (see 81 FR 24386 at 24393, discussing Ref. 17), all of the other studies are case reports or literature reviews pulling from these case reports.

The case reports show immediate interruption of target behaviors at the time of shock application. One study on subjects with Lesch-Nyhan syndrome exhibiting SIB and AB shows no effectiveness whatsoever (Ref. 49), and a few report ultimate failure after a period of apparent success. However, all of the other case reports appear to demonstrate immediate interruption of the behavior at the time of shock application. FDA continues to conclude that the evidence shows that ESD shocks generally cause immediate interruption of the behavior that is occurring when the shock is delivered, provided the individual has not adapted to the shock, which has been shown to occur for some individuals.

More critical to the evaluation of the effectiveness of ESDs for SIB or AB is their ability to achieve durable effects by aversively conditioning behavior. A durable effect is one where an individual develops a conditioned response, so the target behavior, along with the frequency of shocks, is significantly reduced over a clinically meaningful period of time, either while the individual continues to wear the ESD or after the ESD is removed. Half of the references, 32 of 64, include at least some information regarding durability of ESD effects.[7] Several of these references report cases where there was some short period of reduction in target behaviors followed by failure. Most report a reduction in the target behavior ranging from a few months up to several years, particularly with continued (less frequent) ESD use. However, conditioned reduction of SIB or AB over clinically meaningful periods of time is much more difficult to demonstrate than immediate interruption of behaviors because, for example, data regarding such are more vulnerable to the errors that well-designed and controlled studies are intended to minimize. Establishing durable conditioning demands well-conducted clinical studies and data spanning longer periods. For example, an individual may undergo several different behavior modification techniques over a period of time, and it is more difficult to draw conclusions regarding the effectiveness of ESDs from a study that does not control for such confounding factors than from a study that did control for them. As a result of such weaknesses and limitations, as described in the paragraphs that follow, the limited data that currently exist for ESDs for SIB or AB are inadequate to establish durable conditioning.

As the comment recognizes, there are no randomized controlled clinical studies of ESDs for SIB or AB; there are only case reports and, as discussed in the proposed rule, one prospective case-control study on 16 subjects, 8 in the device group and 8 in the control group (see Ref. 17). The comment acknowledges this study has an extremely small sample size. The results of the case-control study are further limited because the study was not randomized or blinded, and it used an unvalidated surrogate endpoint (decrease in mechanical restraint). Case reports are, by definition, extremely small in size; the ones regarding ESDs for SIB or AB typically include fewer than five subjects, and often only a single subject. They have no control group, blinding, or randomization, do not test statistical significance, and the results are unlikely to be generalizable across subjects.

The particular case reports cited in the comment suffer from various other shortcomings that limit the ability to draw conclusions from their results regarding the effectiveness of ESDs for SIB or AB. Perhaps most importantly, many subjects were given concomitant treatments such as positive reinforcement or time-outs; therefore, it is unclear how much, if anything, the use of ESDs contributed to the observed reductions in SIB or AB. Many other case studies lacked sufficient detail to determine whether concomitant treatments were given. Other information important to assessing ESD effectiveness was often missing, such as details regarding the subjects and their particular forms of SIB or AB, baseline behavior measurements, device output and electrode locations, and shock administration protocols.

Further, most of the studies were conducted several decades ago and do not conform to current study conduct, reporting, or peer-review publication standards. Results were sometimes reported anecdotally and were not always recorded by a trained investigator, which raises questions regarding their reliability. Most studies lacked predefined, clinically meaningful endpoints, and typically study sessions and followup were of inadequate duration to assess effectiveness for a clinically meaningful time period or generalizability to the subjects' everyday environment. As a result of these limitations, the data are inadequate to draw any scientific conclusions regarding the durability of ESD effects on SIB and AB.

[7] We had not previously discussed 10 of these references in the proposed rule or Panel Executive Summary, Refs. 50–59.

(Comment 34) A comment notes that a literature review discussed in the proposed rule states, ''basic findings suggest that relatively intense punishers may be associated with successful long-term outcomes'' (Ref. 60). The comment asserts this demonstrates that aversives are effective and durable.

(Response) FDA disagrees. As discussed in the proposed rule, even though the cited article opines that research findings suggest sufficiently intense punishers such as ESDs *may* be associated with long-term success, it cautions that such findings suffer from various limitations, and the authors conclude that ''[u]ntil additional research on long-term maintenance is conducted, practitioners and caregivers should not assume punishment will remain effective over the long run.'' (81 FR 24386 at 24399, citing Ref. 60). The article explains that most of the time periods evaluated in the literature on punishment are brief, which may limit their applicability to treatment outcomes in clinical settings, and these studies have shown inconsistent outcomes in maintaining a reduction in target behavior (see, *e.g.,* Refs. 19, 20, 61 to 64). According to this article, conclusions about applied findings on maintenance of effect are difficult to draw for a number of reasons, including that relapse cases are less likely to be submitted or accepted for publication than successful ones. Thus, the reference does not demonstrate that aversives such as ESDs achieve durable reduction of SIB or AB for a clinically meaningful period of time. Rather, the article questions their effectiveness, and ultimately concludes that current knowledge is insufficient to support clinical application.

(Comment 35) A comment states that FDA badly mischaracterized a reference, Ref. 65, in the proposed rule, and that the findings in the reference contradict claims that ESDs cannot be successful unless continuously applied.

(Response) FDA disagrees. Providing only an excerpt from the article's abstract in support of its assertion, the comment misrepresents the findings of this article, which does not purport to study the effects of punishers, much less reach any conclusions regarding ESD effectiveness. Rather, the authors studied the ability to terminate the use of punishment-based procedures—described as ''multiple, 'aversive' treatments'' that ''were discontinued abruptly''—in favor of less invasive alternatives, specifically multielement positive interventions. The article explained, ''The question posed was how do adults with developmental disabilities and seriously challenging behaviors respond in the long-term when they are no longer exposed to negative and highly invasive procedures?''

Interventions that included contingent electric shock from ESDs were used for each subject prior to the positive interventions studied by the authors. The article acknowledges, ''[i]t is possible, of course that the prior invasive [restrictive] treatment contributed to the long-term outcomes presented in this report,'' but concludes that its ''results are encouraging in demonstrating that punishment-based approaches can be terminated, alternative strategies can be substituted, and through a clinically responsive system of monitoring and decision-making, behavioral adjustment can be supported without having to resort to invasive forms of treatment'' (Ref. 65). In sum, the authors were not validating the initial use of punishers or evaluating their long-term effectiveness but rather studying the ability of multielement positive interventions (*i.e.,* state-of-the-art approaches) to supplant punishment procedures, finding encouraging results that behavioral adjustment can be supported without invasive forms of treatment.

(Comment 36) One comment states that a reference cited in the proposed rule, Ref. 66, included ''surprising findings'' on the use of shock ''pertaining to 'the immediate increase in socially directed behavior, such as eye-to-eye contact and physical contact, as well as the simultaneous decrease in a large variety of inappropriate behaviors, such as whining, fussing, and facial grimacing . . .' '' The comment asserts that FDA selectively used information from this article for our own purposes.

(Response) FDA disagrees. FDA referred to this article in the proposed rule for several reasons, including: To support some of the risks posed by ESDs; to support the occurrence of adaptation, wherein a patient grows accustomed to a particular level of shock and no longer responds; and to support the ability of ESDs to immediately interrupt behavior occurring at the time of shock. The cited article studied short-term treatment and reported some immediate benefits from the use of ESDs for SIB or AB, as stated in the proposed rule. However, regarding longer-term followup, it states: ''Although the immediate 'side-effects' of punishment point in a desirable direction, one should be less optimistic about long-term behavioral change under certain conditions. We can supply few data which exceed a couple of months' followup, and in the case of only two children have we had the opportunity to conduct follow-ups for as much as 1 year, while the suppression of self-destruction was being maintained.'' This is consistent with FDA's determination that the data suggesting durable effectiveness of ESDs are generally weak, and the reference's statement is also consistent with the commenter's criticism (elsewhere in its comments) of this reference's ''extremely small sample size'' of three subjects.

It is also important to note that this article was published in 1969, so as explained elsewhere, we believe that it suffers from outdated methodology, such as a lack of systematic observation and reporting of AEs. Thus, the article's characterization of ''side effects'' as pointing in a ''desirable direction'' must be considered in this light. FDA considered the entire reference with regard to both benefits and risks and continues to regard the reference as we did for the proposed rule.

(Comment 37) A comment asserts that FDA's claims that Dr. Israel's 2008 and 2010 papers (Refs. 47 and 67) were not peer reviewed, and that they failed to disclose Dr. Israel's affiliation with JRC, are incorrect. The comment states that the copy of the 2008 review posted by FDA includes an apparent printing error that omitted the references to Dr. Israel's disclosure.

(Response) FDA acknowledges the apparent printing error in the omission of Dr. Israel's disclosure in the 2008 paper. Thus, other readers may have been adequately notified of any potential bias. However, as we explained in the proposed rule, FDA was aware of the affiliation and took into account the possible conflicts of interest, which stem from the facts that Dr. Israel was the founder of JRC and, at the time his papers were published, was on the journal's editorial board and thus part of the reviewing and approving body (for his own papers). As such, this printing error does not affect our conclusion with respect to Dr. Israel's potential bias. As we stated in the proposed rule, possible conflicts of interest do not, on their own, invalidate results. However, we continue to view Dr. Israel as a potentially biased source and weigh this evidence accordingly.

With regard to peer review, the commenter simply asserts without explanation that the papers were peer reviewed. However, as we explained in the proposed rule, we determined that the publications (both 2008 and 2010) were not peer reviewed because the articles were only reviewed by the journal's editorial board rather than an independent expert whose sole role was

to verify accuracy and validity (see 81 FR 24386 at 24401).

(Comment 38) One comment asserts that all of JRC's residents' harmful and dangerous behaviors decreased substantially as a result of treatment with the GED device, as evidenced in JRC's resident case reports, behavior tracking charts, and analyses from the past 16 years. The comment asserts this data set is extraordinarily robust because the individuals reside at JRC and are continuously monitored. The comment also asserts this data and information demonstrate the effectiveness of ESDs for SIB or AB for refractory patients.

(Response) FDA disagrees that this is a robust data set, and this information does not change FDA's assessment of the effects of ESDs for SIB or AB. The case reports and other information submitted by JRC about its residents on whom ESDs have been used appear to indicate that their SIB and AB decreased substantially once they began wearing the GED and remained at low levels for years. However, as explained in the paragraphs that follow, this information suffers from several serious methodological limitations that prevent FDA from drawing any scientific conclusions regarding ESD effectiveness based on it. For example, these are resident records, not study data, and they also suffer from the same limitations that generally apply to the case studies discussed in the literature. In addition, the manner in which the information was collected and documented undermines its reliability.

In particular, these resident records are anecdotal and do not amount to *study* data. The information was collected by JRC, which did not take measures to minimize the impact of subjectivity and potential bias. Important measures that its employees did not take include having an investigational plan and study protocol, running an analysis to demonstrate scientific soundness, validating methodology and endpoints, and selecting qualified investigators. JRC also failed to implement features designed to minimize confounding factors and other types of bias, such as a control group, blinding, and randomization, the importance of which are discussed in the proposed rule and in the responses to other comments. These records also suffer from the limitations that apply to extremely small studies. Although in 2016 JRC submitted case summaries for 68 residents (and has applied the devices to close to 300 individuals over the years, including about 51 then subject to the devices), we consider these data to be 68 individual resident summaries, not a single study including all residents, because the records do not show, for example, that conditions were controlled across individuals or subgroups of individuals.

Further, confounding factors and uncontrolled conditions make it very difficult to attribute JRC's observed improvements in behavior to the GED device or draw any conclusions about its effects. For example, according to these records, most of the individuals on GEDs received concurrent treatment with various forms of behavioral therapy, including positive behavioral programming and various differential reinforcement programs, counseling, and functional communication training. Without adequately controlling for, or adequately documenting the formulation, application, and effects of the other behavioral intervention components, it is difficult if not impossible to differentiate effects of the GED from effects of behavioral treatments. Additionally, these records indicate that JRC targeted different behaviors during different time periods. As a result, many of the tracking charts show highly variable behavior, in some instances showing some target behaviors decreasing for an individual while other target behaviors did not decrease for that individual, and thus shocks continue to be applied. This makes it difficult to assess overall ESD effectiveness.

Where data represent a relatively small number of individuals, detailed, systematic observations are critical to reducing uncertainty regarding results. Yet the information submitted by JRC fails to include important details regarding how the data were collected and recorded. This creates considerable uncertainty as to its significance and reliability and prevents us from drawing clinically meaningful conclusions regarding the benefits of the GED from the limited data provided in the case summaries. For example, the information lacks key details regarding the time at which the device was applied, the specific behaviors targeted, behaviors that occurred prior to administration of shocks, criteria for counting behaviors, the number of electrodes and their location on the body, which ESD model was used, frequency and duration of data collection, who determined a behavior to be SIB or AB, who recorded the count data, and the medical training (if any) or qualifications of those recording data to evaluate the residents. The information submitted to FDA suggests that JRC often applied multiple devices at once to single individuals, but the submissions do not explain why this was necessary or how the number of devices was determined; the submissions only provide gross detail, for example, that shocks were indicated for ''health-dangerous behavior.'' Finally, the charts include little information regarding the individuals and their behaviors before and after ESD use, making it difficult to draw conclusions regarding how the devices affected the target behaviors.

(Comment 39) A comment argues that the ESD shock is applied to help residents identify their dangerous behaviors for purposes of reducing the frequency of that behavior. As residents learn to identify and control their dangerous behaviors, the number of shocks delivered decreases. The comment asserts that, for a significant portion of JRC residents, the duration of effects from ESDs for SIB or AB is lasting as demonstrated by the numerous residents who have been transitioned or ''faded'' off of the GED and no longer manifest SIB or AB.

(Response) Although ESDs may interrupt behaviors occurring at the time of shock, FDA has not seen adequate evidence demonstrating that ESD shocks produce a conditioned response. Additionally, although the ability of ESDs to condition individuals not to engage in SIB or AB after removing the device is part of the evaluation of ESD effectiveness, fading itself is not demonstrative of effectiveness. Fading of the GED is an indication of JRC's decision to reduce or cease use of the device for an individual, and submissions from JRC do not establish that it makes such decisions consistently, much less that it adequately establishes that the device caused changes in behavior. Further, SIB and AB can exceed pre-baseline levels once an ESD is removed, as has been observed in the literature. This is partly why, as discussed in the previous comment response, FDA disagrees that the resident data submitted by JRC demonstrate a durable effect for ESDs for SIB or AB.

With respect to individuals transitioned off of the GED, only a small percentage of individuals at JRC have been completely faded off of the GED. According to the records submitted by JRC for the 68 residents on whom ESDs have been used, only 13 (19 percent) have been completely faded, and the duration of ESD use prior to fading ranges from 3.5 to 23 years. According to the summary information for the 189 residents on whom ESDs have been used since 2000, which is even less detailed than the 68 resident records, only 58 (31 percent) had been

completely faded off of the GED device at least 2 weeks before discharge from JRC.

Further, JRC provided no information regarding clinical protocols, treatment plans, or behavior frequencies for individuals after they left JRC. At the Massachusetts hearing, Dr. Blenkush stated that JRC has not systematically collected follow-up data on individuals after they leave JRC (Ref. 14, day 37 at 81). FDA is not suggesting JRC necessarily must collect followup data; however, such data are important to understanding the effects of ESDs. Based on the scant information provided, FDA is unable to determine, for example, whether behaviors worsened after leaving JRC or whether other non-aversive treatments are responsible for any successes. Overall, it is difficult if not impossible to evaluate the effects of ESDs, much less draw any conclusions regarding ESD effectiveness, from the fading data provided by JRC for the GED, without: (1) A standardized clinical assessment protocol (*e.g.,* specific behaviors targeted, criteria for counting behaviors, frequency and duration of data collection, who determined a behavior to be SIB or AB, who recorded the data, and the medical training or qualifications to evaluate patients of those recording data); (2) controlling for or adequately documenting the formulation, application, and effects of the other behavioral intervention components that were applied according to JRC's data; and (3) well-documented followup to determine whether behaviors worsened after ESD use discontinued at JRC or after leaving JRC.

The claim that these devices produce durable conditioning is further undermined by the fact that, as evidenced in the resident records submitted by JRC, the device has been used on many individuals for years and even decades. As Dr. Iwata explained during the Panel Meeting:

> [M]y understanding of the way this whole process works is that within a given range in terms of interventions that we use, some are effective and some are not, and if they're not effective, you go on to something else. Now, electrical stimulation is designed to be very effective very quickly, which means that the individual should not experience very many stimulations, which means that very few people should habituate to the stimulus. And if they do, it's not really habituation; that is, they haven't adapted to it. It's simply ineffective, and you would move on rather than to step up the voltage, so to speak. To use an analogy, a small amount of lemon juice on the tongue might be another aversive event, but if that doesn't work, we don't put acid on the tongue.

(Ref. 15 at 142). Regardless of whether adaptation is the correct characterization, even JRC has acknowledged that its strongest ESD sometimes loses any effects it may have had in reducing target behaviors, necessitating the use of an alternative method to modify behaviors program instead of an ESD. Dr. Blenkush highlighted ''a very comprehensive alternative behavior program'' at JRC that was ''very effective'' after adaptation to the GED–4 even for patients engaging in SIB that could result in serious injury to themselves (Ref. 15 at 148).

(Comment 40) One comment states some Panel members recognized ESDs as potentially appropriate for certain patients and asserts that FDA has ignored the comments of several Panel members that there is evidence to demonstrate that ESDs for SIB or AB have beneficial effects, particularly in the refractory population treated at JRC.

(Response) FDA agrees that some Panel members opined that ESDs provide benefits for some patients but disagrees that we ignored these comments in the proposed rule and disagrees that Panel members opined that the benefits would be more likely to occur in JRC's patients. As explained in the proposed rule, approximately half of the Panel agreed that there was a benefit, but they qualified their answers by explaining that the evidence showed a benefit from the interruption and immediate cessation of the behavior and noted the weaknesses in the evidence (81 FR 24386 at 24401). Regarding refractory individuals residing at JRC, when asked specifically about the subpopulation for whom any benefits might manifest, most panelists stated that they could not define that subpopulation. Further, as noted in Responses 13, 32, and 43, being refractory to other treatments does not mean ESDs will be effective. However, overall, the Panel recommended to FDA that the Agency ban ESDs for SIB or AB, with the members taking into consideration potential benefits and risks of the devices, including use of the device in a refractory population. Accordingly, the Panel's overall evaluation of ESD effectiveness is consistent with FDA's.

(Comment 41) One comment says that expert testimony from the Massachusetts hearing supports JRC's argument that the GED is effective for the population on whom it is used at JRC.

(Response) FDA agrees that some of the expert witnesses at the Massachusetts hearing testified about the beneficial effects from the GED for SIB or AB at JRC. For example, Dr. Susan Shnidman, a clinician, testified that she observed improvements in the behaviors of many JRC residents after beginning treatment with the GED, and Dr. Philip Levendusky, another clinician, acknowledged in his testimony that there are many examples where the GED had a positive impact on a JRC resident. Further, clinicians Dr. Mikkelsen stated, and Dr. Zarcone confirmed, that in many cases there was rapid deceleration in SIB after the use of the GED, with the problematic behaviors decreasing from hundreds per day to zero in a very short period of time.

While expert testimony regarding observed benefits of the GED in many individuals at JRC is certainly relevant to this rulemaking, and FDA has taken this information into account in our decision-making, much more important is the issue of durable, clinically meaningful, effectiveness of ESDs for SIB or AB. On this more scientifically complex issue, the expert testimony from the Massachusetts hearing generally cuts in the opposite direction and is consistent with FDA's assessment that the evidence is insufficient to establish behavioral conditioning or durable effectiveness.

For example, although Dr. Mikkelsen testified that the GED can suppress the behavior and that he has seen some residents' behaviors respond to the GED, he also testified that, based on JRC's spreadsheets regarding efficacy, the GED ''doesn't have any statistically lasting effect'' and that he does not believe the GED ''actually changes the behavior in any lasting way'' (Ref. 14, day 7 at 196). Dr. Geller testified, ''[t]he 168 articles represent a small number of cases that have extremely mixed results. . .The studies fail to show whether or not [contingent skin shock] is effective, if the outcome means that the individual could live a life without the self-injurious behaviors or would have aggression without shock'' (see Ref. 14, day 21 at 49–60). Dr. McCracken testified regarding the design weaknesses and inadequate duration of observation of the majority of studies on ESDs for SIB, which are particularly detrimental due to the fact that SIB ''waxes and wanes over time''; one ''could mistakenly attribute those changes to the treatment if you don't have a comparison group'' (Ref. 14, day 9 at 152). Dr. McCracken summarized that, ''the use of painful electric shock lacks what any professional group would deem an adequate and well supported evidence base'' (Ref. 14, day 9 at 85–86), and that he would never use

shock even if no other treatment worked (see also Ref. 14, day 9 at 149–50, 160).

Further, according to hearing testimony and an exhibit from Dr. Geller, for nearly half of the 87 JRC residents with GEDs between 2000 and 2014, the ''peak 12-month period'' during which they received the most GED shocks was after their first year using a GED at JRC. Based on Dr. Geller's analysis of JRC data, the average time to peak applications was 2.7 years, and in some cases the peak was not reached until they had been receiving GED shocks for 8 years or longer. Dr. Blenkush of JRC criticized this analysis insofar as it did not include pre-2000 data; however, JRC did not provide this GED application frequency data to FDA. According to this hearing testimony and exhibit, JRC's own data show that for many individuals, the frequency of GED shocks and hence, the frequency of SIB and AB, *increased* rather than decreased for some period of time after GED use began; for many individuals, the peak 12-month period was many months, and for some individuals, many years, after GED use began. This casts additional doubt on JRC's assertions that the GED very quickly decreases SIB and AB and produces a lasting conditioning effect, as well as on the ability of ESDs to achieve durable conditioning generally.

E. State of the Art for the Treatment of SIB and AB

(Comment 42) A comment asserts that PBS is not a state-of-the-art treatment for individuals exhibiting SIB and AB, arguing that PBS is not formally defined by any authoritative professional body and that it has no professional credential or license. However, the comment also states that ESDs must be used in conjunction with positive approaches.

(Response) FDA disagrees that the lack of PBS-specific professional credentialing or licensing means it is not a state-of-the-art treatment for SIB or AB. As explained in the preamble to the proposed rule, and as FDA continues to maintain, state-of-the-art treatment for individuals exhibiting SIB and AB generally relies on multielement positive interventions such as PBS (81 FR 24386 at 24403–10; see also section I.A.). The comment cites the hearing testimony of Dr. Zarcone, a psychologist and board-certified behavior analyst, to show that there is no educational degree or licensing for PBS. However, elsewhere in her testimony, Dr. Zarcone states that the use of PBS is generally accepted practice for the treatment of individuals who have intellectual and developmental disabilities and severe behavior problems (Ref. 14, day 13 at 98).

As we recognized in the proposed rule, multielement positive methods such as PBS or dialectical behavioral therapy (DBT) span several categories of intervention for a wide variety of purposes (Refs. 68 and 69). Likewise, the term ''positive'' can apply to many different treatment modalities (Refs. 9 and 70). This does not, however, mean that positive approaches are vague or ill-defined. To the contrary, a large body of scholarship as well as broad institutional support informs the use of multielement positive approaches like PBS.

To take PBS as an example, as we explained in the proposed rule, the Association for Positive Behavior Supports has adopted specific standards of practice for the elements that comprise PBS (Ref. 12). Multielement positive interventions that rely on FBAs, such as PBS, are described in academic journals, books, graduate training programs, and professional organization publications (Ref. 12). Likewise, other positive-only models such as DBT are well-defined and formally described (see Refs. 71 and 72). Although the comment here states that PBS is not formally defined, it elsewhere refers to techniques of PBS as a discrete subset of ABA techniques in which JRC employees have experience. Furthermore, the comment characterizes one provider, Dr. Zarcone, as a national expert on PBS, recognizing that PBS is a distinct, defined treatment approach for SIB and AB. We note that no professional organization publishes standards of practice for the use of ESDs, and no journals, graduate programs, or professional organizations focus on the skills necessary to use contingent electric shock (see Ref. 12).

Comments from healthcare providers who have experience treating patients with SIB and AB explain that state-of-the-art positive behavioral interventions are even more advanced and effective than the methods that FDA described in the proposed rule (*e.g.,* PBS). FDA agrees. For example, in one form of functional behavior assessment referred to as ''analog functional analysis,'' clinicians identify the antecedents and consequences that maintain problem behaviors by experimentally replicating the events or conditions thought to trigger, incentivize, or reinforce the behavior, then develop a behavior plan based on modifying these antecedents and consequences (Ref. 73). According to Dr. Zarcone, analog functional analysis is the most rigorous and precise level of FBA, and it is now considered to be the ''gold standard'' in the field of applied behavior analysis for individuals with severe problem behaviors (see Ref. 14, day 13 at 66–67, 71–72, 80). This is demonstrated by the exponential increase in the number of research studies relating to analog functional analysis in recent years: While there were only a handful of such studies before 1985, there were approximately 250 in the 1990s and almost 1,000 between 2001 and 2010 (Refs. 74 and 75).

The comment asserting that PBS is not a state-of-the-art treatment for SIB or AB concedes that state-of-the-art treatments available to patients with SIB and AB include, among other options, positive behavior therapy, and that, ''PBS therapy is almost always the first line therapy in the treatment of numerous disorders, including AB and SIB, due to its limited risk profile.'' The comment goes further, stating that ESDs ''must always be used in conjunction with positive behavioral programming as part of a comprehensive care protocol individualized for the patient.'' These statements contradict the comment's assertion that approaches such as PBS are not within the state of the art.

In analyzing the state of the art in a device ban, the Agency assesses the risks of the device being banned relative to the risks of other treatments used in current medical practice for the same purposes. Positive behavioral treatment techniques have a very low risk profile, and FDA did not receive any comments suggesting otherwise. Even this comment concedes PBS is ''low risk.'' The only risk that FDA found to be associated with positive behavioral treatments is one posed by ''extinction,'' a common component of behavioral plans (see 81 FR 24386 at 24405). Extinction exhibits the potential risk of ''extinction bursts,'' an upsurge of the actual undesirable behavior, particularly manifested in the early stages of the intervention. If this upsurge in behavior poses a danger to the individual or others, then an extinction paradigm may not be a feasible option. The behavioral therapist would have to use a different treatment plan component to accomplish the same objective. However, extinction bursts would be easily recognized and quickly mitigated by competent therapists. With respect to SIB and AB, positive behavioral treatment alternatives present much lower risks than ESDs, supporting the conclusion that the risks posed by ESDs are unreasonable.

(Comment 43) Some comments argue ESDs are necessary options because positive-only behavioral approaches such as PBS are ineffective for certain patients, citing literature indicating that

PBS is not always effective for every patient in every situation, and pointing out that the Panel agreed that treatment options other than ESDs would not be adequate for all patients. One comment asserts that FDA has erroneously clung to the notion that the effectiveness of PBS to treat SIB and AB is an absolute and that FDA was not forthright in the proposed rule because we treated PBS as though it has been universally recognized as effective.

(Response) FDA disagrees. Citing most of the same literature cited by the commenter, we acknowledged in the proposed rule that positive behavioral approaches may not always be completely successful for all patients, either used alone or in conjunction with pharmacological treatment or other non-ESD treatment options. We also acknowledged that the Panel agreed that positive behavioral approaches alone are not adequate for all individuals who exhibit SIB or AB (81 FR 24386 at 24405 to 24406). Further, we explained that not all providers follow a positive-only behavioral treatment model such as PBS (81 FR 24386 at 24405, citing Refs. 10 and 76). For example, we discussed the sources cited by the commenter that showed success in 52 percent and 60 percent of patients where positive behavioral approaches were attempted and concluded that positive behavioral therapy may sometimes need to be supplemented with pharmacotherapy or other non-ESD treatment options (81 FR 24386 at 24405 to 24406). Thus, FDA has not portrayed PBS effectiveness as an absolute or universally recognized panacea. However, the literature does indicate PBS is successful for many individuals who exhibit SIB or AB and that substantial progress in non-aversive approaches for the treatment of SIB and AB has been evident in the literature for at least 20 years. More recent literature corroborates FDA's position; for example, a recent meta-analysis of case studies in individuals with autism or developmental disabilities and SIB found that 77 percent of subjects had a positive outcome from behavioral interventions for SIB (Ref. 77).

The commenter asserts far more research is needed regarding the efficacy of PBS for SIB and AB, quoting from a literature review that FDA cited in the proposed rule. The review states: ''in recent years, a number of questions have been raised regarding PBS, including questions regarding the efficacy of using an exclusively positive approach to support people with seriously challenging behavior'' (Ref. 8). Although this article states that further research is needed to validate the findings of the studies conducted, the article goes on to say its review of 12 published studies concludes that ''the results for literally hundreds of individuals who received services in different countries around the world appear to support the conclusion that the (multi-element PBS) model is effective. Specifically, PBS appears to be beneficial for the most severe problems (as well as less severe problems), for high-rate behaviour (as well as low-rate behaviour), and for behaviour problems exhibited by people who live in institutional settings (as well as for people who live in the community'' (Ref. 8). FDA agrees more clinical research on PBS would be helpful, but this does not undermine the benefits and general success of PBS that have been shown thus far.

Two sources cited by the commenter that we did not discuss in the proposed rule provide further evidence that state-of-the-art behavioral techniques and psychotropic medications are not always completely effective for all individuals who exhibit SIB or AB, and that further research would be helpful (Refs. 78 and 79). Notably, one of them concludes that outcome measures ''suggest a high degree of effectiveness'' for behavioral interventions for self-injury (Ref. 79, noting that treatment failures may be underreported). This echoes our explanation in the proposed rule (81 FR 24386 at 24403 to 24410): Although PBS and multielement positive approaches may not be completely effective for every patient, the literature and the experience of experts in the field indicate that these are generally successful, sometimes alongside pharmacotherapy. This is true regardless of the severity of the behavior targeted, there has been substantial progress in non-aversive treatments for SIB and AB, and the success rate for such interventions continues to improve. (See, *e.g.,* Refs. 2, 10, 12, 68, and 80 to 88).

As discussed in the previous comment response, comments on the proposed rule from healthcare providers and experts not affiliated with JRC indicate that positive behavioral interventions are more advanced and effective than described in the proposed rule, and, most importantly, such interventions are very low risk. Based on FDA's expertise, experience, and knowledge of the literature, we agree with the findings of Dr. McCracken, who testified that the majority of this patient population can be successfully treated using a combination of positive behavior supports and pharmacotherapy, without the use of ESDs (Ref. 14, day 9 at 148; day 10 at 107–08).

Lastly, even though there are some patients for whom positive behavioral approaches may not be completely successful, that does not mean ESDs are effective for those patients. As one Panel member stated, the fact that other ''therapies are not completely successful or don't work on all patients does not mean, therefore, that electrical aversive stimulation is indicated.'' See section V.D. for a discussion of ESD effectiveness.

(Comment 44) One comment supports its arguments regarding the ineffectiveness of non-ESD treatment options for certain individuals by asserting that, for the individuals on whom ESDs have been used at JRC, all other behavioral and pharmacological treatment options were attempted and failed.

(Response) FDA has reason to doubt that pharmacological and positive behavioral treatment options were adequately attempted for the individuals on whom ESDs have been used at JRC based on the available data and information from JRC. JRC submitted resident summaries to FDA for 68 individuals at JRC in 2016 on whom ESDs had been used. Of those 68 summaries, only 9 (13 percent) indicate a formal functional assessment was conducted by JRC, and the summaries indicate that 5 other individuals underwent prior assessments at other facilities. JRC also submitted related case conference reports to FDA for 54 of those 68 individuals. Those reports indicate that only 19 individuals (35 percent of 54, 28 percent of 68) had either past or ongoing functional assessments. Therefore, based on the available data and information, only a fraction of individuals at JRC subject to ESDs appear to have undergone functional behavioral assessments.

Further, the resident summaries and conference reports provided to FDA by JRC provide little to no detail regarding the functional assessments that had been conducted. For example, information regarding assessment instruments, granular results, and reassessment results is nonexistent, and in many cases, they do not identify the function of the behavior. Thus, for the minority of individuals who have undergone a documented assessment, the lack of any detail makes it difficult to identify the functions of the target behaviors, corroborate that the assessments met accepted standards, or even that the individuals were periodically reassessed.

In his hearing testimony, JRC's Director of Research, Dr. Blenkush, not only acknowledged that JRC does not perform functional analyses but

recognized that outside observers would question why they have not. (Ref. 14, day 38 at 174). This is consistent with what we explained in the proposed rule: At least some parents who withdrew their children from JRC did not report any activity that would indicate the development of prevention or antecedent strategies, and some reported that facilities their children attended prior to JRC had not attempted such strategies or even conducted FBAs.

As we explained in the proposed rule, a functional behavioral assessment is critical to developing a successful multi-element positive intervention or other empirically derived, individualized behavioral interventions (81 FR 24386 at 24403 to 24404). Failure to conduct a functional behavioral assessment and do so adequately may actually lead to harm because the resulting plan may inadvertently reinforce and consequently increase the problem behavior (Ref. 12). Similarly, inadequately performed functional assessments could reduce the effectiveness of the resulting behavioral intervention (Brown report). The failure to conduct an assessment or re-assessment properly, or even at all, is tantamount to a failure to attempt multi-element positive interventions (*e.g.,* PBS) or other interventions that utilize such assessments.

Further, the resident summaries JRC submitted include diagnoses but do not include any information regarding how primary diagnoses were made, such as what clinical tests or scales were used, or any other information regarding past medical history. Dr. McCracken testified that methods of diagnosing individuals at JRC are outdated, and that its staff ''puts very little effort'' into properly diagnosing individuals; ''the [JRC] clinicians adopted a kind of cut-and-paste mentality from the prior evaluations and appear to not feel the need to more carefully assign and evaluate the presence of these overlapping terms in an effort to understand their clients more deeply.'' FDA agrees that JRC's diagnoses lack thoroughness and careful assessment based on our review of the summaries JRC submitted in its comment. Dr. McCracken further testified, and FDA agrees, that without a proper diagnosis, it is difficult for clinicians to develop an appropriate treatment plan (see Ref. 14, day 9 at 99–101, 104, 107–09, 116–17). As with any medical condition, improper diagnosis, treatment, and lack of access to specialty care limits positive outcomes. A proper diagnosis can greatly increase the chances of beneficial treatment; for example, when comorbid conditions are correctly diagnosed, they can be successfully treated with psychotherapies, behavioral therapies, and pharmacotherapies that are individualized to the patient's needs.

With regard to the use of positive interventions prior to ESD use, whether at JRC or before an individual was brought to JRC, the available data and information lack critical details necessary to assess whether these treatments were adequately or appropriately administered. For example, the documents do not provide detail on what specific therapies were attempted, how long they were tried, or what the effects were. We cannot determine from the JRC resident charts and summaries which, if any, treatments were tried prior to placement at JRC. Critically, the documents do not provide enough information to determine whether the interventions were appropriately targeting behaviors, which is necessary to understand whether the interventions failed, and if so, why they failed.

More importantly, these omissions also prevent evaluating whether the use of ESDs caused or contributed to different outcomes. The reasons provided for placement at JRC include not only unsuccessful treatment at previous facilities, but also aging out of previous facilities, rejection by previous facilities, and inability of parents to handle behaviors at home. For some cases, no reason is provided. Dr. Shnidman, a psychologist who wrote reports justifying the use of GEDs on JRC residents as part of the State court approval process, testified that in almost every case, she recommended that the GED was the most effective, least restrictive treatment, yet she was not aware whether JRC tried to use positive interventions or whether positive interventions were effective (see Ref. 14, day 12 at 156, 217). Similarly, Dr. Fox testified that he never saw an individual at JRC for whom an adequate workup had been conducted to establish that a GED was the most effective, least restrictive treatment (see Ref. 14, day 40 at 39).

The JRC resident summaries and the hearing testimony and exhibits that JRC submitted in its comments also cast doubt on JRC's assertions that pharmacological alternatives were adequately attempted prior to GED use on individuals. For example, the resident summaries excluded information on dosage, regimen (*e.g.,* how many, how often, and for what duration), and both positive and negative effects. In certain instances, the summaries indicate that maximum therapeutic doses were not attempted. Dr. Mikkelsen testified that many of the medication trials he looked at closely ''were inadequate or, you know, the person may only have been on it for two weeks at a low dose and it's listed as all these medications didn't work'' (Ref. 14, day 7 at 156). Dr. Geller testified that, based on the charts he reviewed for individuals weaned off medication and put on the GED, individuals did not have sufficient trials of psychopharmacology (see Ref. 14, day 21 at 66).

JRC documents indicate that JRC generally opposes the use of pharmacological treatments and makes little effort to attempt their use before or after prescribing the GED for an individual. For example, JRC's Policy on Psychotropic Medication states, ''it is JRC's policy to avoid, or at least minimize the use of psychotropic medication'' and explains that, for individuals on psychotropic medication prior to enrollment at JRC, a psychiatrist will be consulted to consider the benefits of psychotropic medication removal (Ref. 14, exhibit 718). Dr. Joseph, JRC's sole consulting psychopharmacologist, recommends medication removal in response to almost every JRC referral (Ref. 14, day 40 at 136–37). Once psychotropic medications are eliminated, the individual is typically discharged from Dr. Joseph's care, and no psychiatrist follows the individual thereafter. In the words of Dr. Geller, Dr. Joseph ''sees his task as removing people from all their psychiatric medications and then ending his contact with them'' (Ref. 14, day 21 at 66). Of the 64 individuals with a treatment plan including ESD use as of June 2015, 7 had no record of any psychopharmacological consultations, 50 had not had psychopharmacological evaluations for over 5 years; of these 50, 37 had not had psychopharmacological evaluations for over 10 years, and 8 had not had psychopharmacological evaluations for over 20 years (Ref. 14, day 21 at 6–9, referring to impounded exhibit 662).

Other comments and testimony indicate that non-ESD alternatives have been or likely would be successful for individuals on whom ESDs have been used at JRC. Several comments from healthcare providers explain that patients with severe SIB or AB at JRC present behaviors that are challenging to treat. However, such behaviors are no more challenging to treat than those exhibited by patients with similar conditions who are successfully treated across the country without the use of ESDs. This is supported by fact and expert witnesses in the hearing testimony cited by JRC, who testified

that individuals with the most challenging SIB and AB have been successfully treated without the use of skin shock at various institutions across the country. (See, *e.g.,* Ref. 14, day 4 at 42–43 (Simons); day 7 at 49, 60–61, 181 (Mikkelson); day 9 at 39–40, 160 (McCracken); day 13 at 11–12, 138 (Zarcone); day 14 at 24, 28 (Thaler).)

For example, Dr. McCracken, a clinician who treats individuals with developmental disabilities who engage in SIB and AB, testified that his clinic has been successful in treating the vast majority of individuals and has been able to help everyone, at least to some degree, without using skin shock (Ref. 14, day 10 at 107–08). Dr. Alfred Bacotti, another clinician, testified that in his 30 years as a psychologist treating patients, including some with SIB and AB as severe as those exhibited by JRC residents, he never used skin shock (Ref. 14 at 212). Perhaps most tellingly, Dr. Chris White, a licensed psychologist with over 30 years of experience in the field of behavioral therapies who runs a facility to which many individuals formerly on ESDs at JRC were transferred, testified at a Massachusetts DDS hearing in 2011 that his facility has been able to successfully serve these individuals without the use of aversives by taking a combined-treatment approach, emphasizing positive interventions. (See Ref. 14, exhibit 455, at 142–43, for a partial transcript of the July 2001 hearing.)

(Comment 45) Behavioral therapists comment that state-of-the-art treatments such as PBS can prevent the recurrence of SIB and AB because they address the underlying causes of SIB and AB and the communicative needs of patients, unlike ESDs.

(Response) FDA agrees that state-of-the-art interventions such as PBS are generally successful because, unlike ESDs, they address the underlying causes of SIB and AB. As we explained in the proposed rule, one goal of state-of-the-art approaches such as PBS is to teach new behaviors that proactively displace undesirable behaviors (SIB and AB) by teaching individuals to express themselves with behavioral substitutions that will not cause harm to themselves or others (Refs. 87 and 89). For example, functional communication training, as one element of an intervention, examines the communicative intent of the problem behaviors (what the individual is trying to communicate or obtain from others), and then focuses on teaching the individual a functionally equivalent, but non-problematic, behavior (Ref. 12). There has been a shift toward prevention in recent years (*e.g.,* structured environment and schedule, support services at school), and prevention of SIB and AB is considered the best practice, particularly for those with intellectual and developmental disabilities (Refs. 77 and 90).

In contrast, as these comments point out, the use of ESDs does not teach a person new skills or replacement behaviors, does not mitigate the underlying cause, and cannot achieve behavioral conditioning for some patients who have conditions that impair their ability to understand consequences and react by changing their behaviors (Ref. 8). Even Dr. Blenkush of JRC stated that providers there can reduce the use of ESDs through skill training or other procedures and that even people whom JRC thought could not be faded off of ESDs responded to these treatments (Ref. 15 at 148). These are some of the reasons that the field of ABA as a whole moved away from intrusive physical aversive conditioning techniques such as ESDs two decades ago (Ref. 9, reprinted from 1990, and Ref. 91).

(Comment 46) Some parents of individuals at JRC who exhibit SIB or AB comment that ESDs have been the only treatment capable of reducing their family member's behaviors. They argue that a ban on ESDs for SIB or AB would force them to resort to ineffective and risky therapies such as restraints and medication. Another comment states that FDA has dismissed such parents' views on the basis that a very small minority claimed they were coerced or misled.

(Response) FDA has not dismissed the views of these parents but rather has given their input careful consideration. As we stated in the proposed rule, FDA has no reason to doubt these parents' best intentions, the sincerity of their belief that an ESD is the best or perhaps only option for their loved one, or that they have tried alternatives without success. Whether they were opposed to or in favor of a ban, FDA considered each parent's comments and submissions for the Panel Meeting, as well as their comments submitted to the public docket for this rule. As explained in the proposed rule, we did not consider these parents' reports as scientific evidence relating to the use of the devices. Rather, FDA used these parents' reports to help inform our understanding of parents' and patients' experiences and knowledge regarding the risks and benefits of ESDs and the state of the art.

As explained in the proposed rule, FDA has reason to question the information provided to family members by JRC. We explained how some of the parents' reported experiences contradicted assertions that the devices were only used as a last resort and indicated that other treatment strategies were not adequately attempted, in which case it is not known whether they would have been successful. In the proposed rule, we referred to parents' reports that, for some of their children, schools did not attempt all treatment options. For example, some schools did not use a functional behavioral assessment to develop prevention or antecedent strategies, strategies that are hallmarks of state-of-the-art interventions (81 FR 24386 at 21409). Ref. 92 also stated that once the family members were at JRC, none of the parents reported the development of prevention or antecedent strategies. None of the comments on the proposed rule cause us to view these reports differently. Taken together, these parents' reports indicate that non-ESD interventions based on functional behavioral assessments that seek to prevent target behaviors were not adequately attempted for these individuals. As we acknowledged in the proposed rule, we understand that these reports are only from certain parents who volunteered to share negative experiences, and we cannot conclude that these reported experiences were shared by others or are generally representative of families' experiences at JRC.

As with the parents of individuals at JRC, we have no reason to doubt the sincerity of the parents who removed their children from JRC. As one researcher noted, these individuals and their families ''have likely traveled a rough path'' (Ref. 12). For these individuals, ESDs were not in fact applied as a last resort, and their parents reported feelings of coercion from JRC (Ref. 92). It thus appears that at least some parents felt pressured to agree to the use of ESDs, and for at least some individuals, alternative treatments were not exhausted.

One comment asserts these viewpoints are hearsay and criticizes FDA for relying on them while elsewhere rejecting articles supporting ESD effectiveness because they are not deemed adequately controlled studies. This criticism is without merit. In fact, FDA's views regarding the exhaustion of behavioral and pharmacological treatment options are informed primarily by the scientific literature regarding state-of-the-art treatments for SIB and AB, expert views on these issues, and the records provided by JRC regarding individual treatment prior to ESD use, which suffer from serious limitations, as discussed in Responses

38 and 44. FDA also considered the views and experiences of parents; as they relate to the current state of medical practice and alternative treatment attempts, the reports from parents who oppose the use of ESDs are consistent with the data and information we considered and explained in the proposed rule as well as the records JRC provided regarding its residents. Further, the vast majority of parents who commented on the state of the art opposed the use of ESDs.

Again, evidence of failures of treatments other than ESDs is not evidence that ESDs safely or successfully treat patients. Programs across the nation successfully treat SIB and AB without ESDs. While some parents may sincerely believe in the necessity of ESDs and undoubtedly face serious difficulties in selecting treatment, their information may be incomplete, and alternatives may not have been adequately attempted.

(Comment 47) Hundreds of parents of individuals who exhibit SIB or AB comment that positive-only approaches work even for the most severe manifestations of SIB or AB. Some describe a need to be supportive of individuals, contrasting support with the physically punitive nature of ESDs.

(Response) These comments are consistent with FDA's finding that the state of the art for the treatment of SIB or AB relies on multielement positive methods, especially PBS, sometimes in conjunction with pharmacological treatments. ''Positive'' can apply to many different treatment modalities, but it does not include aversive interventions such as contingent skin shock (Refs. 9 and 70). State-of-the-art, multielement, positive interventions such as PBS rely on functional behavior assessments to design a treatment plan for individual patients.

Clinicians ordinarily try multiple positive treatment interventions if the initial treatment is not successful. Indeed, if a given intervention does not reduce or eliminate an unwanted behavior, a clinician would adjust the treatment on an empirical basis. As one expert in PBS explained, the assessment of behaviors and design of interventions is an iterative process, and continual adjustment of positive interventions will serve the patient better than substituting elements with the use of ESDs (Ref. 82). FDA believes that what these parents describe in their comments mirrors the state of the art for the treatment of SIB or AB. Multielement positive interventions are designed to support the individual by teaching skills and replacement behaviors, and such interventions can achieve durable success in community and home settings (Refs. 12, 87, and 88).

(Comment 48) Comments assert that punishment generally, contingent shock, and the use of ESDs are state-of-the-art treatment options for patients with SIB and AB (along with PBS, pharmacotherapy, and restraint).

(Response) To ban a device under section 516 of the FD&C Act, FDA must find that it presents substantial deception or an unreasonable and substantial risk of illness or injury. As we explained in the preamble to the proposed rule, with respect to 'unreasonable risk,' we will conduct a careful analysis of risks associated with the use of the device relative to the state of the art and the potential hazard to patients and users. The state of the art with respect to this proposed rule is the state of current technical and scientific knowledge and medical practice with regard to the treatment of patients exhibiting self-injurious and aggressive behavior. Thus, in determining whether a device presents an 'unreasonable and substantial risk of illness or injury,' FDA analyzes the risks and the benefits the device poses to individuals, comparing those risks and benefits to the risks and benefits posed by alternative treatments being used in current medical practice (81 FR 24386 at 24386 to 24388).

The purpose of the analysis of the state of the art is to assess the risks and benefits of alternatives used in current medical practice to treat a particular patient population and to compare those to the risks and benefits of the device that is the subject of the ban, not to determine whether the device that is the subject of the ban is part of the state of the art. For these reasons, whether punishment, contingent shock, or ESDs are within the standard of care or state of the art is not an issue in this rulemaking. However, the state of current technical and scientific knowledge and medical practice with regard to the use of punishment generally and ESDs in particular on patients exhibiting SIB and AB may still bear some indirect relevance to the risk-benefit profile of ESDs as compared to alternative treatments.

As we explained in the proposed rule, punishment techniques include a broad range of consequences (81 FR 24386 at 24405 to 22406). On one end of the spectrum, some are highly restrictive and/or painful, such as the use of ESDs or food deprivation, while, on the other end, some are less or non-intrusive, such as using ''time-outs.'' Given such a broad range, FDA did not attempt to define all possible punishment techniques relative to the state of the art.

During the hearing, Dr. Zarcone testified that she uses punishment techniques such as time-outs, holds, and facial screening. However, she said that she distinguishes her techniques from those that cause pain such as the use of ESDs (Ref. 14, day 15 at 31–41). Her techniques are less intrusive, and in her view, teach the individual something about the behavior and are effective. Such techniques can be compatible with PBS. In contrast, painful punishments, including aversive interventions, are not compatible (Ref. 14, day 13 at 103–04). One textbook explains that electric shock can be replaced with ''more acceptable aversive outcomes'' such as a squirt of lemon juice or a reprimand (Ref. 59 at 56–79). Similarly, Dr. Daniel Bagner, a clinician and professor, testified that he does not teach parents to use painful punishment such as electric shocks or spanking, and that such techniques are not part of any evidence-based treatment (Ref. 14, day 11 at 81).

While punishment-based techniques may appear in textbooks that provide an overview of treatments for completeness, such references often caveat the use of punishment-based techniques as less beneficial than others. As we stated in the proposed rule, a 2008 survey of the members of the Association for Behavior Analysis found that providers generally view punishment procedures as having more negative side effects and being less successful than other reinforcement procedures (Ref. 76). The study of punishment to treat SIB and AB peaked in the 1980s and has been declining steadily ever since (Ref. 93).

Regarding ESDs, as we explained in the proposed rule, researchers have long raised ethical concerns about purposefully subjecting patients to the harms caused by physically aversive stimuli (see, *e.g.,* Refs. 9, 60, 66, 71, and 88). Review of the current scientific literature confirms that, in recent decades, medical practice has shifted away from restrictive physical aversive conditioning techniques such as ESDs and toward treating patients with SIB and AB with positive-based behavioral interventions (see, *e.g.,* Refs. 9, 10, and 91; see also 81 FR 24386 at 24405). Indeed, of the 57 total published studies on the effectiveness of contingent skin shock, only 10 such studies have been published in the past 20 years, and only 1 in the past decade. Although a few ABA textbooks (one of which is authored by a JRC Board member) mention contingent skin shock as an available technique, they also emphasize the highly limited use of ESDs due to negative side effects and

ethical and humanitarian objections (Ref. 94). FDA acknowledges that a number of States do not prohibit the use of ESDs for SIB or AB on their residents, and some States reimburse individuals for the use of ESDs on their residents in certain circumstances. However, according to a 2015 survey conducted by NASDDDS, 37 of the 45 States that responded reported that aversive interventions are disallowed for treatment of people with intellectual or developmental disabilities, and none of the other eight States included ESDs as permissible aversives. With regard to the GED specifically, Dr. McCracken testified that no valid evidence supports the use of the GED and that its use is unethical (Ref. 14, day 9 at 79, 85–86, 160).

Perhaps most revealingly, as JRC acknowledges in its comments, JRC is currently the only facility in the country that uses ESDs for SIB or AB, and it uses ESDs on individuals from only 12 States.

(Comment 49) A comment questions FDA's reliance on expert reports for the proposed rule because the experts are vocal advocates for PBS and vocal critics against the use of ESDs. The comment argues that FDA sought to bolster a particular point of view with biased advocates rather than seek information in a more neutral way, and that FDA did not similarly defer to the opinions of experts affiliated with the manufacturer.

(Response) FDA disagrees. Although two of the three outside experts from whom FDA solicited reports oppose the use of ESDs and support the ban, the third, Dr. Smith, opposes the ban and instead argues in his report for allowing their continued use with new regulatory restrictions. In the proposed rule, we made clear these reports are ''solicited opinions.'' The fact that we found the views of some experts more compelling than others does not mean we deferred to some and dismissed others. Rather, given their expertise and experience, we considered the opinions of all three experts in our analysis of the risks and benefits of ESDs and alternative treatments, similar to our consideration of the expert views of the Panel members. In evaluating these views, we took into account any potential biases, similar to our review of the literature. FDA made these solicited opinions and the transcript of the Panel Meeting publicly available in the docket for the proposed rule, so commenters had an opportunity to examine and respond to them.

(Comment 50) One comment asserts that there are no pharmacologic treatments specifically approved for treatment of SIB and AB; thus, no drug has been proven effective for such uses, such uses are off-label, and no drug should be considered a state-of-the-art treatment for SIB or AB. The comment further asserts that pharmacotherapy is ineffective for some patients and has severe risks.

(Response) FDA disagrees with the assertions that state-of-the-art treatments for SIB or AB do not include pharmacotherapy, and that there are no pharmacologic treatments specifically approved for the treatment of SIB or AB.

It is important to understand that SIB and AB are not disorders themselves but rather symptoms associated with various underlying conditions. In clinical practice, SIB and AB are referred to as transdiagnostic symptoms because they can be associated with numerous, sometimes comorbid conditions and are not specific to a particular diagnosis. Examples of disorders in which patients may exhibit SIB and AB include, but are not limited to:

- Psychiatric disorders, which have a relatively high prevalence of SIB and AB, for example, attention deficit hyperactivity disorder (ADHD), mood disorders, psychotic disorders, PTSD, eating disorders, anxiety disorders, adjustment disorders, and substance use disorders;
- neurodevelopmental disorders (NDDs) and genetic disorders, which also have a relatively high prevalence of SIB and AB, for example, ASD (the definition of which was recently broadened in the DSM–5), stereotypic movement disorder, intellectual disability, Lesch-Nyhan Syndrome, fragile X syndrome, Angelman Syndrome, and fetal alcohol syndrome (FAS); and
- medical diagnoses, for example, traumatic brain injury, cerebral palsy, and sleep disorders.

The comment incorrectly minimizes the importance of proper diagnosis and treatment of underlying causes of SIB and AB. Treatment of moderate to severe SIB and AB is complex and should be tailored to the individual needs of each patient; treating the underlying condition often improves SIB and AB symptoms. Therefore, state-of-the-art treatment for SIB and AB begins with a proper diagnosis, obtained using a comprehensive psychiatric and medical examination by a board-certified specialist (*e.g.,* psychiatrist) in consultation with other professionals, such as psychologists, pediatricians or internists, and neurologists (Ref. 95). In recent years, advancements in psychiatric research and clinical care have improved our understanding of psychiatric diagnosis and treatment, particularly in individuals with intellectual and developmental disabilities. This has facilitated the use of pharmacological treatments that reduce SIB and AB, whether the drug products target SIB or AB symptoms directly, regardless of the underlying condition, or by more indirectly reducing SIB and AB by improving the underlying condition.

The prevalence of SIB in NDD is high, as high as 50 percent in ASD (Ref. 96), a population representing a subset of all patients with SIB and AB. Two drugs are approved for treating irritability associated with ASD, one of which specifically includes SIB and AB among its approved indications. Specifically, RISPERDAL (risperidone) is FDA-approved for the treatment of ''irritability associated with autistic disorder, *including symptoms of aggression towards others, deliberate self-injuriousness,* temper tantrums, and quickly changing moods,'' (emphasis added).[8] As described in the proposed rule, ABILIFY (aripiprazole), has also been approved by FDA for the treatment of irritability associated with autistic disorder in children. As explained in the FDA-approved labeling for ABILIFY, ''The efficacy of ABILIFY (aripiprazole) in the treatment of irritability associated with autistic disorder was established in two 8-week, placebo-controlled trials in pediatric patients (6 to 17 years of age) who met the DSM–IV criteria for autistic disorder and demonstrated behaviors such as tantrums, *aggression, self-injurious behavior,* or a combination of these problems,'' (emphasis added).[9] Both ABILIFY (aripiprazole) and RISPERDAL (risperidone) met their primary efficacy endpoint by demonstrating statistically significant changes in score on the Aberrant Behavior Checklist—Irritability scale (ABC–I), which is one of the most commonly used scales to measure SIB and AB in drug development programs. Thus, the comment is incorrect that no drugs have been proven effective for SIB and AB in any population.

To date, most of the randomized clinical trials completed for the treatment of SIB and AB have been conducted in youth with developmental disabilities such as ASD (see Ref. 77 for review). In clinical practice, results from these clinical trials for the treatment of SIB and AB in ASD inform state-of-the-

[8] Labeling available at *https://www.accessdata.fda.gov/drugsatfda_docs/label/2019/020272s082,020588s070,021444s056lbl.pdf.*

[9] Labeling available at *https://www.accessdata.fda.gov/drugsatfda_docs/label/2019/021436s043,021713s034,021729s026,021866s028lbl.pdf.*

art pharmacotherapy for SIB and AB treatment across diagnoses because SIB and AB are considered transdiagnostic symptoms. Therefore, clinicians consider data related to treatment of SIB and AB in ASD when determining whether to prescribe drugs for the treatment of SIB and AB in other psychiatric, genetic, medical and neurodevelopmental disorders in children and adults.

The comment recognizes that ''pharmacotherapy may be effective in controlling the behaviors of certain patients.'' The comment's main concern seems to be that, ''pharmacotherapy is not uniformly effective,'' or that ''these types of drugs are not effective for all persons that exhibit aggressive and SIB behavior.'' FDA agrees that risperidone and aripiprazole are not uniformly effective for the treatment of SIB and AB in all patients. However, this does not undermine FDA's conclusion that the literature indicates that positive behavioral interventions, sometimes alongside pharmacotherapy, are generally successful for the treatment of SIB and AB, regardless of the severity of the behavior targeted.

The comment highlights the side effects that drugs used to treat SIB and AB can cause, some of which can be severe. For example, as FDA pointed out in the proposed rule, the most common adverse reactions observed in the trials conducted for approval of RISPERDAL and ABILIFY were sedation, increased appetite, fatigue, constipation, vomiting, and drooling. Other less common serious adverse reactions with the use of risperidone or aripiprazole may include neuroleptic malignant syndrome, gynecomastia, galactorrhea, metabolic changes, and tardive dyskinesia (note, valbenazine (INGREZZA) and deutetrabenazine (AUSTEDO) have been approved for the treatment of tardive dyskinesia). FDA acknowledges the significance of the risks posed by pharmacotherapy, but assesses them together with their proven benefits. FDA determined that the benefits outweigh the risks in the population for which they are intended when we approved these drugs for irritability associated with ASD based on well-controlled clinical studies.

Further, drugs that have not been approved for treatment of SIB and AB and thus have not been found safe and effective for this use may nonetheless be part of state-of-the-art treatment for SIB and AB, which has a specific meaning in the context of a device ban. As we explained in the preamble to the proposed rule, and maintain now, the state of the art with respect to this proposed rule is the state of current technical and scientific knowledge and medical practice with regard to the treatment of patients exhibiting self-injurious and aggressive behavior (81 FR 24386 at 24388). Elsewhere in its comments, the commenter recognizes that state-of-the-art treatment for this patient population can include pharmacotherapy, among other options, and asserts that a wide range of pharmacological interventions have been used to treat patients with SIB and AB, including mood stabilizers, antidepressants, and antipsychotics.

A systematic review was recently completed of randomized, placebo-controlled studies that measured the effect of pharmacologic treatments on reduction of aggressive behaviors and irritability, measured using the ABC–I change from baseline score in children with ASD (Ref. 97). Ref. 97 reports improvement on ABC–I scores for numerous drugs, including risperidone (Cohen's d = 0.9), aripiprazole (d = 0.8), clonidine (Cohen's d = 0.6), methylphenidate (d = 0.6), venlafaxine (d = 0.4), naltrexone (d = 0.35), and valproate (d = 0.3). Ref. 97 illustrates that several drugs in addition to risperidone and aripiprazole have evidence-based support suggesting that they can improve symptoms of SIB and AB in ASD. As noted above, only risperidone and aripiprazole have FDA approval for the treatment of irritability in ASD.

In evaluating the state of the art for purposes of determining whether to ban ESDs, FDA considered the available information regarding risks of these drugs used for SIB and AB, as well as the available information regarding their benefits in treating SIB and AB symptoms. The general risks of risperidone, aripiprazole, clonidine (an alpha-agonist), and methylphenidate (a stimulant) are described elsewhere in this comment response. Common adverse reactions associated with serotonin-norepinephrine reuptake inhibitors (SNRIs) such as venlafaxine include headache, insomnia, diarrhea, vomiting, decreased appetite, hyperactivity, irritability, sexual dysfunction, muscle pain, and change in weight; mania, abnormal heart rhythm, and suicidal ideation and behavior can also occur. Valproate has FDA-approved indications in adults related to bipolar disorder, seizures, and migraine headaches. Common side effects include somnolence, dyspepsia, nausea, vomiting, diarrhea, dizziness, and pain. Serious adverse reactions can occur, including hepatoxicity, fetal malformations, multiorgan hypersensitivity reactions, and thrombocytopenia. Naltrexone is an opioid antagonist approved for the treatment of addiction and is associated with dyspepsia, diarrhea, nervousness, sleep problems, muscle pain and can cause liver injury and allergic pneumonia.

As stated previously, other drugs may improve SIB and AB symptoms by treating the underlying disorder for which they are approved. Thus, in considering the state-of-the-art treatment for SIB and AB, FDA also considered these treatments of underlying disorders. For example, children who are impulsive with aggressive outbursts may have moderate to severe ADHD. FDA-approved medications can treat symptoms of ADHD, including impulsivity, and therefore may also reduce associated SIB and AB symptoms. FDA-approved medications for ADHD include stimulant and non-stimulant medications. Stimulants include amphetamine and methylphenidate drugs. Common adverse reactions with stimulant use include decreased appetite, trouble falling asleep, irritability, headaches, and stomachaches. Reduction in growth rate, sadness, irritability, tics, abuse, dependence, and elevation in blood pressures and heart rate can also occur. Sudden death, stroke, and myocardial infarction have been reported in otherwise healthy adults and in youth with heart problems taking stimulants. Non-stimulants with FDA-approval for ADHD include atomoxetine and alpha-agonists. Adverse reactions to non-stimulant medications include tiredness, insomnia, stomachaches, headaches, and nausea; hepatitis and suicidal thoughts can also occur. Thus, these drugs are not without risks, although in approving them, FDA determined that their risks are outweighed by their benefits in treating ADHD.

Accurate diagnosis is especially important for mood disorders because choosing the wrong class of medications for treatment may worsen SIB or AB symptoms. For example, individuals who have bipolar disorder can be misdiagnosed with depression, especially children and adolescents. This is important because prescribing antidepressant medications to patients with bipolar disorder may induce or worsen symptoms of mania, which may include symptoms of irritability and impulsivity, both of which can be associated with SIB or AB. Medications approved to treat bipolar disorder include atypical antipsychotics, anticonvulsants, and lithium salts. Risks associated with these medications include but are not limited to sedation,

metabolic changes, rash, and other cardiovascular, endocrine, hematopoietic, and neurological adverse reactions. Neuroleptic malignant syndrome, extrapyramidal symptoms, tardive dyskinesia, and gynecomastia/galactorrhea can also occur.

Some congenital and genetic disorders are also associated with SIB and AB symptoms. Advancements in understanding genetic and prenatal exposure-related causes for intellectual and developmental disabilities have improved diagnosis and management of these conditions, for example through genetic testing. This is important because some genetic disorders have treatments, some of which are pharmacological, that can improve the underlying condition and may also improve associated behavioral problems such as SIB and AB. For example, psychiatric and behavioral symptoms associated with phenylketonuria (PKU) can improve with diet or medications such as pegvaliase-pqpz, which received FDA approval for the treatment of PKU in 2018 (Ref. 98). The most common adverse reactions occurring in at least 15 percent of patients taking pegvaliase-pqpz were injection site reactions, arthralgia, hypersensitivity reactions, headache, pruritus, nausea, and dizziness.

Finally, we now recognize that individuals with NDDs, intellectual disabilities, and other developmental disabilities can have comorbid psychiatric conditions that benefit from treatment. For example, treatment of comorbid depression, anxiety, ADHD, psychosis, or bipolar disorder, can improve symptoms such as irritability, psychomotor agitation, impulsivity, and worthlessness, which, in turn, can attenuate associated SIB and AB symptoms. As Dr. McCracken testified at the Massachusetts hearing, psychiatrists now recognize that developmentally disabled individuals are at high risk for a variety of psychological disorders and it is generally accepted medical practice to treat co-morbid disorders in individuals who exhibit challenging behaviors (Ref. 14, day 9 at 93). Patients and healthcare providers have numerous medication options to treat comorbid psychiatric diagnoses and the associated symptoms, as described earlier in this comment response.

F. Labeling and Correcting or Eliminating Risks

(Comment 51) Some comments argue that the risks associated with ESDs for SIB or AB can be corrected or eliminated through labeling and other controls, such as the labeling and process JRC currently uses prior to using ESDs on an individual.

(Response) FDA disagrees. FDA considered all available data and information, and we have determined that labeling or a change in labeling cannot correct or eliminate the unreasonable and substantial risk of illness or injury. Regardless of how the device is labeled, the individual subject to it will receive shocks intended to be painful and will continue to be subject to the physical and psychological risks we have described in this rulemaking. No manner of labeling will correct or eliminate these risks, so the device will continue to present the same unreasonable and substantial risk of illness or injury. The commenter does not offer any alternative except to limit the number of vulnerable individuals subject to the unreasonable and substantial risk.

The Panel members who opined that the banning standard is met (a majority of the Panel) were asked whether labeling could correct or eliminate the risk of illness or injury posed by ESDs and all concluded that labeling could not correct or eliminate the dangers associated with ESDs. As we explain in Responses 14 and 18, factors outside of the user's control, including the psychological state of the individual subject to the device, can play a significant role in how an individual perceives any given shock or series of shocks. Further, especially for those with intellectual or developmental disabilities, the individual may not communicate or be able to communicate information for the device user to change the manner in which the device is used to correct or eliminate the risks. Because these factors are outside of the user's control or are difficult to ascertain or predict, labeling that corrects or eliminates the risks of ESDs for SIB or AB cannot be written.

The only labeling suggestion the commenter offers regards labeling the device for use only in individuals refractory to other treatments, which is how JRC's GED devices are currently labeled. As explained in comment Response 30, if such a subpopulation does exist, it is very difficult to define. Even if such a subpopulation could be identified, specifying this limitation in the labeling would not correct or eliminate the risks for those individuals. Further, as discussed in the comment responses regarding effects, no subpopulation has been identified in which ESDs are more likely to be effective, and thus the risks of ESDs would still outweigh the benefits. Similarly, as recognized by the Panel members who were asked, limiting the indications to a subpopulation of individuals who engage in life-threatening behaviors would not mitigate the risks for those individuals, and there is no evidence that the device is effective in such a subpopulation. Accordingly, limiting the use of the device to a narrower population through labeling would also not correct or eliminate the risks.

(Comment 52) A comment argues that general ''treatment resistant'' language adequately defines the population for whom ECT devices are intended, which is precisely the population on whom JRC uses ESDs, and which language could be used in ESD labeling to limit the device's use to individuals who are refractory to all behavior controls except ESDs.

(Response) FDA acknowledges that there is language regarding treatment resistance that does not precisely define a refractory subpopulation in the labeling for certain other devices that have different intended uses and different intended patient populations. However, FDA's position is not that imprecise descriptions of a refractory patient population are necessarily inadequate but rather that, in the case of ESDs used for SIB or AB, labeling stating that the device should only be used in a refractory subpopulation would not correct or eliminate the unreasonable and substantial risk of illness or injury to that population. This is because in the case of ESDs, the available data and information do not establish that the devices are effective for treating SIB or AB in people who are refractory to other approaches. Thus, given that the serious risks posed by ESDs for SIB or AB apply to refractory patients just as they do to others, the risks of this device outweigh its benefits regardless of whether other options may have been attempted, and labeling limiting its use to a refractory population would in no way change this. In contrast, for ECT, the available data associated with its use, including in treatment resistant patients, was of better quality and provided a reasonable assurance of safety and effectiveness.

Further, for ECT there are better-defined hierarchies of treatment options prior to use of ECT, based on data demonstrating instances where other appropriate treatment options were tried and failed. For example, the APA has issued recommendations for determining when the use of ECT may be appropriate (Ref. 99), as has the National Institute for Health and Clinical Excellence in the United Kingdom (Ref. 100). Thus, the use of ''treatment resistant'' language for ECT, in light of the data and the formal,

evidence-based practice guidelines, reflects a much clearer consensus than is available for the use of ESDs for SIB or AB. As discussed in earlier comment responses, it is difficult to define a refractory population for ESDs for SIB or AB, JRC has not established that its residents on whom ESDs are used are refractory to other treatments, and the evidence shows that state-of-the-art alternatives have generally been successful even for the most difficult cases. Accordingly, ECT is distinguishable and FDA's determination remains that labeling or a change in labeling cannot correct or eliminate the substantial and unreasonable risks of illness or injury of ESDs used for SIB or AB.

(Comment 53) A comment argues that an expert believes labeling can be developed to minimize the risks of ESDs. The comment refers to an expert whose opinion FDA solicited regarding this ban.

(Response) FDA disagrees. Dr. Smith proposed certain restrictions, but none of these address labeling.

G. Legal Issues

(Comment 54) One commenter suggests that the evidentiary standard for banning a device is a ''preponderance of evidence,'' meaning that there must be proof of harm and not just theoretical risk. The commenter bases this on a statement in the proposed glove powder ban that the preponderance of evidence suggests that use of an alternative reduces the incidence of certain harms (81 FR 15173, 15179, March 22, 2016).[10]

(Response) FDA disagrees. As Congress explained in the legislative history of section 516 of the FD&C Act, and as FDA stated in the preamble to its banning regulations at 21 CFR part 895 and in the preambles to the proposed rules to ban ESDs and glove powder, actual proof of illness or injury is not required; FDA need only find that a device presents the requisite degree of risk on the basis of all available data and information. H. Rep. 94–853 at 19; 44 FR 29214 at 29215; 81 FR 15173 at 15176; 81 FR 24386 at 24392. The proposed rule to ban glove powder does not state otherwise. The statement cited by the commenter does not address the standard for a device ban, nor does it imply that actual harm is required to meet the standard; it simply states that the evidence relevant to that proceeding indicated that using alternatives would more likely than not result in lower frequency of certain harms relative to glove powder.

(Comment 55) One commenter claims that FDA arbitrarily and capriciously discounted JRC patient data in the proposed rule and instead relied on data that are anecdotal and that were carefully selected to support the Agency's position.

(Response) FDA disagrees. As discussed in sections III.A. and V.B., FDA considered all available data and information, including anecdotal information, and weighed it appropriately in making our decision. FDA provided multiple opportunities for input from all stakeholders and notes again that the expert Panel also weighed all available evidence, applied its expertise and a majority supported a ban.

(Comment 56) Commenters argue that FDA does not have authority to ban a device for a specific use or uses, but rather must ban a device for all uses. One of these commenters argues banning a device only for certain uses is inconsistent with section 513(i)(1)(E) of the FD&C Act, and another claims FDA's only previous device ban at the time banned implanted all hair fibers without regard to their intended uses.

(Response) FDA disagrees. There is nothing in the FD&C Act or its implementing regulations that requires a ban under section 516 of the FD&C Act to apply to all uses of a device. To the contrary, it is difficult to conceive of a ban of a device divorced from its intended use since devices are defined and regulated not only according to their technological characteristics but also according to their intended uses. See, *e.g.,* section 201(h) of the FD&C Act and the device classification regulations at 21 CFR parts 862 through 892. Thus, a device may be one class for one use and a different class for another use, see, *e.g.,* 21 CFR 886.5916 (rigid gas permeable contact lens, class II if intended for daily wear, class III if intended for extended wear). This is clearly what Congress intended. See H.R. Rep. No. 94–853 at 14–15 (Feb. 29, 1976) (''Finally, despite the fact that generally the term 'device' is used in the bill to refer to an individual product or to a type or class of products, there may be instances in which a particular device is intended to be used for more than one purpose. In such instances, it is the Committee's intention that each use may, at the Secretary of Health and Human Services' (Secretary) discretion, be treated as constituting a different device for purposes of classification and other regulation.''). Similarly, a product may be regulated as a ''device'' for one intended use, or, if it had a different intended use, it may be regulated as a ''drug'' (*e.g.,* if it achieved its primary intended purposes through chemical action in or on the human body).

As discussed earlier, in determining whether a device presents an unreasonable and substantial risk of illness or injury, FDA weighs the device's benefits against its risks and considers the risks relative to the state of the art; the benefits and risks of a device and the state of the art are heavily impacted by the device's intended uses, including the patient population for whom it is intended. Thus, FDA's banning regulation for prosthetic hair fibers explains that these devices are intended for implantation into the human scalp to simulate natural hair or conceal baldness, 21 CFR 895.101, and the glove powder ban is not for any gloves or powder but, for certain powdered gloves intended to be worn on the hands of operating room personnel to protect a surgical wound from contamination and intended for medical purposes, that are worn on the examiner's hand or finger to prevent contamination between patient and examiner, and glove powder intended to be used to lubricate the surgeon's hand before putting on a surgeon's glove (21 CFR 895.102, 895.103, and 895.104).

The commenter's reliance on section 513(i)(1)(E) of the FD&C Act is misplaced for several reasons. First, this provision only pertains to review of a 510(k) and not to device bans or any other aspect of device regulation. Second, if the commenter's point is that harmful uses of a device should not prohibit its beneficial uses, this cuts against the commenter's position that FDA must ban a device for all uses. FDA is only banning ESDs for certain uses, which is consistent with the principles underlying section 513(i)(1)(E) of the FD&C Act. Third, if the commenter's point is that FDA should not prohibit use of a device that may be harmful if labeling can adequately mitigate such harm, the harmful uses of ESDs are its labeled uses, not ones outside the labeling, which are the target of section 513(i)(1)(E). Further, section 516 of the FD&C Act and its implementing regulations only authorize banning where FDA has determined the deception or risk cannot be corrected or eliminated by labeling, as FDA has done here; this is also consistent with the principles underlying section 513(i)(1)(E) of the FD&C Act.

(Comment 57) Commenters assert that the proposed ban on ESDs would interfere with the practice of medicine and the doctor-patient relationship, specifically with respect to doctors and

[10] Available at *https://www.federalregister.gov/documents/2016/03/22/2016–06360/banned-devices-proposal-to-ban-powdered-surgeons-gloves-powdered-patient-examination-gloves-and.*

patients at JRC, in contravention of section 1006 of the FD&C Act (21 U.S.C. 396). One of these comments recognizes that what it refers to as the practice of medicine exemption does not limit FDA's ability to determine which devices are available to prescribe but argues that it means FDA cannot ban one use of a device and not others.

(Response) FDA disagrees. Section 1006 of the FD&C Act states that nothing in this act shall be construed to limit or interfere with the authority of a health care practitioner to prescribe or administer any legally marketed device to a patient for any condition or disease within a legitimate health care practitioner-patient relationship. This makes clear, for example, that a doctor may prescribe an approved device for a use different from those for which it has been approved; it does not, however, in any way limit FDA's ability to determine which devices can be legally marketed and the uses for which they can be legally marketed. Indeed, the next sentence of section 1006, not cited by these commenters, explains that this section shall not limit any existing authority of the Secretary to establish and enforce restrictions on the sale or distribution, or in the labeling, of a device that are part of a determination of substantial equivalence, established as a condition of approval, or issued through regulations. Banning ESDs for SIB or AB would not violate section 1006 of the FD&C Act or be inconsistent with its general approach toward the practice of medicine. Pursuant to this ban, ESDs for SIB or AB, such as the GED devices manufactured and used at JRC, are adulterated under section 501(g) of the FD&C Act, and thus are not legally marketed devices. FDA's issuing of this rule in no way conflicts with section 1006 of the FD&C Act or FDA's long-standing position regarding the practice of medicine.

(Comment 58) One commenter argues that FDA does not have the authority to determine the state of the art and decide that one therapy is appropriate and another is not, and that in doing so FDA is playing the role of doctor, which sets a dangerous precedent that would allow FDA to ban any device or use of any device any time it disagrees with clinical practice.

(Response) FDA disagrees. As explained in the preamble to FDA's banning regulations, in determining whether a device presents an unreasonable risk, we should assess the device's risks relative to the state of the art. Before banning a device, it is thus important to consider the current state of science and medicine relevant to the device and the patient population the device is intended for, including alternative treatments. This does not mean FDA is ''playing the role of doctor'' any more than it does when FDA decides whether to approve a medical product; in both contexts FDA must determine whether the applicable statutory standard is met.

(Comment 59) One commenter argues that because these devices were manufactured years ago, the ban is only about the use of the device.

(Response) FDA disagrees. As discussed above, a device is defined in terms of both its technological characteristics and its intended use(s). As discussed in section III, the ban prohibits future manufacturing and distribution or sale of ESDs for SIB or AB by anyone, and the ban also applies to any such devices already manufactured and being held for sale, such as the GEDs in use at JRC.

(Comment 60) In the context of its arguments regarding the practice of medicine, one commenter cites section 510(g) of the FD&C Act and 21 CFR 807.65(d), which exempt practitioners licensed by law to prescribe or administer devices and who manufacture devices solely for use in their practice from registration and listing, and consequently, premarket notification, requirements. The commenter asserts that FDA's Mobile Medical Applications Guidance (February 2015) suggests that licensed practitioners who develop devices solely for use in their professional practice and do not label or promote their product to be used generally by others would not be considered medical device manufacturers and therefore would not have to register, list, or submit a premarket application for their device.[11] The commenter concludes that JRC is not a device manufacturer because its GED devices are used only for its residents and are not promoted or offered for sale at other institutions, and argues JRC's GED devices are outside FDA's jurisdiction because they are not the subject of any interstate commercial sale.

(Response) FDA disagrees. The statute, regulation, and guidance cited by the commenter regarding registration, listing, and premarket review in no way impact FDA's authority to ban a device under section 516 of the FD&C Act, or our determinations regarding banning ESDs. FDA notes, however, that the GED devices are subject to FDA jurisdiction and are subject to this ban.

(Comment 61) One comment argues a ban on ESDs for SIB or AB would discriminate against the most severely disabled and vulnerable members of the population, as well as their parents and guardians, by treating this subgroup differently from the larger disabled population as a whole by banning a treatment needed only by this subgroup, in violation of their right to equal protection of the laws under the Fourteenth Amendment of the Constitution.

(Response) FDA disagrees. The Equal Protection Clause of the Fourteenth Amendment prohibits States from denying citizens equal protection of the laws. As the commenter notes, citing *Tennessee* v. *Lane,* 541 U.S. 509 (2004), this generally requires similarly situated people to be treated alike, and classifications based on disability must have a rational relationship to a legitimate governmental purpose to pass Constitutional muster. FDA notes that although the Fourteenth Amendment applies to the States, the courts have applied the same Equal Protection analysis to the Federal government via the Fifth Amendment. See, *e.g., Buckley* v. *Valeo,* 424 U.S. 1, 93 (1976); *Weinberger* v. *Wiesenfeld,* 420 U.S. 636, 638 n.2 (1975). The Equal Protection analysis is not applicable to this ban. FDA is banning a particular device, defined in part by its intended use; FDA is not classifying individuals on the basis of any disabilities or applying its laws any differently to anyone on the basis of their disability or the severity of their disability. According to the commenter's logic, FDA would violate the Equal Protection Clause, for example, every time we approve a drug or device for a subpopulation of a larger patient population, or when we deny expansion of approval of a drug approved for a subpopulation to a larger patient population, which is clearly not so.

Finally, assuming for the sake of argument that Equal Protection analysis did apply, the commenter provides no analysis regarding how the ban would fail to bear a rational relationship to a legitimate governmental interest. Protecting patients from devices that present an unreasonable and substantial risk of illness or injury is a legitimate governmental interest. Because FDA has found this standard to be met specifically for ESDs for SIB or AB, as detailed in section III.A., application of the ban to this specific type of device, and not a broader or narrower category of devices, is clearly rationally related to this interest.

[11] FDA's guidance entitled ''Mobile Medical Applications,'' issued February 9, 2015, has been superseded by ''Policy for Device Software Functions and Mobile Medical Applications,'' issued September 27, 2019, available at *https://www.fda.gov/media/80958/download.*

(Comment 62) One commenter argues that the proposed ban would constitute a violation of the substantive due process rights of parents of students at JRC, arguing that parents have a fundamental right to choose ESD treatment for their children and that the ban is not narrowly tailored to serve a compelling government interest.

(Response) FDA disagrees. The ban is not a violation of parents' substantive due process rights because their interests do not constitute a fundamental right, and the ban is rationally related to a legitimate government interest.

The interest asserted by the commenter, parents' right to choose ESD treatment for their children, is not a fundamental right. The Supreme Court has recognized parents' fundamental right to direct the upbringing and education of their children. *Troxel* v. *Granville,* 530 U.S. 57 (2000). The Court has made clear, however, that there are limitations to such rights and that the State has ''a wide range of power for limiting parental freedom and authority in things affecting the child's welfare.'' *Prince* v. *Massachusetts,* 321 U.S. 158, 167 (1944). Under this rubric, the Court has upheld State interference with parental rights when there was a determination that the activity being restricted was harmful to a child's mental or physical health. See, *e.g., Jehovah's Witnesses* v. *King Cty. Hosp.,* 278 F. Supp. 488, 504 (W.D. Wash. 1967), aff'd., 390 U.S. 598 (1968) (per curiam) (holding that States may intervene when a parent refuses necessary medical care for a child).

Although the Supreme Court has not addressed the specific parental interests asserted here, several lower courts have addressed similar interests and have expressly stated that parents' fundamental rights do not encompass the right to choose for a child a particular type of health or medical treatment that the state has deemed harmful. See *Pickup* v. *Brown,* 740 F.3d 1208 (9th Cir. 2015); *Doe ex rel. Doe* v. *Governor of New Jersey,* 783 F.3d 150 (3d Cir. 2015).

The *Pickup* court was persuaded, in part, by the holdings of various courts that individuals do not have a fundamental right to choose specific health and medical treatments for themselves, noting that ''it would be odd if parents had a substantive due process right to choose specific treatments for their children—treatments that reasonably have been deemed harmful by the state—but not for themselves.'' *Pickup,* 740 F.3d at 1236; see *Nat'l. Ass'n. for Advancement of Psychoanalysis* v. *Cal. Bd. of Psychology,* 228 F.3d 1043, 1050 (9th Cir. 2000) (''substantive due process rights do not extend to the choice of type of treatment or of a particular health care provider''); *Mitchell* v. *Clayton,* 995 F.2d 772, 775 (7th Cir. 1993) (''a patient does not have a constitutional right to obtain a particular type of treatment or to obtain treatment from a particular provider if the government has reasonably prohibited that type of treatment or provider''); *Carnohan* v. *United States,* 616 F.2d 1120, 1122 (9th Cir. 1980) (per curiam) (holding that there is no substantive due process right to obtain drugs that the FDA has not approved); *Rutherford* v. *United States,* 616 F.2d 455, 457 (10th Cir. 1980) (''the decision by the patient whether to have a treatment or not is a protected right, but his selection of a particular treatment, or at least a medication, is within the area of governmental interest in protecting public health.''); see also *Abigail All. for Better Access to Developmental Drugs* v. *von Eschenbach,* 495 F.3d 695 (D.C. Cir. 2007) (holding that terminally ill adult patients had no fundamental right to have access to investigational drugs that had not yet been approved by FDA for public use); *CaretoLive* v. *Eschenbach,* 525 F. Supp. 2d 952 (S.D. Ohio 2007) (holding that because an association of cancer patients did not have a ''fundamental liberty interest'' in a particular treatment, FDA's denial of the product's application did not violate the association's right to substantive due process).

Based on these cases, we disagree with the commenter that parents have a fundamental right to choose as a treatment for their children ESDs for SIB or AB devices that FDA has determined to present an unreasonable and substantial risk of illness or injury. Because the interests asserted are not fundamental rights, and a suspect class is not involved, the ban is not in violation of parents' substantive due process rights as long as it is rationally related to a legitimate State interest. See *Washington* v. *Glucksberg,* 521 U.S. 702, 728 (1997). As discussed above in the previous response, the ban is rationally related to FDA's legitimate interest in protecting patients from devices that present an unreasonable and substantial risk of illness or injury.

(Comment 63) One comment argues that the proposed ban would deprive the parents of students on whom ESDs are currently used at JRC of the procedural protections required by the Due Process Clause of the Fifth Amendment of the Constitution. This comment asserts that FDA's ban of ESDs for SIB or AB is an adjudicatory decision against JRC, its students, and the parents of its students, and is inappropriately couched as a rulemaking because in substance and effect it is individual in impact and condemnatory in purpose. The comment argues that the affected parties are thus entitled to an oral evidentiary hearing to resolve the myriad factual disputes at issue with the benefit of procedural safeguards such as live cross-examination.

(Response) FDA disagrees. First, this ban of ESDs for SIB or AB is legislative, not adjudicative, in character and purpose, and as such, ''it is not necessary that the full panoply of judicial procedures be used.'' *Hannah* v. *Larche,* 363 U.S. 420, 442 (1960). This ban plainly meets the definition of ''rule'' in the Administrative Procedure Act, 5 U.S.C. 551(4) that an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. There is a presumption of procedural validity for the rulemaking procedure prescribed in the APA, 5 U.S.C. 553, utilized here, as mandated by section 516 of the FD&C Act. See *American Airlines, Inc.* v. *C.A.B.,* 359 F.2d 624, 630 (D.C. Cir. 1966).

The only reason the commenter provides to support its argument that this ban is adjudicative is that ''FDA repeatedly makes factual judgments and findings specifically concerning the medical care and treatment of a small subset of students at just *one* institution: JRC.'' To the extent the commenter is arguing that the facts and analysis underlying the ban only regard a subset of students at JRC, this is not true. As discussed throughout this final rule and the preamble to the proposed rule, the key analyses supporting this ban regard the risks and benefits posed by ESDs for SIB or AB and the state of the art of treatment for this patient population, which are based on evidence from the literature and other sources respecting patients and subjects treated and studied at many different institutions across the country over several decades. To the extent the commenter is arguing that banning ESDs for SIB or AB will only, as a practical matter, impact students at one institution, this does not render the ban adjudicatory, as explained in the following paragraphs.

An administrative law treatise cited in one of the cases relied upon by the commenter helps clarify the distinction between adjudicatory and legislative Agency action:

> Adjudicative facts are the facts about the parties and their activities, businesses, and properties. Adjudicative facts usually answer the questions of who did what, where, when,

how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy discretion.

Alaska Airlines, Inc. v. *C.A.B.,* 545 F.2d 194, 201, n. 11 (D.C. Cir. 1976) (quoting 1 Davis, Administrative Law § 7.02 at 413 (1958)). The D.C. Circuit further illustrated the distinction with a passage from the Attorney General's Manual on the Administrative Procedure Act (1947) at 14–15:

> The object of the rule making proceeding is the implementation or prescription of law or policy for the future, rather than the evaluation of a respondent's past conduct . . . Conversely, adjudication is concerned with the determination of past and present rights and liabilities. Normally there is involved a decision as to whether past conduct was unlawful so that the proceeding is characterized by an accusatory flavor and may result in disciplinary action.

Id. at 201 n. 12.

Applying these considerations to this device ban, it is clear this is legislative and not adjudicatory action. The key facts relevant to FDA's ban of ESDs for SIB or AB do not concern who did what, where, when, how, why, with what motive or intent; rather, they concern the risks and benefits these devices present to the intended patient population, and the state of the art of medical treatment for this patient population across the United States. The purpose of the ban is to prospectively prohibit future manufacturing and sale of ESDs for SIB or AB by anyone anywhere in the United States. The purpose of this rulemaking proceeding is not to evaluate JRC's or any other entity's past conduct, nor is it to determine the lawfulness of any past conduct. Although some of the relevant data and information regard patients at JRC, they also regard patients and subjects treated and studied at a number of other institutions, reported in the literature over decades; these are general facts that have led FDA to determine that the legal standard for banning a device has been met. The proceeding is not punitive and may not result in disciplinary action (although future failure to comply with the ban may result in enforcement action).

In another case cited by the commenter, the Ninth Circuit described the primary considerations for distinguishing between legislation and adjudication as, ''(1) whether the government action applies to specific individuals or to unnamed and unspecified persons; (2) whether the promulgating agency considers general facts or adjudicates a particular set of disputed facts; and (3) whether the action determines policy issues or resolves specific disputes between particular parties.'' *Gallo* v. *U.S. Dist. Ct. for the Dist. of Ariz.,* 349 F.3d 1169 (9th Cir. 2003) (citations omitted). Although this court pointed out that that the line between legislation and adjudication is not always easy to draw, it is easy to determine that this device ban falls well within the legislative side of the line.

First, it applies not only to JRC but to any entity that may wish to manufacture or sell ESDs for SIB or AB in the future. FDA notes that when we banned prosthetic hair fibers for concealing baldness, making it illegal for any entity to commercially distribute that product, there were no entities engaged in the commercial distribution of those products at the time of the ban (see 48 FR 25126, June 3, 1983).[12] FDA has cleared 510(k)s for other ESDs unrelated to JRC, although to FDA's knowledge none of these are currently in commercial distribution or use. The fact that only one entity happens to be holding ESDs for SIB or AB for sale does not render this an adjudicative action.

Second, in banning ESDs for SIB or AB, FDA has considered general facts regarding this device type and alternative treatments for this patient population from the literature and a wide variety of other sources, not a particular set of disputed facts regarding a particular party.

Third, the ban quite clearly determines general scientific and policy issues regarding whether ESDs for SIB or AB may be legally marketed in the United States, and does not resolve a dispute between particular parties, as did the cases cited by the commenter involving an adjudicative action (*e.g.,* disputes regarding individuals' qualification for various types of government benefits or termination of their employment).

Further, FDA has provided the public, including affected entities and individuals, years of notice, as well as meaningful opportunities to participate in the process and present evidence and views regarding the ban. FDA first notified the public that it was considering a ban on ESDs for SIB or AB on March 14, 2014 (79 FR 17155). Although not required by statute, FDA then held the Panel Meeting to discuss issues relating to a potential ban of these devices. FDA opened a public docket for this meeting, received hundreds of written comments from a wide variety of stakeholders, including JRC, JRC residents and their relatives, and provided an opportunity for verbal testimony, which was utilized by JRC, former JRC residents, and relatives of current and former JRC residents. FDA then issued a proposed rule to ban ESDs for SIB or AB on April 25, 2016, on which we received over 1,500 comments.

FDA has carefully considered and responded to these comments in this final rule. Contrary to the commenter's claims that FDA has not revealed all the sources upon which it has relied (an assertion for which the commenter provides no support), the extensive sources upon which FDA has relied in issuing this ban are listed in section XI of the proposed rule, 81 FR 24386 at 24414, and in section XI, and some, such as the reports FDA obtained from outside experts, were included in full in the public docket for the proposed rule. This process satisfies the requirements of due process.

The commenter argues that an evidentiary hearing with live cross-examination of witnesses is required to satisfy due process here. The cases cited by the commenter, *e.g., Goldberg* v. *Kelly,* 397 U.S. 254, 268–70 (1970) and *Gray Panthers* v. *Schweiker,* 652 F.2d 146, 167–72 (D.C. Cir. 1980), consider the due process right to an evidentiary hearing in adjudicative matters, and thus are not applicable to this legislative action. Further, in those cases, the courts held that due process requires an opportunity to be heard. Here, interested parties, including the individuals affected by this ban, on their own or through their representatives, have had ample opportunity to present evidence and their views to FDA, and FDA has clearly explained the reasons for banning ESDs for SIB or AB. Unlike the circumstances in *Gray Panthers,* FDA has no financial or other interest in the outcome of this proceeding other than the protection of the public health. This is not an area where cross-examination of people submitting comments would be warranted.

Indeed, this ban is much more akin to the cases cited by the commenter where the court found that live cross-examination was *not* required, for example, because the governmental proceeding was a general fact-finding investigation, not an adjudicatory proceeding, that would be unduly burdened by trial-like proceedings, *Hannah* v. *Larche,* at 451 (1960), or because the information critical to the decision, such as physicians' conclusions and other information from medical sources, is more effectively and efficiently communicated through

[12] Available at *https://www.govinfo.gov/content/pkg/FR-1983-06-03/pdf/FR-1983-06-03.pdf.*

written than oral presentation, *Mathews* v. *Eldridge,* 424 U.S. 319, 345 (1976). The same holds true here: key evidence underlying this ban is most effectively provided in written form, in particular the medical and scientific literature. FDA has already considered live testimony from over a dozen experts in the field and a wide variety of interested stakeholders with different views on the issues at its Panel Meeting, and little value would be added by a full or informal evidentiary hearing or live cross examination. Requiring such would place a huge burden on the Agency, with little, if any, benefit.

(Comment 64) One comment alleges FDA distorted comments submitted by the U.S. Department of Justice Civil Rights Division (DOJ) in the proposed rule, 81 FR 24386 at, 24409, because FDA did not note that DOJ investigated JRC and took no enforcement action, which the commenter interprets to mean that JRC's program and use of ESDs fully complies with accepted professional judgment, practice, and standards. The commenter further asserts that FDA's reliance on DOJ's statements that ESDs do not conform to professional standards of care is misplaced and flawed, as DOJ conducted a full investigation and did not take enforcement action, and DOJ is not qualified to dictate healthcare practice.

(Response) FDA disagrees. There are many reasons why DOJ may have chosen not to take enforcement action against JRC under the statutes it administers, which are different from those administered by FDA. The fact that DOJ did not do so does not mean that JRC's use of ESDs complies with accepted professional judgment, practice, or standards. Indeed, as discussed in the proposed rule, DOJ clearly explained its position that ESDs for SIB or AB are harmful and have uncertain efficacy. As explained in the proposed rule, DOJ has experience in this field, because it must determine relevant standards of care in administering the statutes under its purview, and the evidence submitted by DOJ pertaining to the state of the art is corroborative of FDA's conclusions based on other evidence.

H. Transition Time

(Comment 65) Comments we received related to transitioning individuals on whom ESDs are currently used off of them supported making the transition time as short as possible after the ban is effective. One stated that if FDA allows a gradual transition, a definite end date must be set. However, one comment stated that improper transition would be potentially life-threatening and likely to cause a return to behaviors and result in direct and immediate harm; any transition must happen under the care of a physician.

(Response) As explained in the proposed rule, this ban applies to future manufacture, sale, and distribution of devices as well as to devices already in commercial distribution and devices already sold to the ultimate user. For devices already in use, FDA agrees that transition off of ESDs should occur under the supervision of a physician and that the transition should end as soon as possible for the individual. The majority of comments suggested that use of ESDs can cease immediately and that an appropriate behavioral treatment plan can continue to address SIB or AB even without the device. As we noted in the proposed rule, the Massachusetts DDS and other providers have successfully transitioned several patients who were subject to ESDs at JRC to providers who do not use ESDs (81 FR 24386 at 24408 and 24411). We further note that JRC has implemented ''a very comprehensive alternative behavior program'' at its own facility that it described as ''very successful'' on occasions it decided its most powerful ESD was not effective, even for severe SIB. JRC's representative also said that its providers were able to transition individuals off of ESDs even though they had initially thought a transition ''would be very unlikely'' (see Ref. 15 at 148). However, in light of concerns about thorough assessments of the behaviors' functions and corresponding development of appropriate treatment plans, FDA recognizes that affected parties may need some period of time to establish or adjust treatment plans. We have determined the compliance date for residents already subject to the device with that in mind. In determining the amount of transition time for compliance, we relied upon clinical expert opinions, such as those provided by members of the Panel Meeting who opined that six months should be the maximum time allowed to transition (see Ref. 1).

VI. Effective Date and Compliance Dates

This rule is effective 30 days after its date of publication in the **Federal Register** (see **DATES**). We are establishing two compliance dates. For devices in use on specific individuals as of the date of publication and subject to a physician-directed transition plan, compliance is required 180 days after the date of publication of this rule in the **Federal Register** (see **DATES**). For all other devices, compliance is required 30 days after publication in the **Federal Register**. Section 501(g) of the FD&C Act provides that a device is adulterated if it is a banned device.

VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule would only affect one entity that is not classified as small, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $154 million, using the most current (2018) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

Under this final rule we are banning ESDs for SIB or AB. Non-quantified benefits of the final rule include a reduction in adverse events, such as the risk of burns, PTSD, and other physical or psychological harms related to use of the device in this patient population.

We expect that the final rule will only affect one entity that currently uses these devices on residents of its facility. The final rule will impose costs on this entity to read and understand the rule,

as well as to provide affected individuals with alternative treatments. Although uncertain, other treatments or care at other facilities may cost more than the current treatment with the banned device.

To account for this uncertainty, we use a range of potential alternative treatment costs. At the lower bound, we assume that alternative treatments would cost the same as the current treatment. We use reimbursement data from the State of Massachusetts to estimate a potential upper bound for alternative treatments. The costs for the one affected entity to read and understand the rule range from around $1,200 to $5,200. The present value of the incremental treatment costs over 10 years ranges from $0 to $44 million, with a primary estimate of $22 million at a 3 percent discount rate, and from $0 to $38 million, with a primary estimate of $18.8 million at a 7 percent discount rate. Annualized costs range from $0 million to $5.0 million, with a primary estimate of $2.5 million at a 3 percent discount rate, and from $0 million to $5.0 million, with a primary estimate of $2.5 million at a 7 percent discount rate. The lower-bound cost estimates only include administrative costs to read and understand the rule with no incremental costs for alternative treatments. Additionally, there would be transfer payments between $14 million and $15 million annually either within the affected entity to treat the same individuals using alternative treatments, or between entities if affected individuals transfer to alternate facilities for treatment. The final rule's costs and benefits are summarized in table 1.

We also examined the economic implications of the rule as required by the Regulatory Flexibility Act. The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule would only affect one entity that is not classified as small, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

TABLE 1—ECONOMIC DATA: COSTS AND BENEFITS STATEMENT

Category	Low estimate (million)	Primary estimate (million)	High estimate (million)	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized.							
Monetized $millions/year.							
Annualized.							
Quantified.							
Qualitative							Reduction in physical and psychological adverse events related to use of the device.
Costs:							
Annualized	$0.0	$2.5	$5.0	2018	7	10	
Monetized $millions/year	0.0	2.5	5.0	2018	3	10	
Annualized.							
Quantified.							
Qualitative							Transition costs to the affected entity and individuals for transitioning to alternative treatments.
Transfers:							
Federal.							
Annualized.							
Monetized $millions/year	From:			To:			
Other Annualized	13.8	14.2	14.6	2018	7	10	
Monetized $millions/year	13.8	14.2	14.6	2018	3	10	
	From: Affected entity for current treatment			To: Affected entity for other treatments or to other facilities that treat aggressive or self-injurious behavior			
Effects	State, Local or Tribal Government: State expenditures may rise or fall if individuals move across State boundaries. Small Business: No effect. Wages: No effect. Growth: No effect.						

In line with Executive Order 13771, in table 2 we estimate present and annualized values of costs and cost savings over an infinite horizon. We do not estimate any cost savings due to this final rule.

TABLE 2—EXECUTIVE ORDER 13771 SUMMARY TABLE

[In $millions 2016 dollars, over infinite time horizon]

	Primary (7%)	Lower bound (7%)	Upper bound (7%)	Primary (3%)	Lower bound (3%)	Upper bound (3%)
Present Value of Costs	$36.7	$0	$73.4	$82.5	$0	$165.0
Present Value of Cost Savings	$0	0	0	0	0	0
Present Value of Net Costs	36.7	0	73.4	82.5	0	165.0
Annualized Costs	2.6	0	5.1	2.5	0	4.9

TABLE 2—EXECUTIVE ORDER 13771 SUMMARY TABLE—Continued

[In $millions 2016 dollars, over infinite time horizon]

	Primary (7%)	Lower bound (7%)	Upper bound (7%)	Primary (3%)	Lower bound (3%)	Upper bound (3%)
Annualized Cost Savings	0	0	0	0	0	0
Annualized Net Costs	2.6	0	5.1	2.5	0	4.9

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 101) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

FDA has carefully considered the potential environmental effects of this final rule and of possible alternative actions. In doing so, the Agency focused on the environmental impacts of its action as a result of disposal of unused ESDs that will need to be handled after the effective date of the final rule.

The environmental assessment (EA) considered each of the alternatives in terms of the need to provide maximum reasonable protection of human health without resulting in a significant impact on the environment. The EA considered environmental impacts related to landfill and incineration of solid waste at municipal solid waste (MSW) facilities. The selected action will result in an initial batch disposal of ESDs primarily at a single geographic location, followed by a gradual, intermittent disposal of a small number of remaining devices where these devices are used. The total number of devices to be disposed is small, *i.e.,* estimated at fewer than 300 units. Overall, given the limited number of ESDs in commerce, the selected action is expected to have no significant impact on MSW and landfill facilities and the environment in affected communities.

The Agency has concluded that the final rule will not have a significant impact on the human environment, and that an environmental impact statement is not required. FDA's finding of no significant impact (FONSI) and the evidence supporting that finding, contained in an EA prepared under 21 CFR 25.40, may be seen at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

FDA has analyzed this rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe . . . a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain State requirements ''different from or in addition to'' certain Federal requirements applicable to devices (21 U.S.C. 360k; see *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470 (1996); *Riegel* v. *Medtronic, Inc.,* 552 U.S. 312 (2008)). This rule creates a requirement under 21 U.S.C. 360k that bans ESDs for SIB or AB.

XI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

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List of Subjects

21 CFR Part 882

Medical devices, Neurological devices.

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 882 and 895 are amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Amend § 882.5235 by revising paragraph (b) to read as follows:

§ 882.5235 Aversive conditioning device.

* * * * *

(b) *Classification.* Class II (special controls), except for electrical stimulation devices for self-injurious or aggressive behavior. Electrical stimulation devices for self-injurious or aggressive behavior are banned. See § 895.105 of this chapter.

PART 895—BANNED DEVICES

■ 3. The authority citation for part 895 continues to read as follows:

Authority: 21 U.S.C. 352, 360f, 360h, 360i, 371.

■ 4. Add § 895.105 to subpart B to read as follows:

§ 895.105 Electrical stimulation devices for self-injurious or aggressive behavior.

Electrical stimulation devices for self-injurious or aggressive behavior are aversive conditioning devices that apply a noxious electrical stimulus to a person's skin to reduce or cease self-injurious or aggressive behavior.

Dated: February 27, 2020.

Stephen M. Hahn,

Commissioner of Food and Drugs.

[FR Doc. 2020–04328 Filed 3–4–20; 8:45 am]

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Part V

Department of Veterans Affairs

38 CFR Part 71

Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments Under the VA MISSION Act of 2018; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 71

RIN 2900–AQ48

Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments Under the VA MISSION Act of 2018

AGENCY: Department of Veterans Affairs

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC). This rulemaking would propose improvements to PCAFC and would update the regulations to comply with the recent enactment of the VA MISSION Act of 2018, which made changes to the program's authorizing statute. These proposed changes would allow PCAFC to better address the needs of veterans of all eras and standardize the program to focus on eligible veterans with moderate and severe needs.

DATES: Written comments must be received on or before May 5, 2020.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ48, Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments under the VA MISSION Act of 2018.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Elyse Kaplan, National Deputy Director, Caregiver Support Program, Care Management and Social Work, 10P4C, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–7337. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Summary of Proposed Regulatory Changes

We propose to revise VA's regulations that govern PCAFC. This rulemaking would make improvements to PCAFC and update the regulations to comply with section 161 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 or the VA MISSION Act of 2018, which made changes to PCAFC's authorizing statute.

This proposed rule—

- Would expand PCAFC to eligible veterans of all service eras, as specified.
- Would define new terms and revise existing terms used throughout the regulation. Some of the new and revised terms would have a substantial impact on eligibility requirements for PCAFC (*e.g.,* in need of personal care services; need for supervision, protection, or instruction; and serious injury), and the benefits available under PCAFC (*e.g.,* financial planning services, legal services, and monthly stipend rate).
- Would establish an annual reassessment to determine continued eligibility for PCAFC.
- Would revise the stipend payment calculation for Primary Family Caregivers.
- Would establish a transition plan for legacy participants and legacy applicants, as those terms would be defined in revised § 71.15, who may or may not meet the new eligibility criteria and whose Primary Family Caregivers could have their stipend amount impacted by changes to the stipend payment calculation.
- Would add financial planning and legal services as new benefits available to Primary Family Caregivers.
- Would revise the process for revocation and discharge from PCAFC.
- Would reference VA's ability to collect overpayments made under PCAFC.

Background on Governing Statutes and Public Input

Title I of Public Law 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010 (hereinafter referred to as ''the Caregivers Act''), established section 1720G(a) of title 38 of the United States Code (U.S.C.), which required VA to establish a program of comprehensive assistance for Family Caregivers of eligible veterans who have a serious injury incurred or aggravated in the line of duty on or after September 11, 2001. The Caregivers Act also required VA to establish a program of general caregiver support services, pursuant to 38 U.S.C. 1720G(b), which is available to caregivers of covered veterans of all eras of military service. VA implemented the program of comprehensive assistance for Family Caregivers (PCAFC) and the program of general caregiver support services (PGCSS) through its regulations in part 71 of title 38 of the Code of Federal Regulations (CFR). Through PCAFC, VA provides Family Caregivers of eligible veterans (as those terms are defined in 38 CFR 71.15) certain benefits, such as training, respite care, counseling, technical support, beneficiary travel (to attend required caregiver training and for an eligible veteran's medical appointments), a monthly stipend payment, and access to health care (if qualified) through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). 38 U.S.C. 1720G(a)(3), 38 CFR 71.40. This proposed rule relates primarily to PCAFC.

VA recognizes that improvements to PCAFC are needed to improve consistency and transparency in decision making and sought input from stakeholders on potential changes. On January 5, 2018, VA published a **Federal Register** Notice (FRN), requesting information and comments from the public to help inform VA of any changes needed to PCAFC that would increase consistency across the program as well as ensure the program supports those Family Caregivers of veterans and servicemembers most in need. See 83 FR 701 (January 5, 2018). On February 1, 2018, VA published a correction notice to clarify that public comments in response to the January 5, 2018 FRN had to be received by VA on or February 5, 2018.[1] See 83 FR 4772 (February 1, 2018).

Through these FRNs, we asked the public to comment on whether VA should change the definition of serious injury, how a veteran's need for supervision or protection should be assessed, how in the best interest should be defined, the circumstances under which veterans' eligibility should be reassessed after approval for PCAFC, what terminology VA should use for those who are no longer eligible for PCAFC, whether VA should modify its timeframes for continuation of benefits when a caregiver is revoked, how VA should calculate stipend rates, and how VA should assess and determine the amount and degree of personal care services provided by the Family

[1] While the January 5, 2018 FRN also required comments to be received by VA on or before February 5, 2018, it mistakenly referred to a 45-day (instead of 30-day) comment period, which was corrected in the February 1, 2018 FRN.

Caregiver. 83 FR 703 (January 5, 2018). In response to the FRNs, VA received three hundred and twenty-three (323) comments. Of these, one hundred and eighteen comments (118) addressed at least one of the eight questions listed in the notice and described above, and we considered these comments when developing this proposed rule. Most commenters expressed support for expanding PCAFC to include veterans of all eras, followed by comments identifying challenges with operational processes of the current program including inconsistency with eligibility determinations and the completion of home monitoring visits. The comments received from this FRN are publicly available online at *www.regulations.gov.* Copies of the comments are also available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (exception holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

On June 6, 2018, the VA MISSION Act of 2018 was signed into law. Section 161 of the VA MISSION Act of 2018 amended 38 U.S.C. 1720G by expanding eligibility for PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, establishing new benefits for designated Primary Family Caregivers of eligible veterans, and making other changes affecting program eligibility and VA's evaluation of PCAFC applications. The VA MISSION Act of 2018 established that expansion of PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, will occur in two phases. The first phase will begin when VA certifies to Congress that it has fully implemented a required information technology system that fully supports PCAFC and allows for data assessment and comprehensive monitoring of PCAFC. During the 2-year period beginning on the date of such certification to Congress, PCAFC will be expanded to include Family Caregivers of eligible veterans who have a serious injury (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty in the active military, naval, or air service on or before May 7, 1975. Two years after the date of submission of the certification to Congress, PCAFC will be expanded to Family Caregivers of all eligible veterans who have a serious injury (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty in the active military, naval, or air service, regardless of the period of service in which the serious injury was incurred or aggravated in the line of duty in the active military, naval, or air service.

On November 27, 2018, VA again sought public comment through a FRN that requested input from the public on certain changes to PCAFC required by section 161 of the VA MISSION Act of 2018. 83 FR 60966 (November 27, 2018). Specifically, we asked how VA should define ''a need for regular or extensive instruction or supervision'' in new 38 U.S.C. 1720G(a)(2)(C)(iii); how ''need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired'' would differ from ''a need for supervision or protection based on symptoms of residuals of neurological or other impairment or injury;'' how VA should assess whether the ability of the veteran to function in daily life would be seriously impaired without regular or extensive instruction or supervision; and what financial planning and legal services should be made available to Primary Family Caregivers, how such services should be provided, and what types of entities provide such services. VA received two hundred and twenty (220) comments, including comments outside the scope of questions posed. Many comments focused on the desire for PCAFC to be expanded to veterans of all eras, and to include illnesses as covered conditions for which a veteran may be eligible. In direct response to the questions posed, some commenters shared opinions on the importance of including the veteran's and caregiver's perspective in the assessment process and considering the complexity and frequency of the care being provided and what would happen to the veteran in the absence of such care. Other commenters offered support for utilizing the need for long-term care as a criterion for PCAFC. VA appreciates the time and attention from commenters who shared their opinions on how to improve PCAFC, and we considered these comments when developing this proposed rule. The comments received from this FRN are publicly available online at *www.regulations.gov.* Copies of the comments are also available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (exception holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

Additional efforts were made to garner input from stakeholders. On February 25 and March 5, 2019, meetings were held with various Veteran Service Organizations (VSOs) to discuss PCAFC and the VA MISSION Act of 2018. Discussion topics included the definitions of serious injury, need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, and inability to perform an activity of daily living; the tier system related to stipend payments; and revocation and transition of participants from PCAFC. Furthermore, on April 26, May 16, and May 29, 2019, listening sessions were held with representatives from an organization advocating for military caregivers, various VSOs, and Caregiver Support Program Peer Mentors, consecutively, to discuss legal and financial services needed by caregivers. Discussion topics included, but were not limited to: Estate planning, end of life planning, advanced directives and living wills, designating a power of attorney, guardianship, debt management, household budget planning, retirement planning, and insurance review and counseling. The notes from these meetings and listening sessions can be found as supporting documents at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published.

Introduction to Proposed Regulatory Changes

As explained in more detail below, we propose to revise and update 38 CFR part 71 to comply with changes made to 38 U.S.C. 1720G by section 161 of the VA MISSION Act of 2018, to further improve PCAFC for eligible veterans of all eras of service by improving consistency and transparency in how the program is administered across VA, and to provide a better experience for eligible veterans and their caregivers.

In this proposed rule, we refer to two implementation dates—one related to the first phase of expansion of PCAFC to eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, and another for purposes of our other proposed changes to part 71. As we stated above, the first phase of PCAFC expansion under the VA MISSION Act of 2018 to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, will begin when VA certifies to Congress that it has fully implemented a required information technology system. It is VA's intent that such certification be provided to

Congress on the same day that our other proposed regulatory changes would go into effect. However, we recognize that the timeline for development of an information technology system can be unpredictable. Additionally, changes to this proposed approach may be warranted based on public comments we receive in response to this proposed rule and other factors. Therefore, this proposed rule indicates that the first phase of PCAFC expansion would begin on a ''date specified in a future **Federal Register** document,'' and the other proposed changes in this proposed rule would go into effect on the effective date of this rule. In the proposed regulatory text below, the effective date of the final rule is referenced as ''[EFFECTIVE DATE OF FINAL RULE]''.

71.10 Purpose and Scope

We propose to amend § 71.10(b), which sets forth the scope of part 71 to clarify the first sentence and add a new sentence at the end. The first sentence of current paragraph (b) states that part 71 regulates the provision of Family and General Caregiver benefits authorized by 38 U.S.C. 1720G. We propose to revise this language to better align with the language used in 38 U.S.C. 1720G(a) and (b). We propose to revise the language to state, ''[t]his part regulates the provision of benefits under the Program of Comprehensive Assistance for Family Caregivers and the Program of General Caregiver Support Services authorized by 38 U.S.C. 1720G.''

The second sentence of current paragraph (b) explains that individuals eligible for such benefits may also be eligible for other VA benefits pursuant to other laws or parts of title 38, CFR, and we would make no changes to the current language.

We also propose to add a sentence at the end of paragraph (b) to explain that these benefits are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20). Section 101(20) of title 38, U.S.C., defines ''State'' to mean ''each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.'' Although it has been VA's practice since the programs started in 2011, the regulations in part 71 do not state that these programs are provided only to those individuals residing in a State. Therefore, we would update our regulations to align with current practice. We note that it is not currently feasible for VA to provide benefits under part 71 outside of a State. The requirements of this part include in-home visits such as an initial home-care assessment under current § 71.25(e) and the provision of certain benefits that can be provided in-home such as respite care under current § 71.40(a)(4) and (c)(2), which would be difficult to conduct and provide in a consistent manner outside of a State. Also, ensuring oversight of PCAFC and PGCSS outside of a State would be resource-intensive and we do not believe there is sufficient demand to warrant the effort that would be required. We note that currently there are administrative limitations that prevent VA from providing certain benefits under this part in remote areas, even within the scope of the term ''State,'' such as in the Commonwealth of the Northern Mariana Islands; however, VA will continue to explore the potential for expanding VHA services to support PGCSS and PCAFC in these remote areas. As revised, § 71.10(b) would state, ''[t]his part regulates the provision of benefits under the Program of Comprehensive Assistance for Family Caregivers and the Program of General Caregiver Support Services authorized by 38 U.S.C. 1720G. Persons eligible for such benefits may be eligible for other VA benefits based on other laws or other parts of this title. These benefits are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20).''

71.15 Definitions

We propose to amend § 71.15, which contains definitions for terms used throughout part 71, by removing the definitions of ''combined rate,'' and ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' revising the definitions of ''in the best interest,'' ''inability to perform an activity of daily living (ADL),'' ''primary care team,'' and ''serious injury''; and adding new definitions for the terms ''domestic violence,'' ''financial planning services,'' ''in need of personal care services,'' ''institutionalization,'' ''intimate partner violence,'' ''joint application,'' ''legacy applicant,'' ''legacy participant,'' ''legal services,'' ''monthly stipend rate,'' ''need for supervision, protection, or instruction,'' ''overpayment,'' and ''unable to self-sustain in the community.'' These proposed changes are explained in more detail below. We emphasize, as stated in the introductory language for § 71.15, that these proposed definitions would apply only for purposes of part 71.

In § 71.15, we would remove the current definition of ''combined rate.'' This term is currently defined to refer to the Bureau of Labor Statistics (BLS) hourly wage rate for home health aides at the 75th percentile in the eligible veteran's geographic area of residence, multiplied by the Consumer Price Index for All Urban Consumers (CPI–U). Also, the current definition explains how the rate will be determined for the purposes of this program. As further explained in this rulemaking regarding our proposed definition of the term ''monthly stipend rate'' and proposed § 71.40(c)(4), we are proposing to determine monthly stipend payments using data from the Office of Personnel Management's (OPM) General Schedule (GS) instead of using the combined rate. Although some Primary Family Caregivers would, for one year after the effective date of the rule, maintain the stipend amount they were eligible to receive as of the day before the effective date of this rule, we would no longer make annual adjustments to the combined rate, and it would otherwise no longer apply after the effective date of this rule. One year after the effective date of this rule, all stipend payments would be calculated using the monthly stipend rate (as that term would be defined in proposed § 71.15). Therefore, the definition of combined rate would no longer be needed or applicable in 38 CFR part 71.

In § 71.15, we would add a new definition for the term ''domestic violence.'' We would define domestic violence to refer to any violence or abuse that occurs within the domestic sphere or at home, and may include child abuse, elder abuse, and other types of interpersonal violence. We believe other types of interpersonal violence would include, but would not be limited to, financial harm and threatening behavior. This definition is based on the definition of domestic violence used by the Veterans Health Administration's (VHA) Intimate Partner Violence Assistance Program. As explained later in this rulemaking, we would define this term as it is used in proposed § 71.45(b)(3)(iii)(B) concerning a Family Caregiver's request for discharge from PCAFC due to domestic violence.

In proposed § 71.15, we would add a new definition of ''financial planning services.'' We would define this term to address changes made to 38 U.S.C. 1720G by the VA MISSION Act of 2018. Specifically, the VA MISSION Act of 2018 added financial planning services relating to the needs of injured veterans and their caregivers as a benefit for Primary Family Caregivers. See 38 U.S.C. 1720G(a)(3)(A)(ii)(VI)(aa), as amended by Public Law 115–182, section 161(a)(3). As explained later in this rulemaking, we propose to add

''financial planning services'' to the benefits available to Primary Family Caregivers under a revised § 71.40(c).

We propose to define ''financial planning services'' in § 71.15 to mean services focused on increasing financial capability and assisting the Primary Family Caregiver in developing a plan to manage the personal finances of the Primary Family Caregiver and the eligible veteran, as applicable, to include household budget planning, debt management, retirement planning review and education, and insurance review and education. We believe ''household budget planning'' would include making a budget, learning to balance a checking account, and learning to pay bills; ''debt management'' would include assistance establishing payment plans and credit counseling; ''retirement planning'' would include review and education on personal retirement plans, pension planning, and investment options, however it would not include specific investment advice; and ''insurance review and education'' would include review of current insurance policies, and education on alternative insurance options to include health, automobile, life, or house insurance. These services would be aimed at increasing the financial capability of Primary Family Caregivers and assisting Primary Family Caregivers in being able to manage their own personal finances and those of the eligible veteran, as applicable. We believe this is reasonable under the authorizing statute.

The VA MISSION Act of 2018 requires that these financial planning services relate ''to the needs of injured veterans and their caregivers'' and we believe defining these services in this manner would meet this requirement as these types of services are relevant and applicable to the care and needs of the eligible veteran and the caregiver. We believe these would be the type of financial planning services that Primary Family Caregivers would need and best support Primary Family Caregivers. This definition would also align with the feedback we received from the public in response to the November 27, 2018 FRN as well as additional meetings and listening sessions held to garner input from stakeholders. For example, some feedback included a desire for assistance with bill paying, balancing a checking account, and debt management. Additionally, it was noted that the loss of income combined with additional expenses, often unexpected, attributed to caring for another, are concerns experienced by veterans and caregivers.

We would limit these services to only those related to the personal finances of the eligible veteran and the Primary Family Caregiver. PCAFC is designed to support the clinical needs of the eligible veteran and the benefits provided to Family Caregivers under PCAFC are the direct result of the personal care services they provide to eligible veterans. As a result, these services would not be provided to assist a Primary Family Caregiver with any business or other professional endeavors because these endeavors would not be related to the provision of personal care services to an eligible veteran. We also believe limiting these services in this manner aligns with feedback received since business and professional endeavors were not raised as financial planning services that VA should provide to caregivers. We note that these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities.

In proposed § 71.15, we would add a new definition of ''In need of personal care services.'' We would define this term to mean that the eligible veteran requires in-person personal care services from another person, and without such personal care services, alternative in-person caregiving arrangements (including respite care or assistance of an alternative caregiver) would be required to support the eligible veteran's safety.

Current § 71.15 defines personal care services to mean ''care or assistance of another person necessary in order to support the eligible veteran's health and well-being, and perform personal functions required in everyday living ensuring the eligible veteran remains safe from hazards or dangers incident to his or her daily environment.'' This definition is used for purposes of PCAFC and PGCSS; however, it does not provide sufficient clarity for purposes of PCAFC, which we believe is targeted to a narrower population. Specifically, it does not delineate whether such services must be provided in person or can be provided remotely, or what it means to be ''in need of'' such services under 38 U.S.C. 1720G(a)(2)(C). Because we believe this definition is still appropriate for purposes of 38 U.S.C. 1720G(b) with respect to PGCSS, we would add a new definition of ''in need of personal care services'' for purposes of determining PCAFC eligibility under proposed § 71.20(a)(3), discussed further below, and maintain our current definition of ''personal care services'' in § 71.15.[2]

Our proposed definition of ''in need of personal care services'' would reflect that PCAFC Family Caregivers perform in-person personal care services, and without such care, alternative caregiving arrangements would be required.

The statute makes clear the importance of regular support to an eligible veteran by allowing more than one Family Caregiver to be trained to provide personal care services. 38 U.S.C. 1720G(a)(5) and (6). Likewise, eligible veterans are provided protections under the statute in the absence of a Family Caregiver such as respite care during a family member's initial training if such training would interfere with the provision of personal care services for the eligible veteran. 38 U.S.C. 1720G(a)(6)(D). Thus, we believe ''in need of personal care services'' under section 1720G(a)(2)(C) means that without Family Caregiver support, VA would otherwise need to hire a professional home health aide or provide other support to the eligible veteran such as adult day health care, respite care, or facilitate a nursing home or other institutional care placement.

While regular support is essential, the frequency with which such services are required may differ depending on the eligible veteran's care needs. Therefore, our proposed definitions of inability to perform an activity of daily living (ADL) and need for supervision, protection, or instruction, as proposed in this section, would further clarify the eligible veteran's frequency of needed care.

This definition would also clarify that ''in need of personal care services''

[2] The definition of ''personal care services'' in 38 CFR 71.15 is based on VA's interpretation of the statutory definition of ''personal care services'' as it existed prior to the enactment of the VA MISSION Act of 2018. The statutory definition of ''personal care services,'' in 38 U.S.C. 1720G(d)(4), was amended by section 161(b) of the VA MISSION Act of 2018 by replacing ''independent activities of daily living'' with ''activities of daily living,'' and to include ''[s]upervision or protection based on symptoms or residuals of neurological or other impairment or injury'' and ''[r]egular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.'' However, we are not proposing to revise the definition of ''personal care services'' in § 71.15 as we believe our current definition encompasses these additional criteria and thereby recognizes all the bases upon which an eligible veteran can be deemed in need of personal care services under 38 U.S.C. 1720G(a)(2)(C)(i) through (iii) (*i.e.,* (i) an inability to perform one or more activities of daily living; (ii) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; and (iii) a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired), which are also encompassed in the eligibility criteria we would consider under proposed § 71.20(a)(3)(i) and (ii).

means that such services are required in person. While technological advances have improved the provision of telehealth and other remote clinical interventions for veterans, we believe PCAFC was intended to provide assistance to Family Caregivers who are required to be physically present to support eligible veterans in their homes. First, we note the term ''personal'' is an adjective that is defined to mean ''done, made, or performed in person'' among other relevant meanings such as, ''[o]f or relating to a particular person.'' The American Heritage Dictionary of the English Language 1311 (4th ed. 2000). Second, 38 U.S.C. 1720G(a) indicates that personal care services are provided in the eligible veteran's home. For example, in conducting monitoring, the statute authorizes VA to visit the ''eligible veteran in the eligible veteran's home to review directly the quality of personal care services provided to the eligible veteran.'' 38 U.S.C. 1720G(a)(9)(C)(i). Moreover, in requiring the personal caregiver stipend be not less than the ''amount a commercial home health care entity would pay an individual in the geographic area of the eligible veteran [or similar area],'' to the extent practicable, the statute establishes an expectation that Family Caregivers are providing services equivalent to that of a home health aide, which are generally furnished in-person and at home. 38 U.S.C. 1720G(a)(3)(C)(ii), (iv). For these reasons, we believe our proposed definition of ''in need of personal care services'' is a reasonable interpretation of the statute. Furthermore, we believe it would reduce clinical subjectivity in PCAFC eligibility determinations and thereby improve consistency in the program.

We note that the term ''in need of personal care services'' is used in 38 U.S.C. 1720G only for purposes of PCAFC under section 1720G(a)(2)(C) and would not apply to restrict eligibility under 38 U.S.C. 1720G(b) with respect to PGCSS. Moreover, this interpretation would not apply to other sections in title 38, U.S.C., that use the phrase ''in need of'' in reference to other types of VA benefits that have separate eligibility criteria. For example, 38 U.S.C. 1114(l), (m), (r), and (t) reference veterans ''in need of regular aid and attendance'' and ''in need of a higher level of care'' for special monthly compensation, and 38 U.S.C. 1710A and 1720C reference veterans ''in need of'' nursing home care. While veterans eligible for PCAFC may also be eligible for these other benefits, there are unique criteria applied by VA to establish a veteran's need for ''regular aid and attendance'' and ''a higher level of care'' under 38 U.S.C. 1114(l), (m), (r) and (t). Similarly, there are unique criteria that apply in establishing a veteran's eligibility for nursing home care under chapter 17 of title 38, U.S.C. Through this rulemaking, we do not purport to modify those criteria or establish eligibility criteria applicable under any other VA statute besides section 1720G(a)(2)(C), which is the only statute in title 38, U.S.C., that references veterans ''in need of personal care services.''

In proposed § 71.15, we would revise the current definition of ''in the best interest'' which is used to determine whether a veteran or servicemember is eligible for PCAFC under current § 71.20(d). This revised definition would be used to determine PCAFC eligibility under proposed § 71.20(a)(4). We would also move this term before ''inability to perform an activity of daily living (ADL)'' in § 71.15 so that the definitions would be listed in alphabetical order.

This term is currently defined to mean a clinical determination that participation in PCAFC is likely to be beneficial to the veteran or servicemember; and in making such determination, a clinician will consider whether participation in PCAFC significantly enhances the veteran or servicemember's ability to live safely in a home setting, supports potential rehabilitation progress of the veteran or servicemember (if that potential exists), and creates an environment supportive of the veteran's or servicemember's health and well-being. This current language would generally remain in the proposed definition of ''in the best interest.'' However, we would replace the phrase ''veteran or servicemember's'' with ''veteran's or servicemember's'' for clarity. Also, we propose to add language to this definition to explain that a clinician would also consider whether participation in PCAFC ''increases the veteran's or servicemember's potential independence, if such potential exists.'' We propose to add this additional consideration because we believe PCAFC is intended to help veterans and servicemembers achieve their highest level of health, quality of life, and independence. This would also reduce incentive for the dependence on a caregiver when there is potential for improvement. Considering an individual's level of independence, particularly when potential for improvement exists, is an important consideration in determining whether participation in PCAFC is in the best interest of the eligible veteran.

In proposed § 71.15, we would also revise the current definition of ''inability to perform an activity of daily living (ADL)'' which is one of the bases for determining eligibility under current § 71.20(c) and proposed § 71.20(a)(3). The ADLs listed in such term, numbered as paragraphs (1) through (7), would also be applied to determine whether a veteran or servicemember is unable to self-sustain in the community for purposes of the monthly stipend (as discussed below). ''inability to perform an activity of daily living (ADL)'' is currently defined as any one of the following: (1) Inability to dress or undress oneself; (2) Inability to bathe; (3) Inability to groom oneself in order to keep oneself clean and presentable; (4) Frequent need of adjustment any special prosthetic or orthopedic appliance that by reason of the particular disability, cannot be done without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); (5) Inability to toilet or attend to toileting without assistance; (6) Inability to feed oneself due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition; or (7) Difficulty with mobility (walking, going up stairs, transferring from bed to chair, etc.). This current list reflects six activities that are widely recognized as ADLs by clinicians and are found in the Katz Basic ADL Scale, and one activity specific to veterans and servicemembers who require the use of a prosthetic or orthopedic appliance. 87 FR 26148 (May 5, 2011). We would maintain the current activities listed; however, we would revise the language for clarity and to delineate the frequency with which an eligible veteran would require personal care services to complete an ADL.

First, we would replace ''any one of the following'' with ''a veteran or servicemember requires personal care services each time he or she completes one or more of the following.'' This language would clarify our interpretation of ''inability'' as it pertains to ADLs, and specify the frequency with which such personal care services would be needed to qualify for PCAFC. In order to be considered to have an ''inability to perform an activity of daily living,'' we would require that a veteran or servicemember need personal care services each time he or she completes any of the ADLs listed in the definition (*e.g.,* every time the individual is dressing or undressing,

bathing, grooming, toileting, etc.). This would exclude veterans and servicemembers who need help completing an ADL only some of the time the ADL is completed (*e.g.,* the individual needs help with dressing or undressing only when wearing certain types of clothing). This change would be consistent with our goal of focusing PCAFC on eligible veterans with moderate and severe needs, and it would provide more objective criteria for clinicians evaluating PCAFC eligibility. This distinction is especially important for eligible veterans whose care needs may be more complex, particularly as personal care service needs related to a physical impairment can evolve over time. For example, infrequent assistance may be needed in the immediate time period following the onset of a disease (such that the individual needs help completing an ADL only some of the time it's completed), but over time and as the individual begins to age, the individual's care needs can progress. We would thus distinguish between veterans and servicemembers needing assistance with an ADL only some of the time from those who need assistance every time the ADL is completed, those who we believe have an ''inability'' to perform an ADL.

Unlike in our definition of ''need for supervision, protection, or instruction,'' discussed below, we would not require the veteran or servicemember qualifying for PCAFC on this basis to need personal care services daily. Although the statute refers to an eligible veteran's inability to perform one or more activities of daily living as a basis upon which he or she can be deemed in need of personal care services (38 U.S.C. 1720G(a)(2)(C)(i)), we recognize that not all activities of daily living need to be performed every day. For example, bathing is included in the current § 71.15 definition of ''[i]nability to perform an activity of daily living,'' but bathing may not be required every day. A veteran may be able to maintain health and wellness by adhering to a less frequent bathing routine.

Second, for consistency with the introductory language proposed for this definition, we would revise the seven ADLs by removing the level of impairment and frequency of need referenced for each ADL. Thus, we would shift the focus to the activity itself rather than the level of impairment (*i.e.,* we would remove the phrase ''[i]nability to'' from current paragraphs (1) through (3), (5), and (6); remove ''[f]requent need of'' from current paragraph (4); and remove ''[d]ifficultly with'' from current paragraph (7)). Despite the phrases ''[f]requent need of'' in current paragraph (4) and ''[d]ifficultly with'' in current paragraph (7) related to adjustment of a special prosthetic or orthopedic appliance and mobility, respectively, we do not believe these ADLs should be treated any differently than the other ADLs listed or have a lower threshold for purposes of PCAFC eligibility. This is because an individual who has difficulty with mobility would generally require personal care services every time they move. For example, an individual who is designated as a fall risk may require assistance each time he or she transfers from the bed to a chair or walks down the hall. Similarly, we believe the likelihood an individual may only require personal care services intermittently versus every time he or she needs to adjust any special prosthetic or orthopedic appliance is low. Finally, we would remove the phrase ''without assistance'' from current paragraph (5) in reference to toileting or attending to toileting as we believe this phrase is redundant because an eligible veteran would require assistance from another individual to complete any of the ADLs listed in this definition.

As revised, the term ''inability to perform an activity of daily living (ADL)'' would be defined to mean ''a veteran or servicemember requires personal care services each time he or she completes one or more of the following: (1) Dressing or undressing oneself; (2) Bathing; (3) Grooming oneself in order to keep oneself clean and presentable; (4) Adjusting any special prosthetic or orthopedic appliance, that by reason of the particular disability, cannot be done without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); (5) Toileting or attending to toileting; (6) Feeding oneself due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition; or (7) Mobility (walking, going up stairs, transferring from bed to chair, etc.).''

In § 71.15, we also propose to add a definition for the term ''institutionalization.'' We would define institutionalization to refer to being institutionalized in a setting outside of the home residence to include a hospital, rehabilitation facility, jail, prison, assisted living facility, medical foster home, nursing home, or other similar setting. The term ''institutionalization'' is commonly used and understood by health care providers and we believe this definition generally aligns with the common use and understanding of the term. Furthermore, we note that the list in this definition is not meant to be exhaustive but rather illustrates the types of settings where an eligible veteran or Family Caregiver could reside to be considered institutionalized for purposes of discharge pursuant to proposed § 71.45. We recognize that the inclusion of medical foster homes (MFH) in this definition would deviate from the common understanding of MFH as a non-institutional long-term care option, and an alternative to facility-based institutional long-term care. VA refers veterans for MFH placement when they are unable to live independently safely or are in need of nursing home level care, but prefer to live in a private home setting. See 38 CFR 17.73 and 17.74. Therefore, we would consider MFH to be ''institutionalization'' only for purposes of PCAFC and only in proposed § 71.45(b)(1) and (2) concerning discharges of the Family Caregiver from PCAFC due to the eligible veteran's or Family Caregiver's institutionalization. As set forth in current § 71.20(e) and proposed § 71.20(a)(5), personal care services provided by the Family Caregiver under PCAFC cannot be simultaneously and regularly provided by or through another individual or entity. Therefore, a veteran participating in a MFH program would not qualify for PCAFC because his or her caregiver would be compensated through other means for the personal care services provided.

In § 71.15, we propose to add a definition for the term ''intimate partner violence (IPV).'' We would define intimate partner violence as referring to any violent behavior including, but not limited to, physical or sexual violence, stalking, or psychological aggression (including coercive acts or economic harm) by a current or former intimate partner that occurs on a continuum of frequency and severity which ranges from one episode that might or might not have lasting impact to chronic and severe episodes over a period of years. The definition would further explain that IPV can occur in heterosexual or same-sex relationships and does not require sexual intimacy or cohabitation. This definition is based on the definition used by VHA's Intimate Partner Violence Assistance Program. As explained later in this rulemaking, we would define this term as it will be used in proposed § 71.45(b)(3)(iii)(B) concerning a Family Caregiver's request

for discharge from PCAFC due to intimate partner violence.

In proposed § 71.15, we would add a new definition for ''joint application.'' We would define this term to mean an application that has all fields within the application completed, including that the application has been signed and dated by all applicants, with the following fields exempted: Social security number or tax identification number, middle name, sex, email, alternate telephone number, and name of facility where the veteran last received medical treatment, or any other field specifically indicated as optional. This term would be used in the proposed definition of ''legacy applicant'' discussed further below, and throughout § 71.25, as we propose to revise such section. VA would also rely on this definition when determining the date that a joint application is received for the purpose of establishing the effective date of benefits for PCAFC in proposed § 71.40(d). Only an application with all mandatory fields completed (*i.e.,* all fields other than those specifically exempted) would be considered a ''joint application'' under these sections.

An application that does not have all of the mandatory sections completed (*e.g.,* names, address of veteran's or servicemember's residence, dates of birth, certifications, and signatures) would not meet the definition of joint application. Such an application would be considered incomplete and the application review process would not be able to begin. This is because the required sections are necessary for VA to begin evaluating the eligibility of veterans and servicemembers and their family members for PCAFC (*e.g.,* to validate that the family member applicant is at least 18 years of age). VA has found that when applicants do not provide all of the required information, this leads to delays as VA must take steps to obtain the missing information. Fields that would be excluded from the definition of ''joint application'' are fields which may not be relevant to all applicants. Thus, VA would only consider an application a ''joint application'' when all required sections are complete (*i.e.,* all fields other than those specifically exempted).

In proposed § 71.15, we would add a new definition for ''legacy applicant.'' We would define this term to mean a veteran or servicemember who submits a joint application for PCAFC that is received by VA before the effective date of this rule and for whom a Family Caregiver(s) is approved and designated on or after the effective date of this rule. The definition would further require that to be considered a legacy applicant, the Primary Family Caregiver approved and designated for the veteran or servicemember pursuant to such joint application (as applicable) continues to be approved and designated as such. We would also state that if a new joint application is received by VA on or after the effective date of the rule that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy applicant.

In proposed § 71.15, we would also add a new definition of ''legacy participant.'' We would define this term to mean an eligible veteran whose Family Caregiver(s) was approved and designated by VA under this part as of the day before the effective date of this rule so long as the Primary Family Caregiver approved and designated for the eligible veteran as of that date (as applicable) continues to be approved and designated as such. We would also state that if a new joint application is received by VA on or after the effective date of the rule that results in the approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy participant.

As explained later in this rulemaking, we are proposing changes to PCAFC that could affect the eligibility and benefits of Family Caregivers of legacy applicants and legacy participants, as those terms would be defined in proposed § 71.15. Therefore, our proposed rule would include requirements in proposed §§ 71.20, 71.30, and 71.40, that are intended to minimize disruption to these individuals for the one-year period following the effective date of the rule. These proposed requirements are addressed in the discussion of those sections below.

In proposed § 71.15, we would add a new definition of ''legal services.'' We would define this term to address changes made to 38 U.S.C. 1720G by the VA MISSION Act of 2018. Specifically, the VA MISSION Act of 2018 added ''legal services, including legal advice and consultation, relating to the needs of injured veterans and their caregivers,'' as a benefit for Primary Family Caregivers. See 38 U.S.C. 1720G(a)(3)(A)(ii)(VI)(bb), as amended by Public Law 115–182, section 161(a)(3). As explained later in this rulemaking, we propose to add ''legal services'' to the benefits available to Primary Family Caregivers under a revised § 71.40(c).

We would define ''legal services'' in § 71.15 to mean assistance with advanced directives, power of attorney, simple wills, and guardianship; educational opportunities on legal topics relevant to caregiving; and referrals to community resources and attorneys for legal assistance or representation in other legal matters. We believe educational opportunities on topics relevant to caregiving would include topics such as advanced directives, simple wills, and estate planning. We believe that these types of legal services would support Primary Family Caregivers and would be relevant and applicable to the needs of eligible veterans and their caregivers.

As previously discussed, VA sought feedback from the public in a FRN published on November 27, 2018, which asked for public comments on what legal services should be made available to Primary Family Caregivers, how such services should be provided, and what type of entities provide such services. Additionally, we held meetings and listening sessions to garner input from stakeholders. The responses received from these activities varied. Some of the feedback received supported a referral system to community providers, while other feedback supported the provision of legal services in the most expansive way possible. Also, some feedback acknowledged the potential for conflict of interests between the eligible veteran and Family Caregiver regarding certain legal issues, including divorce or child custody. Furthermore, some of the feedback received specified that legal services should include the provision of advanced directives, power of attorney, wills, and guardianship. VA has considered the feedback received and believes an approach inclusive of providing assistance with advanced directives, power of attorney, simple wills, and guardianship; education on legal topics relevant to caregiving; and a referral service for other legal services is most appropriate. This definition would allow VA to address certain legal needs among those that relate to and support the Primary Family Caregiver's ability to provide personal care services to the eligible veteran, while also being mindful of VA resources.

The provision of assistance for certain legal matters, and a referral service for other legal matters would provide Primary Family Caregivers with access to community resources and a network of attorneys who practice in the area of law most appropriate to his or her needs. Furthermore, we believe education on legal topics related to caregiving would provide Primary Family Caregivers with access to a multitude of resources specific to caregiving needs. We believe that

paying for legal advice and consultation for matters other than advanced directives, power of attorney, simple wills, and guardianship would be cost prohibitive and may limit our ability to provide other benefits to Family Caregivers. Providing limited legal assistance, education, and referrals would ensure that VA is able to consistently provide the same legal services to all Primary Family Caregivers.

Our proposed definition of ''legal services'' would also limit these services to only those provided in relation to the personal legal needs of the eligible veteran and Primary Family Caregiver. We believe limiting these services is reasonable because PCAFC is designed to support the clinical needs of the eligible veteran and the benefits provided to Family Caregivers are the direct result of the personal care services they provide to eligible veterans. As a result, these services would not be provided to assist with any business or other professional endeavors of the eligible veteran or Primary Family Caregiver because these endeavors would not be directly related to the provision of personal care services to an eligible veteran. We also believe limiting these services in this manner aligns with feedback we received since business and professional endeavors were not raised as legal services that VA should provide to caregivers. We note that these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities.

Furthermore, we would explicitly exclude from this definition assistance with matters in which the eligible veteran or Primary Family Caregiver is taking or has taken any adversarial legal action against the United States government, and disputes between the eligible veteran and Primary Family Caregiver. However, we note that this would not exclude educational opportunities and referrals for such matters. We believe this is reasonable as VA should not be expected to provide legal services in a situation in which an eligible veteran or Primary Family Caregiver takes any adversarial legal action against the United States government, including VA and other Federal agencies. We believe that providing such services may result in conflicts of interest. Additionally, we do not believe VA should provide legal services in a situation where there is a dispute between the eligible veteran and Primary Family Caregiver. Although, PCAFC provides benefits directly to caregivers, VA's mission is to care for veterans, and we believe providing legal services in a situation where there is a dispute between the eligible veteran and Primary Family Caregiver could also create a conflict of interest.

In § 71.15, we propose to add a new definition for the term ''monthly stipend rate.'' We would define this term to mean the Office of Personnel Management (OPM) General Schedule (GS) Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12. We would define ''monthly stipend rate'' as it will be used in proposed § 71.40(c)(4) concerning stipend payments for Primary Family Caregivers. Our basis for selecting this definition and payment rate, how we would address adjustments that result from OPM's updates to the GS rate, and periodic assessments of and, if applicable, adjustments to the monthly stipend rate are discussed below in the context of proposed changes to § 71.40(c)(4).

In proposed § 71.15, we would remove the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' and replace this term with a new definition of ''need for supervision, protection, or instruction.'' The term ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' is one of the bases for determining eligibility under current § 71.20(c), and it is currently defined to mean requiring supervision or assistance for any one of the seven listed reasons: Seizures (blackouts or lapses in mental awareness, etc.); difficulty with planning and organizing (such as the ability to adhere to medication regimen); safety risks (wandering outside the home, danger of falling, using electrical appliances, etc.); difficulty with sleep regulation; delusions or hallucinations; difficulty with recent memory; or self-regulation (being able to moderate moods, agitation or aggression, etc.). These impairments were based on the United Kingdom Functional Independence Measure and Functional Assessment Measure, and the Neuropsychiatric Inventory. 87 FR 26149 (May 5, 2011).

We believe the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' unduly restricts VA's ability to consider all functional impairments that may impact a veteran's or servicemember's ability to maintain his or her personal safety on a daily basis. For example, an individual with a diagnosis of dysautonomia, which refers to a wide range of conditions that affect the autonomic nervous system, could experience symptoms such as an inability to stay upright, tremors, and concentration, and thus be in need of personal care services based on a need for supervision or protection, but would not necessarily have one of the seven impairments listed in the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury.'' It is VA's intent to broaden the current criteria in the definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' so as not to limit eligibility to veterans and servicemembers with a predetermined list of impairments.

We propose to replace this term with a new term, ''need for supervision, protection, or instruction,'' which would be one of the bases for determining eligibility under proposed § 71.20(a)(3). This term would also be applied to determine whether a veteran or servicemember is unable to self-sustain in the community for purposes of the monthly stipend (as discussed below). The term ''need for supervision, protection, or instruction'' would represent and combine two of the statutory bases upon which a veteran or servicemember can be deemed in need of personal care services—''a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' and ''a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.'' See 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii), as amended by Public Law 115–182, section 161(a)(2). We believe these two bases of eligibility capture the personal care service needs of veterans and servicemembers with a significant cognitive, neurological, or mental health impairment, as opposed to an inability to perform an ADL, which captures the personal care service needs of veterans and servicemembers with physical impairment.

The term ''need for supervision, protection, or instruction,'' would mean an individual has a functional impairment that directly impacts the individual's ability to maintain his or her personal safety on a daily basis. Examples of conditions that may cause such functional impairment include dementia, psychosis, seizures, other disorders of mental competence. However, instead of listing specific symptoms and diagnoses, which can

evolve as clinical practice guidelines are updated over time, the proposed definition would shift the focus to functional impairment. In determining eligibility on this basis, VA would not focus on the individual's specific diagnosis or conditions, but rather whether the veteran or servicemember has impairment in functioning that directly impacts the individual's ability to maintain his or her personal safety on a daily basis and thus requires supervision, protection, or instruction from another individual. For example, an individual with schizophrenia who has active delusional thoughts that lead to unsafe behavior (*e.g.,* setting a fire, walking into traffic) may require another individual to provide supervision or instruction to ensure his or her personal safety on a daily basis. Additionally, an individual with dementia may be physically capable of washing their hands or taking a bath but may be unable to use the appropriate water temperature and may thus require step-by-step instruction or sequencing in order to maintain his or her personal safety on a daily basis. However, an individual with dementia who is forgetful or misplaces items but can adapt and manage successfully without compromising his or her personal safety on a daily basis (*e.g.,* by relying on lists and visual cues for prompting), may not be in need of supervision, protection, or instruction.

This definition would also recognize that impairment in functioning may result from multiple conditions or diagnoses and the impact of the functional impairment on the individual's personal safety can change over time (*e.g.,* for a veteran or servicemember with a progressive disease). Whether a veteran or servicemember would qualify for PCAFC on this basis would depend on whether his or her functional impairment directly impacts the individual's ability to maintain his or her personal safety on a daily basis. For example, a veteran or servicemember who is diagnosed with Parkinson's disease may not qualify on this basis during the initial onset of symptoms, but over time or because of comorbidities, could be determined eligible on this basis.

We would require that the functional impairment impact the individual's ability to maintain personal safety on a daily basis to address and clarify the frequency with which a veteran or servicemember would need for supervision, protection, or instruction for purposes of PCAFC eligibility. This requirement would be consistent with our goal of focusing PCAFC on eligible veterans with moderate and severe needs. We also believe it is consistent with the statutory criteria it would implement, which in part recognize that instruction or supervision are needed for the eligible veteran to function in daily life. See 38 U.S.C. 1720G(a)(2)(C)(iii). A veteran or servicemember meeting this criterion may not need supervision, protection, or instruction continuously during the day (see our proposed definition of ''unable to self-sustain in the community'' discussed further below), but would need such personal care services on a daily basis, even if just intermittently each day. For example, a veteran or servicemember may require supervision or instruction when completing certain daily tasks, such as administering daily medication, due to a cognitive impairment caused by dementia, but not require a caregiver to be physically present the remainder of the day.

In § 71.15, we propose to add a new definition for the term ''overpayment.'' We would define this term to mean a payment made by VA pursuant to part 71 to an individual in excess of the amount due, to which the individual was not eligible, or otherwise made in error. The definition would also specify that an overpayment is subject to collection action. This definition would clarify the payments that are considered overpayments and subject to collection action in accordance with the Federal Claims Collection Standards (FCCS) and as discussed below in the context of the proposed addition of § 71.47.

We propose to revise the definition of ''primary care team'' in current § 71.15 and the references to that term in various sections of part 71. The term ''primary care team'' is currently defined to mean ''a group of medical professionals who care for a patient and who are selected by VA based on the clinical needs of the patient.'' The current definition also specifies that ''[t]he team must include a primary care provider who coordinates the care, and may include clinical specialists (*e.g.,* a neurologist, psychiatrist, etc.), resident physicians, nurses, physicians' assistants, nurse practitioners, occupational or rehabilitation therapists, social workers, etc., as indicated by the needs of the particular patient.'' This term is currently used in part 71 in reference to: Authorizations made in the context of eligibility determinations under current § 71.20(c) and (d) and approval and designation under current § 71.25(f), the eligible veteran's ongoing care in current § 71.20(g), the initial assessment of the caregiver applicant in current § 71.25(c)(1), the caregiver applicant's ability to carry out care requirements in current § 71.25(c)(2), and monitoring visits in current § 71.40(b)(2). For reasons discussed further below, we would remove the references to ''primary care team'' in all but one of these contexts (regarding the eligible veteran receiving ongoing care from a primary care team), and we would add a reference to ''primary care team'' in one other context.

Instead of referencing the role of the primary care team in various paragraphs of §§ 71.20 and 71.25, we propose to include one reference to the primary care team in proposed § 71.25(a)(2)(i) that indicates PCAFC eligibility evaluations would be performed in collaboration with the primary care team to the maximum extent practicable. The current references to authorizations by the primary care team in current § 71.20(c) and (d) and current § 71.25(f) are unclear and have not been applied consistently due to variation between facilities on how such authorizations are obtained. Also, the individual or team best suited to conduct the initial assessment of an applicant seeking designation as a Family Caregiver under § 71.25(c)(1) can vary across VA depending on the individual needs of the veteran or servicemember. It may be more appropriate for clinical eligibility teams or providers other than the veteran's or servicemember's primary care team to perform these evaluations. Additionally, in evaluating the caregiver applicant's ability to carry out care requirements under current § 71.25(c)(2), it may be appropriate to consider care requirements prescribed by providers other than the veteran's or servicemember's primary care team, such as a VA clinical eligibility team, non-VA provider, or other appropriate individual or individuals in VA. These changes would give VA more flexibility in how it evaluates PCAFC eligibility and approves and designates Family Caregivers while also ensuring that joint applications are evaluated in collaboration with the primary care team of the veteran or servicemember to the maximum extent practicable.

Additionally, we would remove the reference to the primary care team maintaining the eligible veteran's treatment plan and collaborating with clinical staff making home visits for purposes of monitoring in current § 71.40(b)(2) (*i.e.,* wellness contacts in proposed § 71.40(b)(2)). It may not always be appropriate for the clinical staff conducting home visits to collaborate directly with the eligible veteran's primary care team. It may be more appropriate for the clinical staff

conducting home visits to collaborate with the Caregiver Support Coordinator (CSC) who would then collaborate with the primary care team, and would be the liaison between the primary care team and the clinical staff conducting home visits. As discussed below in the context of proposed § 71.40(b)(2), the primary care team would still maintain the eligible veteran's treatment plan and be involved in monitoring the well-being of eligible veterans.

With these changes, the term ''primary care team'' would only be referenced in part 71 in proposed § 71.20(a)(7) in reference to the eligible veteran receiving ongoing care from a primary care team (based on current § 71.20(g)) and proposed § 71.25(a)(2)(i) in reference to VA's evaluation of PCAFC applications. In these contexts, it is important to revise the current definition of ''primary care team'' in § 71.15 to make clear that it refers to one or more VA medical professionals, and to recognize the variation in how eligible veterans receive care from VA.

First, we would remove the reference to a group ''selected by VA'' and instead refer to ''one or more VA medical professionals.'' The current phrase ''selected by VA,'' is ambiguous and can be interpreted to mean non-VA medical professionals or VA medical professionals selected to serve on the primary care team for an eligible veteran. This proposed change would remove this ambiguity by clearly stating that the primary care team is one or more VA medical professionals. Pursuant to 38 U.S.C. 1720G(a)(9)(A) through (C), VA is required to monitor the well-being of eligible veterans receiving personal care services from a designated Family Caregiver; document findings pertinent to the delivery of personal care services; and ensure appropriate follow up. Requiring eligible veterans to receive ongoing care from a primary care team that consists of one or more VA medical professionals pursuant to proposed § 71.20(a)(7) would ensure that VA is able to continue to fulfill these statutory requirements. Additionally, section 161(a)(6) of the VA MISSION Act of 2018 requires that PCAFC applications be evaluated by VA in collaboration with the primary care team for the eligible veteran to the maximum extent practicable. See 38 U.S.C. 1720G(a)(5), as amended by Public Law 115–182, section 161(a)(6). We recognize that veterans or servicemembers may receive care from non-VA providers in the community; however, for purposes of evaluating joint applications under proposed § 71.25(a)(2)(i), we would rely on input from the VA medical professional(s) who care for the patient. Additionally, we recognize that eligible veterans, based on individual needs, may only receive care from one VA medical professional or may receive care from multiple VA medical professionals; therefore, we would remove reference to ''group'' and instead refer to ''one or more.'' This revised definition would ensure collaboration with the VA medical professional(s) involved in the patient's care during the evaluation of the individual's joint application. Referencing the phrase ''one or more VA medical professionals'' instead of referring to medical professionals ''selected by VA'' would operationally be the most feasible to implement and ensure VA meets its statutory obligations.

Second, we would remove the phrase ''who coordinates care'' from the current definition because that phrase can be misinterpreted to mean a care coordinator or a provider who coordinates care with other providers. This phrase also does not specify whether the care coordinated is specific to care related to PCAFC or all of the care coordination needs of the eligible veteran. We have interpreted this phrase to mean a provider who coordinates the clinical needs of his or her patients which we believe is inherent in the duties of VA medical professionals. Thus, we would remove the requirement in the current definition that the primary care team must include a ''provider who coordinates the care.''

Third, we would remove the phrase ''must include a primary care provider,'' and references to other clinical specialists as indicated by the needs of the particular patient. Some eligible veterans participating in PCAFC may receive their primary care in the community and may only utilize VA for a portion of their care, such as mental health or specialty services. Therefore, we would remove the requirement that a primary care provider must be part of the primary care team. Additionally, because this definition would refer to one or more VA medical professionals who care for a patient based on the clinical needs of the patient, we do not believe it is necessary to specify the types of medical professionals who could serve on the primary care team for an eligible veteran.

As revised the term ''primary care team'' would mean one or more VA medical professionals who care for a patient based on the clinical needs of the patient. We believe this revision would meet our statutory requirements, accommodate veterans and servicemembers who may receive care in the community, and ensure that eligible veterans participating in PCAFC receive care from one or more VA medical professionals based on their needs.

We would also revise the definition of ''serious injury'' in current § 71.15. When Congress enacted the Caregivers Act, it limited PCAFC to eligible Veterans with a ''serious injury (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty in the active military, naval, or air service.'' 38 U.S.C. 1720G(a)(2)(B). Currently, VA's regulations define ''serious injury'' at § 71.15 and implement the requirement at current § 71.20(b) and (c) mainly by restating the statutory language without providing guidance or clarity as to its meaning. ''Serious injury'' is currently defined in § 71.15 to mean ''any injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, that renders the veteran or servicemember in need of personal care services.'' This definition has led to implementation challenges, among them inconsistent eligibility determinations by VA providers. We believe it is critical for VA to revise its definition of ''serious injury'' to address these challenges and improve PCAFC administration. In addition, we believe a revised definition of ''serious injury'' would help ensure that eligible veterans who served both before and after September 11, 2001 have equitable access to PCAFC. We propose four significant revisions to the current ''serious injury'' definition in § 71.15, which are discussed in detail below.

First, we would define the term ''injury'' to include ''any service-connected disability'' regardless of whether it resulted from an injury, illness, or disease. Second, we would define ''serious injury'' to mean having a singular or combined rating of 70 percent or more based on one or more service-connected disabilities. Third, we would no longer require a connection between the need for personal care services and a specific serious injury. Finally, we would remove the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' and replace it with ''service-connected.'' As revised, the term ''serious injury'' would be defined to mean any service-connected disability that (1) is rated at 70 percent or more by VA, or (2) is combined with any other service-connected disability or disabilities and a combined rating of 70

percent or more is assigned by VA. In this discussion, we outline the issues associated with PCAFC's current definition of ''serious injury,'' describe alternative approaches, and propose a new definition that would reduce subjectivity and help ensure more equitable implementation of PCAFC.

The lack of clarity on what constitutes an ''injury'' has placed an inordinate responsibility on providers assessing PCAFC eligibility and, as a result, has contributed to delays in VA's adjudication of PCAFC applications. It is generally not necessary for VA to distinguish between injuries and diseases in establishing service-connection for purposes of disability compensation. See 38 U.S.C. 1110 and 1131 (referring to both ''injury'' and ''disease''). Therefore, the vast majority of VA rating decisions do not indicate whether a disability is attributable to an injury as compared to a disease. In addition, the terms ''injury'' and ''disease'' for purposes of compensation are not defined in title 38, United States Code or Code of Federal Regulations. Thus, VA providers evaluating PCAFC eligibility must rely on complex assessment, clinical diagnoses, or other credible evidence of injury, which may not be available. In the absence of clear guidance on what constitutes an injury or how to distinguish an injury from illnesses and diseases, providers apply subjective clinical judgement on a case-by-case basis.

Providers' interpretations of the ''injury'' requirement vary, resulting in inconsistent outcomes for PCAFC applicants between VA facilities and VA providers. For example, some VA providers have applied the term injury to include illnesses and diseases that have resulted from an injury during service while others have not (*e.g.,* one VA provider may determine that a veteran's arthritis resulted from an injury incurred in the line of duty, whereas another may consider it to be a chronic disease that, while incurred in the line of duty, does not constitute an injury). Providers may also consider the term injury to include exposure to environmental hazards during service, such that illnesses and diseases resulting from an environmental exposure could be considered injuries (*e.g.,* a veteran may suffer from neurological impairments as a result of exposure to burn pits, but providers may have differing opinions on whether that type of exposure constitutes an injury). Additionally, providers may have differing opinions as to what caused a veteran's service-connected disability (*e.g.,* a provider in one VA facility may consider a veteran's migraine headaches to be caused by a traumatic brain injury (TBI), and therefore a qualifying injury, whereas in another the VA provider may attribute the migraine headaches to a viral or bacterial infection of the head and neck that does not constitute an injury). Furthermore, the inclusion of ''psychological trauma'' and ''other mental disorder'' in 38 U.S.C. 1720G(a)(2)(B) has raised questions as to which mental health diagnoses are considered an ''injury'' under the law. For example, providers may have different interpretations of whether ''injury'' includes a mental health diagnosis clearly associated with an illness or disease (*e.g.,* where a veteran's disability rating decision documents that the veteran's post-traumatic stress disorder (PTSD) or major depressive disorder is the result of an illness, like cancer). If VA continues to apply the current definition of ''serious injury,'' these challenges are likely to be exacerbated as PCAFC is expanded to veterans who served before September 11, 2001. Not only will VA be processing more applications for PCAFC, but also considering eligibility for veterans of earlier eras for whom evidence establishing ''injury'' during military service may not be as readily available.

Outside the context of PCAFC, VA generally only considers whether a disability or a death resulted from an injury as compared to a disease when a claim is filed alleging that a disability or death was incurred during inactive duty training. VA compensation is payable only if, during inactive duty training, an individual was disabled or died ''from an injury incurred or aggravated in line of duty,'' or from an ''acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.'' 38 U.S.C. 101(24)(C). The VA General Counsel has analyzed the distinction between ''injury'' and ''disease'' for purposes of 38 U.S.C. 101(24) and concluded that the term ''injury'' denotes harm from external trauma, as distinguished from ''disease'' which refers to a type of internal infection or degenerative process. Also, VA's disability compensation regulations specify that certain presumptive exposures during service constitute an ''injury'' for purposes of 38 U.S.C. 101(24). See 38 CFR 3.307(a)(6)(v) (regarding presumed exposures on C–123 aircraft) and (a)(7)(iv) (regarding presumed exposures to contaminants in the water supply at Camp Lejeune).

VA also administers the Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program under 38 U.S.C. 1980A. TSGLI provides short-term financial assistance to servicemembers insured by Servicemembers' Group Life Insurance who sustain a traumatic injury directly resulting in a scheduled loss. VA's regulations governing TSGLI at 38 CFR 9.20(b) and (c)(1) define ''traumatic injury'' to mean ''physical damage to a living body'' caused by ''the application of external force, violence, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living being.'' The term ''traumatic injury'' specifically excludes ''damage to a living body caused by—(i) [a] mental disorder; or (ii) [a] mental or physical illness or disease, except if the physical illness or disease is caused by a pyogenic infection, biological, chemical, or radiological weapons, or accidental ingestion of a contaminated substance.'' 38 CFR 9.20(c)(2).

While VA's interpretation of ''injury'' for purposes of 38 U.S.C. 101(24) and the TSGLI definition of ''traumatic injury'' for purposes of 38 U.S.C. 1980A are useful as references in defining ''injury'' for purposes of PCAFC, they are not dispositive. In many respects, the term ''serious injury'' in 38 U.S.C. 1720G is distinguishable from ''injury'' and ''traumatic injury'' under 38 U.S.C. 101(24) and 1980A, respectively.

First, the context in which ''serious injury'' appears in 38 U.S.C. 1720G(a)(2)(B) diverges significantly from ''injury'' in 38 U.S.C. 101(24)(C) and ''traumatic injury'' in 38 U.S.C. 1980A. Section 1720G(a)(2)(B) includes the terms ''psychological trauma'' and ''other mental disorder,'' which suggests that, rather than distinguishing ''injury'' and ''disease,'' the term ''serious injury'' includes certain illnesses and diseases. This is in stark contrast to 38 U.S.C. 101(24)(B) and (C) where ''injury'' is clearly distinguished from the term ''disease.'' Compare 38 U.S.C. 101(24)(B) (''any period of active duty for training during which the individual concerned was disabled or died from a disease or injury''), with section 101(24)(C) (''any period of inactive duty training during which the individual concerned was disabled or died . . . from an injury''). The inclusion of ''mental disorder''—conditions that may otherwise be considered ''diseases''—also distinguishes ''serious injury'' in section 1720G(a)(2)(B) from TSGLI's definition of ''traumatic injury,'' which generally excludes coverage for mental disorders (except as specified). In addition, 38 U.S.C. 1980A prescribes certain ''qualifying losses'' for purposes of TSGLI, to include: Total and permanent loss of sight, speech, hearing

in both ears; loss of hand or foot by severance at or above the wrist or ankle; quadriplegia, paraplegia, or hemiplegia; certain burns; and coma or the inability to carry out two or more activities of daily living resulting from traumatic injury to the brain. Congress was not so prescriptive in 38 U.S.C. 1720G, and likely had a broader veteran population in mind when referencing ''serious injury'' for purposes of PCAFC as opposed to servicemembers with a ''traumatic injury'' under 38 U.S.C. 1980A. Whereas the term ''trauma'' is frequently defined with reference to external force or violence (see 70 FR 75940, at 75941 (December 22, 2005) (citing VAOPGC 6–86)), the term ''serious'' does not carry the same connotations. See *Ballentine's Law Dictionary,* 3rd Ed. (2010), *available at* LexisNexis (defining ''serious'' as ''[i]mportant; weighty, momentous and not trifling,'' and in the definition of ''serious bodily injury'' explaining ''[t]he word 'serious,' when used to define the degree of bodily harm or injury apprehended, requires or implies as high a degree as the word 'great' and the latter word means high in degree, as contradistinguished from trifling.'')

Second, there are notable differences in PCAFC under 38 U.S.C. 1720G and these other title 38 authorities (*i.e.,* 38 U.S.C. 101(24) and 1980A). Section 101(24)(C) is limited to injuries and other conditions occurring during training, which is likely related to the nature of inactive-duty training as involving only brief periods of service. For example, Congress may have determined that diseases becoming manifest during such brief periods of service are less likely to be causally related to such service than injuries occurring during such service. The same cannot generally be said of veterans eligible for PCAFC. It is more likely that Congress limited PCAFC to veterans with a serious injury because PCAFC was originally focused on veterans who served on or after September 11, 2001, primarily veterans of Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn. TBI and PTSD have been referred to as ''invisible injuries'' and as the ''signature wounds'' of these conflicts, and it could have been Congress's intent to focus PCAFC benefits on veterans who sustained such disabilities and other ''visible'' injuries, as opposed to veterans with other service-connected illnesses or diseases.

Congress may have had a similar population in mind when establishing TSGLI benefits in 2005. Public Law 109–13, section 1032 (2005). As explained in VA's interim final rule establishing 38 CFR 9.20:

> TSGLI was designed to provide severely injured service members who suffer a loss as a direct result of a serious traumatic injury, such as a loss of an arm or leg, with monetary assistance to help the member and the member's family through an often long and arduous treatment and rehabilitation period. In many instances, the family of a member who suffers a traumatic loss in the service of his or her country must physically relocate in order to be with the member during this period in order to provide the member with emotional support. Relocating an entire family is not only disruptive but can and does result in economic hardship to the member and the member's family brought on by new and/or additional living expenses, and in some cases the loss of a job. TSGLI helps to lessen that economic burden by providing immediate financial relief.

70 FR 75940 (December 22, 2005). However, unlike PCAFC, TSGLI is modeled after commercial Accidental Death and Dismemberment insurance coverage, specifically, the ''dismemberment'' portion of the coverage. Id. In contrast, PCAFC is a clinical benefit program administered through VHA and designed to provide assistance to Family Caregivers that provide personal care services to eligible veterans. Unlike TSGLI, which is limited to lump-sum monetary assistance, PCAFC provides eligible Family Caregivers with training and technical support to assist Family Caregivers in their role as a caregiver for an eligible veteran. In addition, PCAFC provides eligible Family Caregivers with counseling and mental health services, respite care, medical care under CHAMPVA, and a monthly personal caregiver stipend. Rather than quantifying losses, PCAFC is designed to support the health and well-being of eligible veterans, enhance their ability to live safely in a home setting, and support their potential progress in rehabilitation, if such potential exists. 38 CFR 71.15.

Further, while Congress may have originally intended to focus PCAFC on the signature disabilities of veterans who served after September 11, 2001, the VA MISSION Act of 2018 expanded PCAFC to veterans of earlier eras. Veterans who served before September 11, 2001, have high incidences of PTSD and other ''visible'' injuries similar to those who served after September 11, 2001; however, the signature disabilities of earlier conflicts also include other illnesses and diseases, such as diseases presumed to be the result of herbicide exposure in Vietnam and other places, and chronic multi-symptom illness experienced by Persian Gulf Veterans. Other service-connected disabilities that prevail in these populations include multiple sclerosis (MS), amyotrophic lateral sclerosis (ALS), and hepatitis C—disabilities that are generally considered to be diseases, not injuries.

In establishing a proposed definition of ''injury'' for purposes of PCAFC, we considered incorporating elements of VA's interpretation of ''injury'' under 38 U.S.C. 101(24) and the TSGLI definition of ''traumatic injury'' for purposes of 38 U.S.C. 1980A, while also addressing the implementation challenges outlined above and recognizing the disabilities of veterans who served before September 11, 2001. One possibility we considered was defining ''injury'' for purposes of PCAFC to include not only harm resulting from a violent encounter, such as application of chemical, biological, and radiological weapons, but also adverse effects on body tissue or systems resulting from: Introduction of a foreign substance, such as ingestion of a contaminated substance or exposure to a vaccination; exposure to environmental hazards like certain herbicides agents, volatile organic compound contaminants, radiation, excessive heat or cold, or non-penetrating blast waves; detention, internment, or confinement as a prisoner of war; and an insect bite or sting, or animal bite. Such a definition would recognize as an ''injury'' those service-connected disabilities presumed by VA to be the result of exposure during service (including disabilities associated with exposure to certain herbicide agents and diseases specific to radiation-exposed veterans), as well as any illnesses or diseases known to be caused by exposure to environmental hazards based on direct evidence (including known exposure to burn pits).

Although such a definition would be more inclusive and address some of the confusion with the current ''serious injury'' definition, we believe it would also result in additional inequities. This is because not all veterans who experienced such exposures or other injuries qualify for statutory or regulatory presumptions of service-connection, and credible evidence of such exposures or other injuries is not always available. As a result, similarly situated veterans with the same debilitating disease could be treated differently for purposes of PCAFC eligibility based only on whether the veteran qualifies for a presumption of service-connection based on an exposure or other injury or has evidence reflecting that the disease was caused by an exposure or other injury. For example, a veteran's service-connected Parkinson's disease could be considered

to be an ''injury'' for purposes of PCAFC if the veteran's rating decision reflects a presumption of exposure to water supply contaminants at Camp Lejeune, but a similarly-situated veteran who does not qualify for a presumption of exposure could be determined ineligible for PCAFC based solely on a clinical decision that the disease did not result from a qualifying injury in the line of duty. Similarly, a veteran with type 2 diabetes who qualifies for a presumption of exposure to herbicides in the Republic of Vietnam could be considered to have an ''injury'' for purposes of PCAFC, but another Veteran with service-connected type 2 diabetes who served in a different location or era of service could be determined ineligible for PCAFC because of a lack of evidence linking the veteran's diabetes to an exposure or other injury during service. Likewise, a veteran who incurred hepatitis C in the line of duty may believe it to have been caused by exposure to an infected vaccine needle, but without evidence to establish such a connection or other injury, it would be difficult for a provider evaluating PCAFC eligibility to classify the disease as an ''injury'' under this definition.

Moreover, other disabilities presumed by VA to be caused by active military, naval, or air service, or compensable based on having manifested within a certain time period, are not known to have resulted from an identifiable exposure or other injury (such as ALS and certain disabilities of Persian Gulf Veterans). For some veterans, establishing that their illness or disease resulted from an exposure in the line of duty would be challenging. With ALS, for example, ''continuing uncertainty regarding specific precipitating factors or events that lead to development of the disease would present great difficulty for individual claimants seeking to establish service connection by direct evidence.'' 73 FR 54692 (September 23, 2008). The same would be true of veterans trying to characterize their ALS as an injury for purposes of PCAFC. Although VA could propose that veterans with these qualifying presumptions would be considered to have an injury for purposes of PCAFC, we do not believe there is a rational basis for including veterans with these presumptive disabilities while excluding veterans whose service-connection was based on direct evidence of other illnesses or diseases incurred or aggravated in the line of duty.

We believe the definition of ''injury'' for purposes of PCAFC should be as inclusive as possible, but also recognize that including additional categories of specific types of external trauma would result in continued inequities and seemingly arbitrary distinctions. Defining ''injury'' to include diseases resulting from presumed exposures to environmental hazards, for example, would result in an expansion of PCAFC eligibility to veterans of earlier service eras for whom presumptions have been established, but similarly situated veterans of later service eras would be excluded because there is not yet scientific evidence to establish such presumptions. While we believe it would be unreasonable for VA to expand PCAFC benefits to veterans who served before September 11, 2001 without also recognizing the disabilities prevalent among such veterans, it would also be unreasonable to consider the same disabilities to be disqualifying for purposes of PCAFC for veterans who served after September 11, 2001.

Even administrative improvements, like developing detailed clinical guidelines, centralizing eligibility decisions, and training providers who render PCAFC eligibility decisions, would not eliminate these inequities, and could place VA providers in the position of rendering adjudicative decisions like those made by VBA claims examiners for purposes of VA rating determinations. We do not believe Congress intended this result. Accordingly, we believe that, to the extent the statutory language allows, the statute should be construed in a manner that minimizes the potential for complex and time-consuming eligibility determinations and disparate treatment of veterans with similar service-connected conditions and similar medical needs arising from those conditions.

Caregivers of veterans with illnesses and diseases incurred or aggravated in the line of duty, like those mentioned above, could benefit from PCAFC assistance in the same manner as caregivers of veterans with injuries, such as TBI and spinal cord injury. The most equitable and reasonable approach to resolving these challenges would be to recognize any service-connected disability as an ''injury'' for purposes of PCAFC.

Therefore, to address the implementation challenges discussed above in a more objective, inclusive, and equitable manner, we propose to define ''injury'' in 38 U.S.C. 1720G(a)(2)(B) to include any service-connected disability, regardless of whether it resulted from an injury or an illness or disease.

We note that this definition would apply only for purposes of PCAFC and would not affect other VA statutes, specifically, the application of ''injury'' and ''traumatic injury'' under 38 U.S.C. 101(24) and 1980A, respectively. As we have explained above, PCAFC is distinguishable from these other statutes, and the context in which ''injury'' is used in 38 U.S.C. 1720G, supports a different interpretation than has been applied for 38 U.S.C. 101(24) and 1980A.

The fact that 38 U.S.C. 101(24) and 1980A appear to treat ''injury'' and ''disease'' as mutually exclusive categories for purposes of those statutes does not preclude us from construing the term ''injury'' in section 1720G(a)(2)(B) to include diseases and illnesses for purposes of that provision. Although ''there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning . . . the presumption is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent.'' *Atlantic Cleaners & Dyers, Inc.* v. *United States,* 286 U.S. 427, 433 (1932). Congress has not defined the term ''injury'' for purposes of title 38 nor has it otherwise indicated an intent that the term be given a single meaning for purposes of all provisions within title 38. *Cf. Allen* v. *Brown,* 7 Vet. App. 439, 447 (1995) (''The absence of a single generally applicable definition in 38 U.S.C. 101, which would control the interpretation of that term in other parts of title 38, suggests that the term 'disability' may reasonably be interpreted as having different meaning in different parts of title 38.'').

In section 1720G(a)(2)(B), Congress specified that the term ''serious injury'' includes ''traumatic brain injury, psychological trauma, or other mental disorder'' for purposes of that section. The most natural reading of that language is that all mental disorders—including those that could be considered diseases, rather than injuries, under other provisions in title 38—may be within the scope of the term ''serious injury'' for purposes of section 1720G(a)(2)(B). We therefore conclude that Congress did not intend to categorically exclude from coverage under section 1720G(a)(2)(B) all conditions that likely would be considered ''diseases'' for purposes of other provisions in title 38. Further, by using the term ''including'' to preface the parenthetical reference to TBI, psychological trauma, and other mental disorders, Congress indicated that those examples are not exhaustive.

Although we believe it is clear that the term ''injury'' as used in section 1720G(a)(2)(B) is broader in scope than the similar terms as used in other parts of title 38, the statutory text does not indicate the full intended scope of section 1720G(a)(2)(B). In resolving that ambiguity, we note that ''[s]tatutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible.'' *Am. Tobacco Co.* v. *Patterson,* 456 U.S. 63, 71 (1982). VA's proposed interpretation would minimize the risk of disparate treatment based on difficult and possibly subjective determinations as to the specific causes of a veteran's service-connected condition. It would also minimize the need for complex adjudicative determinations separate from those governing entitlement to VA disability compensation, which could delay administration of PCAFC assistance. Considering all service-connected disabilities to be injuries for purposes of PCAFC would reduce subjective clinical judgement and individual determinations with respect to whether a service-connected disability constitutes an ''injury.'' Instead, VA providers evaluating PCAFC eligibility could simply rely on VA rating decisions finding a disability in establishing whether a veteran has an ''injury'' for purposes of PCAFC, and thereby establish a more objective standard to assess eligibility. We note that under this proposed definition, VA would no longer be assessing whether a veteran's disability is related to an injury, however it would still have to be related to the veteran's military service. Under 38 U.S.C. 1720G(a)(2)(B), determining a veteran's disability to be ''incurred or aggravated in the line of duty in the active military, naval, or air service,'' requires evidence of a relationship between a veteran's in-service disease, injury, symptoms, or event and the veteran's current disability. In some cases, this relationship is shown by use of a legal presumption that the disability is related to a particular type of military service, but in other cases, it is established with direct evidence. However, in all cases, a veteran's disability must be determined to be related to the veteran's military service, even if the specific cause (*e.g.,* an injury or disease) is unknown.

The second revision to this definition would be to distinguish an ''injury'' from a ''serious injury'' by requiring that the veteran or servicemember have a single disability rated at 70 percent or more by VA, or a have a combined rating of 70 percent or more. We believe requiring at least a 70 percent rating for a singular service-connected disability or combined rating of 70 percent for multiple service-connected disabilities would demonstrate that a veteran's injuries rise to the level of serious. VA provides nursing home care, to include at VA Community Living Centers, to eligible veterans with a 70 percent or greater service-connected disability rating (see 38 U.S.C. 1710A) based on their clinical needs, and PCAFC is designed to assist a similar population of veterans and servicemembers to remain in their homes. We note that the eligibility criteria for PCAFC and nursing home care are not identical and that there may be many instances when nursing home care would be more appropriate for a veteran or servicemember than PCAFC. However, this definition would help ensure that we are targeting a similar group of veterans and servicemembers with moderate and severe needs. Also, it would remove the current subjectivity in determining whether an injury meets the level of serious injury and would provide a transparent and clearly defined standard that can be consistently applied throughout VA. It would also help ensure better understanding of the term ''serious'' by veterans, servicemembers, and caregivers. Additionally, we assessed the service-connected rating of eligible veterans currently participating in PCAFC and found that the majority have a single or combined rating of 70 percent or more. Furthermore, alternatives explored, such as requiring the eligible veteran qualify for a higher disability rating, would be too restrictive and would result in the majority of the current PCAFC participants no longer qualifying for the program.

For servicemembers undergoing medical discharge (as defined in current § 71.15) who apply for PCAFC, we would accept their proposed VA rating of disability when determining whether the servicemember has a serious injury. When servicemembers are referred to a Physical Evaluation Board and file a VA Form 21–0819, *VA/DOD Joint Disability Evaluation Board Claim,* they are issued a proposed VA rating decision. A final VA rating decision is not issued until VA verifies a member's character of service and date of discharge from active duty, but this proposed rating generally does not change from the time the member received the proposed rating until the official VA rating is provided unless a clear and unmistakable error exists in the proposed rating decision, and/or VA receives new evidence after issuing the proposed rating decision that justifies changing one or more of the decisions set forth in it. While proposed ratings may be adjusted, so can the disability ratings of a veteran over time. Thus, any changes to the rating, regardless of whether the change is for a servicemember undergoing medical discharge or a veteran, that results in a rating of less than 70 percent for a single service-connected disability or a combined rating of less than 70 percent for multiple service-connected disabilities would result in the veteran or servicemember no longer being eligible for PCAFC.

Third, we would no longer require a connection between the veteran's or servicemember's need for personal care services and a specific serious injury; instead, a veteran or servicemember may qualify for this program because they have a need for personal care services for another reason, so long as the veteran or servicemember also has a singular or combined rating of 70 percent or more based on one or more service-connected disabilities (and meets other applicable criteria). We believe decoupling serious injury and the need for personal care services is necessary, as in most cases, the eligible veteran has multiple conditions that may warrant a need for personal care services, and it may not necessarily be because of the disability that he or she incurred or aggravated during their military service. We note that veterans often have complex needs as a result of several conditions and find this even more true among the older veteran population. Their needs can be so complex that it can be difficult to parse out and determine what specific condition out of many causes the need for personal care services. For example, an individual may have leg pain due to a service-connected spinal cord injury but be able to manage his or her symptoms. After a number of years, the individual is diagnosed with diabetes unrelated to his or her military service. Over time, the individual develops neuropathy in his or her lower extremities, which results in the individual being unable to complete his or her ADLs independently. The onset of neuropathy could be related to either the spinal cord injury or diabetes. This example illustrates the difficulty of these clinical decisions because the determination of whether the onset of neuropathy is related to the qualifying serious injury or the illness unrelated to military service would be a subjective clinical determination. Currently there is inconsistency in how the term

''serious injury'' is interpreted due to the complexity of assessing the specific medical condition and whether it renders the veteran or servicemember in need of personal care services. As a result, we believe it is necessary to decouple serious injury from the need for personal care services.

Finally, we propose to simplify the ''serious injury'' definition by replacing the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' with ''service-connected.'' As previously explained, the current definition for serious injury is based on the language in 38 U.S.C. 1720G(a). However, 38 U.S.C. 101(16) defines ''service-connected'' as a disability incurred or aggravated, or a death that resulted from a disability incurred or aggravated, in line of duty in the active military, naval or air service. Because the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' in 38 U.S.C. 1720G(a)(2)(B) is generally synonymous with the term ''service-connected'' in 38 U.S.C. 101(16), we would simplify the ''serious injury'' definition accordingly. Thus, we propose to use ''service-connected'' in the proposed revised definition for serious injury. We note that proposed § 71.20(a)(2) would continue to use the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' in reference to the veteran's or servicemember's serious injury for purposes of establishing eligibility under the dates specified in proposed § 71.20(a)(2)(i) through (iii) and 38 U.S.C. 1720G(a)(2)(B)(i) through (iii).

We believe these proposed changes to the definition of ''serious injury'' would establish faster, more consistent PCAFC eligibility determinations by VA providers, and help ensure more equitable implementation of PCAFC for veterans who served both before and after September 11, 2001. Defining serious injury in this manner would create more uniformity in eligibility determinations across VA through more objective criteria. By recognizing the disabilities prevalent among veterans who served before September 11, 2001 through inclusion of illnesses and diseases, we would support Congress's goal of remedying the ''inequity that currently exists between pre- and post-9/11 veterans and their caregivers'' and ''recognize the service and sacrifice of veteran caregivers of all ages and eras.'' H.R. Rep. No. 115–671, at 17 (2018) (accompanying H.R. 5674, which contained language identical to that enacted in sections 161–163 of the VA MISSION Act of 2018). Similarly, decoupling serious injury and the need for personal care services would also recognize the complex challenges faced by veterans whom we believe PCAFC was intended to support, and eliminate difficult clinical assignment of personal care service needs to specific conditions. Moreover, adopting a 70 percent or more service-connected disability rating requirement would provide an objective clinical standard to establish the appropriate degree of severity of a veteran's or servicemember's disability for purposes of PCAFC. Our proposed definition of ''serious injury'' would support transparency in PCAFC eligibility decisions and improve understanding by veterans, servicemembers, and their caregivers. However, we note that ''serious injury'' is only one criterion a veteran or servicemember would have to meet in proposed § 71.20 to be eligible for PCAFC.

We believe this approach comports with the statutory language and context and provides the most fair and effective means of implementing the statutory language by minimizing the potential for complex and time-consuming eligibility determinations and disparate treatment of veterans with similar service-connected conditions and similar medical needs arising from those conditions. We note that some veterans with service-connected disabilities resulting from illnesses and diseases have already been determined eligible for PCAFC even absent this definition as a result of providers' subjective clinical decisions and the statute's inclusion of certain illnesses and diseases under the terms ''psychological trauma'' and ''other mental disorder.''

We would add a new definition for the phrase ''unable to self-sustain in the community,'' which would be applied for purposes of determining the monthly stipend level under proposed § 71.40(c)(4)(i)(A), discussed further below. As further explained in this rulemaking, we propose to establish two levels for the monthly stipend payments versus the three tiers currently listed in § 71.40(c)(4)(iv)(A) through (C), and unable to self-sustain in the community would be used as the sole criterion to establish eligibility for the higher-level. The term ''unable to self-sustain in the community'' would mean that an eligible veteran (1) requires personal care services each time he or she completes three or more of the seven activities of daily living (ADL) listed in the definition of an inability to perform an activity of daily living in this section, and is fully dependent on a caregiver to complete such ADLs; or (2) has a need for supervision, protection, or instruction on a continuous basis. The basis for selecting this proposed definition is addressed in the discussion of proposed § 71.40(c)(4) below.

§ 71.20 Eligible Veterans and Servicemembers

Current 38 CFR 71.20 sets forth the criteria for veterans and servicemembers to be determined eligible for a Primary or Secondary Family Caregiver under part 71. In this section, we propose to revise the current eligibility criteria, but also ensure that legacy participants and legacy applicants, as those terms would be defined in proposed § 71.15, would remain eligible for PCAFC for a one-year transitional period beginning on the effective date of this rule (subject to the limitations discussed in this proposed rule) while VA completes a reassessment to determine their eligibility under our new proposed eligibility requirements. As a result, we propose to restructure § 71.20 to also accommodate legacy participants and legacy applicants. Proposed paragraphs (a)(1) through (7) would set forth proposed eligibility criteria adapted from current paragraphs (a) through (g); proposed paragraph (b) would address eligibility of legacy participants; and proposed paragraph (c) would address eligibility of legacy applicants. We would add a new introductory paragraph to establish that a veteran or servicemember would be eligible for a Family Caregiver under part 71 if he or she meets the criteria in paragraph (a), (b), or (c) of § 71.20, subject to the limitations set forth in such paragraphs.

In proposed § 71.20(a), we would set forth our proposed eligibility criteria for PCAFC, which would be adapted from current § 71.20(a) through (g). These criteria would be applied to determine eligibility pursuant to any joint application received by VA on or after the effective date of the rule, as discussed further below with regard to proposed § 71.25(a)(3). One year after the effective date of the rule, these criteria would apply to all veterans and servicemembers participating in PCAFC. We would redesignate the current introductory paragraph in § 71.20 as paragraph (a), which would provide that a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under part 71 if he or she meets all of the requirements in paragraphs (a)(1) through (7). We would make no changes to the language that appears in the current introductory paragraph. Proposed paragraph (a)(1), and new proposed paragraphs (a)(1)(i) and (ii) would state that the individual must be either a veteran, or a member of the Armed Forces undergoing a

medical discharge from the Armed Forces. This is the same language in current paragraphs (a) introductory text and (a)(1) and (2).

Current paragraph (b) of § 71.20 sets forth the requirement that the individual must have a serious injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001. As explained previously in this rulemaking, section 161 of the VA MISSION Act of 2018 amended 38 U.S.C. 1720G by expanding eligibility for PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001 in a phased approach.

We propose to redesignate current paragraph (b) as (a)(2), revise proposed paragraph (a)(2), and add paragraphs (a)(2)(i) through (iii) to address the phased expansion required by the VA MISSION Act of 2018. Current paragraph (b) states that the individual has a serious injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service. In proposed paragraph (a)(2), we would continue to state that the individual has a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service. However, we would remove the phrase ''including traumatic brain injury, psychological trauma, or other mental disorder'' that appears in current § 71.20(b) because such conditions would be captured by our proposed definition of ''serious injury.''

As previously explained, we are proposing to revise the definition of ''serious injury'' in § 71.15 to mean any service-connected disability that (1) is rated at 70 percent or more by VA, or (2) is combined with any other service-connected disability or disabilities, and a combined rating of 70 percent or more is assigned by VA. This proposed definition of serious injury would include service-connected disabilities regardless of whether they are injuries, illnesses, or diseases, and thus would encompass traumatic brain injury, psychological trauma, or other mental disorder. Although the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' would also be encompassed by our revised definition of ''serious injury'' through the term ''service-connected,'' as previously explained, it would be needed for purposes of determining eligibility based on the dates specified in proposed paragraphs (a)(2)(i) through (iii).

We would move the language in current paragraph (b) that requires this serious injury have been incurred or aggravated in the line of duty in the active military, naval, or air service ''on or after September 11, 2001'' to proposed new paragraph (a)(2)(i). In proposed new paragraph (a)(2)(ii), we would add language to reflect that a veteran or servicemember would be eligible for this program if his or her serious injury was incurred or aggravated in the line of duty in the active military, naval, or air service ''on or before May 7, 1975.'' We would include language to state that the expansion of the program under proposed paragraph (a)(2)(ii) would become effective on the date specified in a future **Federal Register** document since this expansion is contingent upon the Secretary submitting the required certification to Congress, as discussed previously.

Similarly, in proposed new paragraph (a)(2)(iii), we would add language to reflect that a veteran or servicemember would be eligible for this program if his or her serious injury was incurred or aggravated in the line of duty in the active military, naval, or air service after May 7, 1975 and before September 11, 2001. Proposed paragraph (a)(2)(iii) would cover the final expansion of the program to eligible veterans of all eras, as required by the VA MISSION Act of 2018. We would include language to state that the expansion of the program under proposed paragraph (a)(2)(iii) would be effective two years after the date of the future **Federal Register** document specified in paragraph (a)(2)(ii) since this expansion is triggered two years after we submit the required certification to Congress, as discussed previously. We note that pursuant to proposed § 71.25(a)(3)(ii)(A) and (B), discussed further below, VA would deny any joint application received by VA from a veteran or servicemember before such veteran or servicemember becomes eligible under paragraphs (a)(2)(ii) or (iii).

Current paragraph (c) of § 71.20 requires that the veteran or servicemember have a serious injury that renders the individual in need of personal care services for a minimum of six continuous months. This is based on a clinical determination authorized by the individual's primary care team, and is based on whether the veteran or servicemember meets one of four specifically listed criteria.

As part of this rulemaking, we propose to revise current paragraph (c) by redesignating it as paragraph (a)(3) and removing the language that requires the individual's serious injury to render the individual in need of personal care services. We would specifically remove the language that ''couples'' the serious injury with the need for personal care services, as we previously explained in detail in the discussion on the proposed definition of ''serious injury'' in proposed § 71.15. Our proposed definition of ''in need of personal care services'' would apply for purposes of determining eligibility under proposed paragraph (a)(3).

As discussed above regarding our proposed definition of ''primary care team'' in proposed § 71.15, we would also remove the current language that states the individual's primary care team authorizes the clinical determination that the individual has a serious injury that renders the individual in need of personal care services for a minimum of six continuous months. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i). Furthermore, the use of the term ''clinical'' is redundant since all decisions affecting the furnishing of assistance or support under 38 U.S.C. 1720G are considered medical determinations. See 38 U.S.C. 1720G(c)(1). As revised, § 71.20(a)(3) would state that ''[t]he individual is in need of personal care services for a minimum of six continuous months based on any one of the [criteria listed in proposed § 71.20(a)(3)(i) and (ii)].''

Current 38 CFR 71.20(c)(1) through (4) provides that the veteran or servicemember must have: (1) An inability to perform an activity of daily living; (2) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, including traumatic brain injury; (3) psychological trauma or a mental disorder that has been scored with Global Assessment of Functioning test scores of 30 or less; or (4) a service connected disability rated at 100 percent for a serious injury incurred or aggravated in the line of duty on or after September 11, 2001, and the veteran or servicemember has been awarded special monthly compensation that includes an aid and attendance allowance. The former two bases upon which the individual can be deemed in need of personal care services (*i.e.,* an inability to perform an activity of daily living; and a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, including traumatic brain injury), contained in current § 71.20(c)(1) and (2), restate the bases in 38 U.S.C. 1720G(a)(2)(C)(i) and

(ii). The latter two criteria (*i.e.,* the use of Global Assessment Functioning (GAF) scores, and the 100 percent service connected disability rating that includes an aid and attendance allowance award), contained in 38 CFR 71.20(c)(3) and (4), are alternative bases authorized pursuant to 38 U.S.C. 1720G(a)(2)(C)(iv) and were established by VA when these regulations were first promulgated in 2011. See 76 FR 26150 (May 5, 2011).

In proposed § 71.20, we would redesignate current paragraph (c)(1) as new paragraph (a)(3)(i). We would revise current paragraph (c)(2) and redesignate it as new paragraph (a)(3)(ii). Paragraphs (a)(3)(i) and (ii) would provide the bases upon which an individual can be deemed in need of personal care services for a minimum of six continuous months. The language in current paragraph (c)(1), which refers to ''[a]n inability to perform an activity of daily living,'' would remain the same and would simply be moved to new paragraph (a)(3)(i). The revised definition of inability to perform an ADL in proposed § 71.15 would apply to this paragraph.

In proposed paragraph (a)(3)(ii), we would provide the second basis upon which an individual could be deemed in need of personal care services for a minimum of six continuous months—based on a need for supervision, protection, or instruction. As previously explained regarding § 71.15, we are proposing to remove the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' and add a new definition for ''need for supervision, protection, or instruction.'' This new definition would broaden the eligibility criteria in current paragraph (c)(2) and would combine two of the statutory bases upon which a veteran or servicemember can be deemed in need of personal care services—''a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' and ''a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.'' See 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii), as amended by Public Law 115–182, section 161(a)(2). We would add this new criterion to newly designated paragraph § 71.20(a)(3)(ii). Additionally, we would remove the phrase ''including traumatic brain injury'' that appears in current (c)(2). An individual with a traumatic brain injury could be deemed in need of personal care services based on a need for supervision, protection, or instruction in proposed § 71.20(a)(3)(ii), but we would not specifically list traumatic brain injury or any other specific conditions or diagnoses in that paragraph.

In this rulemaking, we also propose to remove current § 71.20(c)(3), which currently states that an individual can be deemed in need of personal care services based on psychological trauma or a mental disorder that has been scored with GAF test scores of 30 or less, continuously during the 90-day period immediately preceding the date on which VA initially received the caregiver application. At the time these regulations were first promulgated, the GAF assessment was a well-established mental health examination. See 76 FR 26150 (May 5, 2011). However, we now propose to remove this basis because the GAF scoring system was removed from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5), with which a mental disorder diagnosis must conform for VA rating purposes, 38 CFR 4.125(a), and is no longer widely used. Additionally, we note that no veterans and servicemembers have been deemed eligible for PCAFC based solely on their GAF score, as these individuals have also qualified under another basis in current paragraph (c). We believe that any veteran or servicemember who would qualify for PCAFC on this basis would be eligible for PCAFC under the other criteria in proposed § 71.20(a)(3)(i) and (ii). Thus, removing the criterion in current paragraph (c)(3) would likely have no impact on current and future participants.

Additionally, we also propose to remove current § 71.20(c)(4) which sets forth the basis that the veteran is service-connected for a serious injury incurred or aggravated in the line of duty on or after September 11, 2001, has been rated 100 percent disabled for that injury, and has been awarded special monthly compensation that includes an aid and attendance allowance. We believe that any veteran or servicemember who would qualify for PCAFC on this basis, even if it were expanded to reference eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, would be eligible for PCAFC under the other criteria in proposed § 71.20(a)(3)(i) and (ii). Thus, we believe it is reasonable to remove this basis in current § 71.20(c)(4).

We also propose to redesignate current § 71.20(d) as paragraph (a)(4) and revise the language. Current § 71.20(d) provides that a clinical determination (authorized by the individual's primary care team) has been made that it is in the best interest of the individual to participate in the program. Newly designated paragraph (a)(4), would state that it is in the best interest of the individual to participate in the program. The revised definition of ''in the best interest'' in proposed § 71.15 would apply to this paragraph. As discussed above regarding our proposed definition of ''primary care team'' in § 71.15, we would remove the current language that refers to a clinical determination being authorized by the individual's primary care team. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i). Furthermore, the use of the term ''clinical'' is redundant since all decisions affecting the furnishing of assistance or support under 38 U.S.C. 1720G are considered medical determinations. See 38 U.S.C. 1720G(c)(1). Because current paragraph (d) would be revised and redesignated as paragraph (a)(4), we would remove paragraph (d) from § 71.20.

We propose to redesignate current paragraphs (e) through (g) as paragraphs (a)(5) through (7), respectively. The language in current paragraph (e) would remain the same and would simply be moved to new paragraph (a)(5). In paragraphs (a)(6) and (7) we would remove the phrase ''agrees to,'' replace ''receive'' with ''receives,'' replace ''after'' with ''or will do so if,'' and keep the remaining language the same. Current paragraphs (a)(6) and (7) state that after VA designates a Family Caregiver, the individual agrees to receive care at home and to receive ongoing care from a primary care team, respectively. We believe receiving care at home and receiving ongoing care from a primary care team (as such term would be defined in revised § 71.15) should be continuous requirements and not just an agreement made by the veteran or servicemember at some point prior to the Family Caregiver's approval and designation. Therefore, in proposed paragraphs (a)(6) and (7) we would remove the phrase ''agrees to,'' and replace ''receive'' with ''receives.'' We also intend for these requirements to apply throughout the Family Caregiver's approval and designation and therefore propose to replace ''after'' with ''or will do so if'' in proposed paragraphs (a)(6) and (7), so that these paragraphs are not interpreted to apply to any one point following VA's designation of the Family Caregiver. The phrase ''or will do so if'' is used in current § 71.25(b)(2)(ii) with respect to a caregiver applicant who is not a family member but lives with the eligible

veteran full-time ''or will do so if designated as Family Caregiver.'' Including this language would recognize that the veteran or servicemember may not be receiving care at home or receiving ongoing care from a primary care team at the time of his or her application for PCAFC, but would fulfill those requirements if his or her Family Caregiver is approved and designated by VA. As explained in VA's interim final rule and final rule implementing PCAFC, these requirements are needed to enable VA to perform statutorily required monitoring and documentation functions. See 76 FR 26151 (May 5, 2011) and 80 FR 1363–64 (January 9, 2015) (citing 38 U.S.C. 1720G(a)(9)). The remaining language in paragraphs (a)(6) and (7) would remain unchanged.

As a result of changes, we propose to make to the eligibility criteria, we would add a new paragraphs (b) and (c), which would establish that legacy participants and legacy applicants, respectively, would remain eligible for PCAFC for a one-year transitional period (subject to the limitations discussed in this proposed rule). Proposed paragraph (b) would state that for one year beginning on the effective date of the rule, a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy participant. We believe that a one-year transition period is reasonable because it would allow individuals who are participating in PCAFC as of the day before the effective date of the rule to remain in the program for a transitional period while VA completes a reassessment to determine their eligibility under revised § 71.20(a).

Similarly, proposed paragraph (c) would state that for one year beginning on the effective date of the rule, a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy applicant. We note that eligibility under paragraphs (b) or (c) would not exempt the Family Caregiver of a legacy participant or legacy applicant from being revoked or discharged pursuant to proposed § 71.45 for reasons other than not meeting the eligibility criteria in proposed § 71.20(a) in the one-year period beginning on the effective date of the rule. For example, the Family Caregiver could be revoked for cause, non-compliance, or VA error, or discharged due to death or institutionalization of the eligible veteran or Family Caregiver, as discussed in the context of proposed § 71.45 below. Therefore, in order to be considered a ''legacy participant,'' and remain eligible under § 71.20(b), we would require the Primary Family Caregiver approved and designated for the veteran or servicemember as of the day before the effective date of the rule (as applicable) would have to continue to be approved and designated as such. Likewise, in order to be considered a ''legacy applicant,'' and remain eligible under § 71.20(c), we would require that the Primary Family Caregiver approved and designated for the veteran or servicemember pursuant to a joint application received by VA prior to the effective date of the rule (as applicable), continues to be approved and designated as such. Although it is unlikely, we would include ''as applicable'' in parentheses to account for any legacy participant or legacy applicant who has only a Secondary Family Caregiver(s). A veteran or servicemember not meeting these requirements generally would no longer be participating in PCAFC, or would have the same or a new Primary Family Caregiver approved and designated pursuant to a joint application received by VA on or after the effective date of the rule, as discussed further below.

At the end of the one-year period following the effective date of the rule, legacy participants and legacy applicants who do not meet the new § 71.20(a) eligibility criteria would be discharged from PCAFC in accordance with proposed § 71.45, as such section would be revised by this rulemaking. However, VA would continue to support such individuals through alternative supports and services as desired and applicable. PCAFC is just one program through which VA supports veterans and their caregivers. Through the PGCSS, caregivers have access to training and education, self-care courses, peer support, and a Caregiver Support Line. Additional resources to support eligible veterans include respite care, home health aides, home based primary care, or home telehealth to name a few. Upon determining that a legacy participant or legacy applicant and his or her Family Caregiver(s) would not meet criteria for ongoing participation in PCAFC after the one-year transitional period, the local Caregiver Support Coordinator or designated social worker would begin working with the veteran or servicemember and his or her Family Caregiver on discharge.

§ 71.25 Approval and Designation of Primary and Secondary Family Caregivers

Section 71.25 currently describes the application and designation process for Family Caregivers. We propose to amend this section by revising certain terminology, revising and restructuring paragraph (a), and revising paragraphs (c), (e), and (f). These proposed changes are discussed in detail further below.

Current § 71.25(a) describes the process and requirements to apply for designation as a Primary or Secondary Family Caregiver. We propose to revise § 71.25(a)(1) by replacing the phrase ''complete and sign a joint application'' with ''submit a joint application.'' As previously explained, we are proposing a new definition for joint application. This definition would describe the requirements for a joint application to be considered complete by VA to include signatures of all applicants. Thus, the phrase ''complete and sign'' would be redundant since it would be encompassed in the proposed definition for joint application. We would also add language to the end of the paragraph to clarify that no more than two individuals may serve as a Secondary Family Caregiver at one time for an eligible veteran. PCAFC has generally been implemented by allowing the application and designation of one Primary Family Caregiver and up to two Secondary Family Caregivers for each eligible veteran, and this language would align with current practice. For example, the current VA Form 10–10CG has fields for only two Secondary Family Caregivers and we are not aware of any instances in which a veteran or servicemember has sought to apply with three Secondary Family Caregivers. The remaining text in this paragraph would remain unchanged.

We propose to redesignate current paragraph (a)(2) as paragraph (a)(2)(i) and revise the language. Current paragraph (a)(2) states that ''[u]pon receiving such application, VA will perform the clinical evaluations required by this section; determine whether the application should be granted; and, if so, whether each applicant should be designated as identified in the application.'' In newly designated paragraph (a)(2)(i), we would add ''(in collaboration with the primary care team to the maximum extent practicable)'' in between ''VA'' and ''will perform.'' As previously discussed regarding our proposed definition of ''primary care team'' in § 71.15, this would ensure collaboration with the VA medical professionals involved in the patient's care during VA's evaluation of the joint application. For example, a clinical eligibility team or other provider(s) responsible for evaluating joint applications for PCAFC eligibility would seek input from the primary care team to inform their evaluation of joint applications received.

Additionally, we would remove the term ''clinical'' as this is redundant since all decisions affecting the furnishing of assistance or support under 38 U.S.C. 1720G are considered medical determinations. 38 U.S.C. 1720G(c)(1). We would also reword the remaining language for clarity and to more precisely describe VA's evaluation of the joint application by indicating that VA would ''perform the evaluations required to determine the eligibility of the applicants under [part 71].'' We would also add that if the applicants are determined to be eligible, VA would determine ''the applicable monthly stipend amount under § 71.40(c)(4).'' Monthly stipend payments are based on the amount and degree of personal care services provided to the eligible veteran, and the initial eligibility evaluation provides an opportunity for the applicants to provide information to VA about the health status and care needs of the veteran or servicemember. VA values input from caregivers, as well as veterans and servicemembers, and this information would be utilized by VA to determine the appropriate stipend level for the Primary Family Caregiver. We note that the VA MISSION Act of 2018 requires VA to consider, among other things, the Family Caregiver's assessment of the needs and limitations of certain eligible veterans in determining their Primary Family Caregivers' stipend amount. See 38 U.S.C. 1720G(a)(3)(C)(iii)(I), as amended by Public Law 115–182, section 161(a)(4). Specifically, the input received from the Family Caregiver applicant would be taken into account when determining whether a veteran or servicemember is unable to self-sustain in the community (as such term would be defined in proposed § 71.15).

Furthermore, we would also include language that VA will not evaluate a veteran's or servicemember's eligibility under § 71.20 when a joint application is received to add a Secondary Family Caregiver for an eligible veteran who has a designated Primary Family Caregiver. This is because an eligible veteran with a designated Primary Family Caregiver has already been deemed eligible under § 71.20 and we do not believe it is necessary to reevaluate an eligible veteran each time he or she submits a joint application to add a new or replace a former Secondary Family Caregiver because Secondary Family Caregivers generally serve as backup support to the Primary Family Caregiver. Also, as further discussed in proposed § 71.30, eligible veterans would be reassessed for eligibility on an annual basis, unless a determination is made and documented by VA that a more or less frequent reassessment is appropriate. Therefore, upon receiving a joint application to add a new or replace a former Secondary Family Caregiver only, VA would only evaluate the eligibility of the Secondary Family Caregiver applicant. However, for any joint application received by VA requesting the approval and designation of a Primary Family Caregiver, VA would consider the eligibility of the veteran or servicemember, as well as the Primary Family Caregiver applicant and any Secondary Family Caregiver applicants (and if eligible, the applicable monthly stipend amount), pursuant to the requirements of part 71. These requirements would apply to all joint applications received by VA on or after the effective date of the rule, including joint applications submitted by legacy participants and legacy applicants.

We would redesignate current paragraph (a)(3) as paragraph (a)(2)(ii) and revise the language. The revised requirements would be based on current § 71.40(d)(1), which would be revised to address only the effective date of PCAFC benefits, as discussed later in this rulemaking. Current paragraph (a)(3) permits an application to be put on hold for no more than 90 days, from the date the application was received, for a veteran or servicemember seeking to qualify through a GAF test score of 30 or less but who does not have a continuous GAF score available. Because we are proposing to eliminate use of the GAF score as a basis for eligibility under current § 71.20(c)(3), as explained in the preceding discussion, we would also remove language in this paragraph referencing GAF test scores.

Also, we would remove language in this paragraph referencing that an application may be put on hold for no more than 90 days. Instead of placing applications on hold, we would extend the 45-day designation timeline in current § 71.40(d)(1) to 90 days.

Proposed paragraph (a)(2)(ii) would state that ''[i]ndividuals who apply to be Family Caregivers must complete all necessary eligibility evaluations (along with the veteran or servicemember), education and training, and the initial home-care assessment (along with the veteran or servicemember) so that VA may complete the designation process no later than 90 days after the date the joint application was received by VA .'' Further we would state that ''[i]f such requirements are not complete within 90 days from the date the joint application is received by VA, the joint application will be denied, and a new joint application will be required.'' This language is adapted from current § 71.40(d)(1), which requires individuals who apply to be Family Caregivers to ''complete all necessary education, instruction, and training so that VA can complete the designation process no later than 45 days after the date that the joint application was submitted or . . . a new joint application will be required to serve as the date of application for payment purposes.'' We would move this requirement to § 71.25(a) because it pertains to application requirements. We would specify that in addition to education, instruction, and training (which we would refer to as ''education and training'' for consistency with § 71.25(d)), eligibility evaluations and the initial home-care assessment would also have to be completed within 90 days from the date joint application is received by VA because those requirements are necessary prerequisites to VA's approval and designation of a Family Caregiver. We would also apply this timeline to veteran and servicemember applicants, as they must also participate in eligibility evaluations and the initial home-care assessment before VA can approve and designate their Family Caregivers.

The 45-day timeline in current § 71.40(d)(1) is in many cases too brief to allow applicants to complete the requirements for approval and designation of a Family Caregiver because eligibility determinations are complex and require detailed assessments. We believe the accuracy of determinations takes precedence over speed of such determinations. Also, we note that in a recent VA Office of Inspector General (OIG) report, OIG identified that of 1,822 veterans approved to participate in PCAFC, 65 percent did not have their applications processed timely and within the 45-day timeframe in current § 71.40(d)(1). VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, p. 8. Due to the complex nature of eligibility determinations, as well as new criteria and an expanded population of potentially-eligible veterans under the VA MISSION Act of 2018, we propose to remove the current 45-day timeline in current § 71.40(d)(1). We would change this to a 90-day timeline and allow VA to extend the timeline beyond 90 days if the requisite steps are not completed as a result of a delay that is solely due to VA's action. We would state that ''VA may extend the 90-day period based on VA's inability to complete the eligibility

evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is solely due to VA's action.'' We believe 90 days is a reasonable amount of time for VA to make accurate and comprehensive determinations, without unduly delaying the provision of benefits to those ultimately approved for the program. However, we would not penalize an applicant if he or she cannot meet the 90-day timeline as a result of VA's delay in completing eligibility evaluations, providing necessary education and training, or conducting the initial home-care assessment.

We note that access to care for eligible veterans would not be delayed by these proposed changes because clinical interventions and contacts with providers and various clinical teams occur throughout the application and evaluation process. For example, during evaluation of the joint application, VA may make referrals for applicants (including those ineligible for PCAFC) for additional support and services that are not specific to PCAFC. Additionally, these changes generally would not reduce any stipend benefit the Primary Family Caregiver would receive, as stipends and certain other benefits for approved and designated Family Caregivers would continue to be retroactive to the date the application was received or the date on which the eligible veteran begins receiving care at home (or other applicable date specified in proposed § 71.40(d), as discussed further below). While proposed § 71.25(a)(2)(ii) would not impose any specific timeline on VA to complete its evaluation of joint applications, we would continue to monitor application processing times, establish indicators to identify timelines that are not in accordance with any established norms, and conduct outreach as necessary to prevent undue application processing delays.

We would exclude from proposed § 71.25(a)(2)(ii) the language in current § 71.40(d)(1) that authorizes VA to ''extend the 45-day period for up to 90 days after the date the joint application was submitted . . . based on training identified under § 71.25(d) that is still pending completion, or hospitalization of the eligible veteran.'' As previously explained, we would extend the designation period from 45 days after the joint application was submitted to 90 days after the date the joint application was received by VA. Therefore, we believe that the current language in § 71.40(d)(1) that allows for an extension from 45 days to 90 days would no longer be necessary since applicants would have 90 days from the date the joint application is received by VA to complete all requirements so that VA may complete the designation process. As stated previously, this 90-day timeline would also apply to veteran and servicemember applicants as they must also participate in eligibility evaluations and the initial home-care assessment. Therefore, if a veteran or servicemember is hospitalized following the submission of his or her joint application for PCAFC, but before a Family Caregiver is approved and designated, and this hospitalization prevents VA from completing the approval and designation process within 90 days from the date the joint application is received, then the joint application would be denied and a new joint application would be required.

We would also exclude from proposed § 71.25(a)(2)(ii) the language in current § 71.40(d)(1) that addresses how application timelines are impacted when an application has been placed on hold for a GAF assessment. Because we propose to remove reference to GAF test scores in proposed § 71.20 with respect to PCAFC eligibility, we would also remove the language in current § 71.40(d)(1) that refers to the GAF assessment.

As previously explained, we would redesignate current paragraph (a)(3) as paragraph (a)(2)(ii). We would then add a new paragraph (a)(3) to address how applications will be reviewed once received by VA in proposed new paragraphs (a)(3)(i) and (ii). The application process for PCAFC requires evaluation, training, and assessment that do not occur instantaneously. Thus, we anticipate there will be joint applications received by VA prior to the effective date of the rule for which eligibility determinations are still pending on the effective date of the rule. We propose to review these joint applications against the eligibility criteria that existed before the effective date of the rule. Since we are proposing to change the eligibility criteria, including definitions, that would affect VA's review of joint applications received, we believe it is reasonable for VA to continue to evaluate joint applications received prior to the effective date of the rule under the criteria in §§ 71.15, 71.20, and 71.25 as they appeared in part 71, and that were in effect, at the time the joint application was received by VA. We believe that changing the eligibility criteria during the adjudication of a joint application would place an undue hardship on applicants who relied on the eligibility criteria in effect at the time of submitting the joint application to VA. Thus, proposed paragraph (a)(3)(i) would state that, except as otherwise provided, joint applications received by VA before the effective date of the rule will be evaluated by VA based on 38 CFR 71.15, 71.20, and 71.25 (2019) (*i.e.,* as they appeared in part 71 on the day before the effective date of the rule). The one exception to this would be that the term ''joint application'' as we propose to define it in § 71.15 would apply such that only those applications with all mandatory fields completed (*i.e.,* all fields other than those specifically exempted) would be considered ''joint applications'' under this paragraph. A veteran or servicemember who submits a joint application that is received by VA before the effective date of the rule and for whom a Family Caregiver(s) is approved and designated on or after the effective date of the rule would be considered a ''legacy applicant,'' as such term would be defined in proposed § 71.15.

Proposed paragraph (a)(3)(ii) would state that joint applications received by VA on or after the effective date of the rule will be evaluated by VA based on the provisions of this part in effect on or after the effective date of the rule. If a veteran or servicemember and individuals who apply to be his or her Family Caregivers submit a joint application that is received by VA before the effective date of the rule, and are determined to be ineligible for PCAFC under §§ 71.15, 71.20, and 71.25 as they existed before the effective date of the rule, the veteran or servicemember along with his or her caregivers could submit another joint application on or after the effective date of the rule in order be considered under the new criteria.

The proposed changes in §§ 71.20 and 71.40 should minimize the incentive (at least within part 71) for a legacy participant or legacy applicant to submit a new joint application for PCAFC on or after the effective date of the rule. However, if a legacy participant or legacy applicant submits a new joint application on or after the effective date of the rule seeking the approval and designation of a Primary Family Caregiver, we note that pursuant to proposed § 71.25(a)(3)(ii), such application would be evaluated by VA based on the provisions of this part in effect on or after the effective date of the rule, to include an evaluation of the veteran's or servicemember's eligibility under proposed § 71.20(a). As specified in the definitions of ''legacy participant'' and ''legacy applicant,'' if a Primary Family Caregiver is approved

and designated pursuant to such application, the eligible veteran would no longer be considered a legacy participant or legacy applicant. This would include the approval and designation of a new Primary Family Caregiver, including a Secondary Family Caregiver seeking to become a Primary Family Caregiver, or a current or former Primary Family Caregiver who is reapplying. If a Primary Family Caregiver is not approved and designated for a legacy participant or legacy applicant pursuant to a joint application received by VA on or after the effective date of the rule (because the legacy participant or legacy applicant does not qualify under proposed § 71.20(a), the joint application requests the approval and designation of a Secondary Family Caregiver only, or the joint application is withdrawn before approval and designation), the veteran or servicemember would continue to be designated as a legacy participant or legacy applicant and remain eligible for PCAFC under proposed § 71.20(b) or (c), respectively.

We would add paragraphs (a)(3)(ii)(A) and (B) to address joint applications submitted by veterans and servicemembers seeking to qualify for PCAFC under proposed § 71.20(a)(2)(ii) and (iii) (*i.e.,* veterans and servicemembers who incurred or aggravated a serious injury in the line of duty in the active military, naval, or air service before September 11, 2001). As previously discussed, the first phase of PCAFC expansion under proposed § 71.20(a)(2)(ii) would begin on a ''date specified in a future **Federal Register** document.'' The second phase of PCAFC expansion under proposed § 71.20(a)(2)(iii) would begin two years after the date specified in a future **Federal Register** document as described in § 71.20(a)(2)(ii). Proposed § 71.25(a)(3)(ii)(A) and (B) would state that joint applications received from individuals described in § 71.20(a)(2)(ii) and (iii) prior to the date on which such individuals become eligible would be denied and that a veteran or servicemember seeking to quality for PCAFC pursuant to § 71.20(a)(2)(ii) and (iii) should submit a joint application that is received by VA on or after the **Federal Register** document date specified in proposed § 71.20(a)(2)(ii), or two years after such date as specified in proposed § 71.20(a)(2)(iii), respectively, as applicable. We believe denying applications received prior to the effective dates of eligibility expansion specified in proposed § 71.20(a)(2)(ii) and (iii) is appropriate because it is consistent with current practice in that we currently deny applications received from veterans or servicemembers with a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service before September 11, 2001. Moreover, holding applications of applicants seeking to qualify for PCAFC pursuant to § 71.20(a)(2)(ii) and (iii) would result in burdens on both VA and the applicants. A number of factors could change between the time a joint application is received by VA and the effective dates of eligibility expansion, such that the information on the joint application could be outdated by the applicable effective date of eligibility expansion. For example, there could be a different individual providing care to the veteran or servicemember than originally listed on the joint application, or the clinical status of the veteran or servicemember could change. If VA were to hold applications of individuals who would not be eligible (or potentially eligible) for PCAFC until the applicable effective date of eligibility expansion, upon the effective date of eligibility expansion, VA would have to contact each applicant to ensure all the information provided on the joint application is current before evaluating PCAFC eligibility. This would require additional steps in VA's evaluation of joint applications and impose delays before approval and designation of the Family Caregiver(s).

Additionally, we would make changes to § 71.25(c). First, we propose to remove the reference to primary care team in current paragraph (c)(1), as discussed above regarding our proposed definition of ''primary care team'' in § 71.15. Current paragraph (c)(1) requires that an applicant seeking to be designated as a Family Caregiver must be ''initially assessed by a VA primary care team as being able to complete caregiver education and training.'' We would replace the reference to ''a VA primary care team'' in current paragraph (c)(1) with ''VA.'' With this change, the initial assessment of the Family Caregiver applicant could be done by a primary care team, clinical eligibility team, or other appropriate individual or individuals in VA. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i).

Current § 71.25(c)(1)(i) requires that the initial assessment of the Family Caregiver applicant consider ''[w]hether the applicant can communicate and understand details of the treatment plan and any specific instructions related to the care of the eligible veteran.'' We propose to revise § 71.25(c)(1)(i) by replacing the phrase ''details of the treatment plan'' with ''the required personal care services.'' We believe the phrase ''required personal care services'' more accurately reflects the Family Caregiver's role in the veteran's care. We note that treatment plans may be inclusive of clinical needs that are outside the scope of the personal care services provided by the Family Caregiver. It is critical that the Family Caregiver applicant be able to communicate and understand the required personal care services of the eligible veteran, but not necessarily the details of the treatment plan.

We propose to revise § 71.25(c)(1)(ii) by updating the language to better reflect the responsibilities of Family Caregivers. Current paragraph (c)(1)(ii) describes one of the criteria that VA will consider when conducting an assessment of caregiver applicants. Under this paragraph, assessments consider whether the applicant will be capable of following without supervision a treatment plan listing the specific care needs of the eligible veteran. We propose to revise this paragraph to instead state that assessments would consider whether the applicant will be capable of performing the required personal care services without supervision, in adherence with the eligible veteran's treatment plan in support of the needs of the eligible veteran. We believe the phrase ''required personal care services'' more accurately reflects the Family Caregiver's role in the eligible veteran's care. We note that treatment plans may be inclusive of care needs outside the scope of the personal care services provided by the Family Caregiver, and our proposed changes would recognize that the Family Caregiver may not follow an entire treatment plan without supervision. Furthermore, we believe the phrase ''in support of the needs of the eligible veteran'' further clarifies the role of the Family Caregiver to provide personal care services that are not only specific to the needs of the eligible veteran, but support those needs.

We propose to revise § 71.25(c)(2) which currently states that before VA approves an applicant to serve as a Family Caregiver, the applicant must ''[c]omplete caregiver training and demonstrate the ability to carry out the specific personal care services, core competencies, and other additional care requirements prescribed by the eligible veteran's primary care team.'' We would remove ''other'' for clarity and would remove the phrase ''prescribed by the eligible veteran's primary care team,'' as discussed above regarding our proposed definition of ''primary care team'' in § 71.15, to account for care requirements

prescribed by providers other than the veteran's or servicemember's primary care team.

We propose to revise § 71.25(e) which currently states that VA will conduct an initial home-care assessment no later than 10 business days after VA certifies completion of caregiver education and training, or in the instance that an eligible veteran is hospitalized during this process, no later than 10 days from the date the eligible veteran returns home. It also describes the purpose of such initial home-care assessment (*i.e.,* to assess the caregiver's completion of training and competence to provide personal care services, and to measure the eligible veteran's well-being).

First, we propose to revise paragraph (e) to remove the 10-day time period. VA believes flexibility to coordinate the most appropriate clinicians and/or teams to conduct these initial home-care assessments is necessary to ensure adequate VA resources, and this may require more than 10 days to complete. For example, in an attempt to meet the 10-day timeline, VA attempts to schedule visits before a Family Caregiver completes training; however, individuals who apply to become Family Caregivers complete training at different rates of speed. Because such completion dates cannot be predicted at the time training begins, the current 10-day timeline does not afford VA the opportunity to adequately plan, coordinate, and schedule these initial home-care assessments in a manner that would accommodate the needs of the applicants.

Additionally, the 10-day time period is not intended to be burdensome to PCAFC applicants, and we believe the removal of this time period would allow VA to better accommodate the needs of veterans and servicemembers, and individuals who apply to be their Family Caregivers. As discussed below regarding our proposed revisions to § 71.40(d), upon approval and designation of a Family Caregiver, certain benefits, including the stipend, may be provided retroactively to the date the joint application is received by VA, if applicable. Thus, removing the 10-day timeframe would not negatively impact the amount of the stipend and certain other benefits approved Family Caregivers will receive if the initial home-care assessment is conducted more than 10 business days after completion of the caregiver education and training.

Furthermore, the removal of the 10-day timeline is consistent with our proposal to extend the 45-day timeline standard from current § 71.40(d)(1) to 90 days in proposed § 71.25(a)(2)(ii) because we believe focusing on the timeline for the overall application process is more important than establishing a specific number of days between each stage of the designation process.

Second, we would remove ''VA clinician or clinical team'' and instead reference ''VA.'' As previously discussed, we are removing the specific reference to primary care team in paragraph (c)(1) of this section and instead referencing ''VA.'' This is because the individual or team best suited to conduct initial assessments can vary (*e.g.,* a primary care team, clinical eligibility team, or other appropriate individual or individuals in VA). We note that the current phrase ''VA clinician or clinical team'' is inclusive of a primary care team, clinical eligibility team, or other appropriate individual or individuals in VA; however, to maintain consistency with other proposed changes in this section and to avoid any misinterpretation that ''VA clinical or clinical team'' has a separate meaning from ''VA,'' we would only reference ''VA'' in paragraph (e).

Third, we would change the current text in § 71.25(e) that states VA will ''measure the eligible veteran's well-being'' to ''assess the eligible veteran's well-being.'' While the actions involved would not change, VA believes the term ''assess'' is used more widely than ''measure'' and therefore the intent of the initial home-care assessment would be clearer to eligible veterans and caregivers.

Fourth, we would also add new language that we would assess the well-being of the caregiver in addition to the eligible veteran. We believe an assessment of the caregiver's well-being is appropriate to ensure that the caregiver is physically, emotionally, and cognitively capable of providing personal care services to the eligible veteran. Also, an assessment of the caregiver's well-being would allow VA to refer the caregiver to appropriate resources, as necessary.

Fifth, we would remove reference to the assessment of the caregiver's completion of training and only refer to the caregiver's competence to provide personal care services. While caregiver education and training would still be required and would contribute to the caregiver's ability to provide personal care services, the assessment would not focus on whether training has been completed but rather the competence of the caregiver to provide personal care services.

Sixth, we would also remove language that the initial home-care assessment would occur after VA certifies completion of caregiver education and training. Because the needs of the veteran or servicemember and individuals applying to be a Family Caregiver may vary, we believe flexibility to conduct initial home-care assessments prior to the completion of training is necessary. For example, individuals who apply to become Family Caregivers complete training at different rates of speed, and VA may need to conduct an initial home-care assessment prior to the completion of training to allow for the identification of additional needs and necessary resources. Furthermore, an experienced caregiver may be capable of demonstrating the ability to provide personal care services prior to the completion of required training. In this instance, we believe the flexibility to conduct an initial home-care assessment prior to the completion of training would be appropriate and allow VA to better accommodate the scheduling needs of applicants.

Seventh, we would remove the reference to the eligible veteran being hospitalized. As previously explained, we are proposing to remove the 10-day timeline in this paragraph, and we propose to extend the 45-timeline in current § 71.40(d)(1) to 90 days in proposed § 71.25(a)(2)(ii). We believe the combination of these two proposed changes eliminates the need to retain the reference to the eligible veteran being hospitalized because we believe that 90 days is a reasonable amount of time for applicants to complete the application requirements, including the initial home-care assessment, in order for VA to designate the Family Caregiver. Therefore, if the hospitalization of an eligible veteran prevents VA from completing the initial home-care assessment (or complete the eligibility evaluations or provide necessary education and training) within 90 days from the date the joint application is received, then the joint application would be denied, and a new joint application would be required. For the aforementioned reasons, proposed paragraph (e) would state that VA will visit the eligible veteran's home to assess the eligible veteran's well-being and the well-being of the caregiver, as well as the caregiver's competence to provide personal care services at the eligible veteran's home.

We propose to revise current paragraph (f) which explains that VA will approve and designate Primary and/or Secondary Family Caregivers, as appropriate, if the eligible veteran and at least one applicant meet the requirements of part 71. It further

explains that this is a clinical determination authorized by the eligible veteran's primary care team, and that approval and designation is conditioned on the eligible veteran and Family Caregiver(s) remaining eligible for benefits under part 71.

First, we would revise the first sentence for clarity to state that ''VA will approve the joint application and designate Primary and/or Secondary Family Caregivers, as appropriate, if the applicable requirements of part 71 are met.''

Second, we would remove the second sentence stating, ''approval and designation will be a clinical determination authorized by the eligible veteran's primary care team.'' As discussed above regarding our proposed definition of ''primary care team'' in § 71.15, we would remove the current language that refers to a clinical determination being authorized by the individual's primary care team. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i). Also, the term ''clinical'' is redundant since all decisions under 38 U.S.C. 1720G affecting the furnishing of assistance or support are considered medical determinations. 38 U.S.C. 1720G(c)(1).

Third, we would revise the last sentence of current paragraph (f) to state that approval and designation is conditioned on the eligible veteran's and designated Family Caregiver's continued eligibility for Family Caregiver benefits under part 71, the Family Caregiver(s) providing the personal care services required by the eligible veteran, and the eligible veteran and designated Family Caregiver(s) complying with all applicable requirements of this part, including participating in reassessments pursuant to § 71.30 and wellness contacts pursuant to § 71.40(b)(2), as such sections are proposed to be revised by this rulemaking. We would further explain that refusal to comply with any applicable requirements of part 71 will result in revocation from the program pursuant to § 71.45, Revocation and Discharge of Family Caregivers, as such section is proposed to be revised by this rulemaking. We would establish an explicit requirement that the Family Caregiver provide the eligible veteran with his or her required personal care services. Part of the eligibility requirements for veterans and servicemembers is that they are in need of personal care services; thus, we believe it is reasonable to require that a Family Caregiver(s) actually provides personal care services to an eligible veteran in order to continue to be approved and designated as such. We recognize that there may be instances where the Family Caregiver is temporarily absent and unable to personally provide personal care services, and we would not apply this requirement to such brief absences, such as when respite care is provided.

As discussed further below, we would also establish an explicit requirement for eligible veterans and Family Caregivers to participate in reassessments and wellness contacts. As explained in more detail in the discussion directly below, VA is required to conduct periodic evaluations of Family Caregivers' skills and eligible veterans' needs pursuant to 38 U.S.C. 1720G(a)(3)(D), as revised by the VA MISSION Act of 2018, and the reassessments and wellness contacts would ensure that VA is meeting this requirement and that the needs of PCAFC participants are being met. See 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). When either the eligible veteran or Family Caregiver refuses to participate in reassessments or wellness contacts, VA would revoke the Family Caregiver's designation pursuant to proposed § 71.45, which is explained in more detail later in this rulemaking.

§ 71.30 Reassessment of Eligible Veterans and Family Caregivers

We would redesignate current § 71.30, which pertains to PGCSS, as new § 71.35; and new § 71.30 would establish that VA will conduct reassessments of eligible veterans and Family Caregivers to determine their continued eligibility for participation in PCAFC under part 71. We would include this in proposed § 71.30 as it would logically follow the previous sections in 38 CFR part 71 describing eligibility for PCAFC.

Currently, there is no standardized or consistent requirement for PCAFC eligibility reassessments across VA; some facilities conduct reassessments while others do not. There is also no standard timeline for when such reassessments occur. A recent VA OIG report affirmed that veterans' health conditions change, and such changes may warrant a reassessment of the need for care for the purposes of determining continued PCAFC eligibility or the appropriate stipend tier level. VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, pp. 11–14. OIG also recommended VHA establish assessment guidelines for when a veteran's need for care changes. Id. According to OIG, without consistent monitoring of PCAFC participants and ''improved documentation of changes in the status of veterans' health, VHA cannot take timely action when veterans need more or less care. VHA needs to take this action to both support the needs of veterans and their caregivers and to identify veterans who need less care or no care at all.'' Id. at 14. Additionally, regular assessment of PCAFC participants would, like with proposed wellness contacts in proposed § 71.40(b)(2) (*i.e.,* monitoring visits in current § 71.40(b)(2)), ensure continued engagement between VA and PCAFC participants, and that additional support is provided when an eligible veteran's care needs increase. Congress recognized the need for such engagement in the VA MISSION Act of 2018 by requiring VA to ''periodically evaluate the needs of the eligible veteran and the skills of the [F]amily [C]aregiver of such veteran to determine if additional instruction, preparation, training, or technical support . . . is necessary.'' 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). For these reasons, we would add a reassessment requirement in proposed § 71.30.

Proposed § 71.30(a) would state that, except as provided in paragraphs (b) and (c) of this section, the eligible veteran and Family Caregiver will be reassessed by VA on an annual basis to determine their continued eligibility for participation in PCAFC under part 71, and that reassessments will include consideration of whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under proposed § 71.40(c)(4)(i)(A). Additionally, it would state that such reassessments may include a visit to the eligible veteran's home. We believe this is reasonable under 38 U.S.C. 1720G, since we do not believe that Congress intended for PCAFC participants' eligibility to never be reassessed after the initial eligibility determination, particularly as an eligible veteran's and Family Caregiver's continued eligibility for the program can evolve.

We propose to conduct these reassessments on an annual basis, as eligible veterans' needs for personal care services may change over time as may the needs and capabilities of the designated Family Caregiver(s). Conducting this reassessment on an annual basis is reasonable as it will allow consideration of whether an eligible veterans' assessed level of need is sustained or if it has increased or decreased during the year. Requiring annual reassessments would also create

consistency across the program and ensure that reassessments are generally conducted on a standard timeline. Furthermore, eligibility for PCAFC is conditioned upon the eligible veteran receiving care at home (pursuant to proposed § 71.20(a)(6)); and an in-home assessment may be required as part of the reassessment to adequately evaluate the eligible veteran's and Family Caregiver's eligibility, including Family Caregiver's continued ability to perform the required personal care services.

Additionally, the reassessment would provide another opportunity for Family Caregivers and eligible veterans to give feedback to VA about the health status and care needs of the eligible veteran. Such information is utilized by VA to provide additional services and support, as needed, as well as to ensure the appropriate stipend level is assigned. We note that the VA MISSION Act of 2018 requires VA to consider, among other things, the Family Caregiver's assessment of the needs and limitations of certain eligible veterans in determining the Primary Family Caregivers' stipend amount. See 38 U.S.C. 1720G(a)(3)(C)(iii)(I), as amended by Public Law 115–182, section 161(a)(4). Specifically, this input from the Family Caregiver would be taken into account when determining whether the eligible veteran is unable to self-sustain in the community for purposes of proposed § 71.40(c)(4)(i)(A). Along with considering the input of Family Caregivers and eligible veterans during reassessments, we would ensure that they are notified in advance of these reassessments.

Reassessments would ensure that VA is supporting eligible veterans and Family Caregivers by offering the most appropriate level of care and support needed. Along with wellness contacts in proposed § 71.40(b)(2) (*i.e.,* monitoring visits in current § 71.40(b)(2)), discussed in more detail below, reassessments help identify whether any additional instruction, preparation, training, and technical support is needed in order for the eligible veteran's needs to be met by the Family Caregiver and is consistent with 38 U.S.C. 1720G(a)(3)(D), as amended by the VA MISSION Act of 2018. See 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). Periodically reassessing PCAFC participants' needs would help ensure that eligible veterans and Family Caregivers have the necessary skills, knowledge, and resources for the eligible veteran to continue progressing toward improved health, wellness, and independence when such potential exists. This annual reassessment would also ensure that VA is being a good fiscal steward and maintaining quality oversight over this program.

Proposed § 71.30(b) and (c) would establish exceptions to the requirement in proposed § 71.30(a) that reassessments occur annually. In proposed paragraph (b), we would explain that reassessments may occur more frequently than annually if a determination is made and documented by VA that more frequent reassessment is appropriate. Through policy, we would require VA to document the clinical factors relied upon in concluding that more frequent reassessment is needed. Clinical factors could include known improvements in or deterioration of the eligible veteran's condition. For example, reassessment may be warranted following a course of treatment or other clinical intervention that reduces an eligible veteran's level of dependency on his or her Family Caregiver, such as increased independence in mobility through the use of adaptive equipment that is expected to result in long-term gains, even if a previous reassessment had already been completed within the previous year. A more frequent than annual reassessment may also be warranted in instances in which there is a significant increase in personal care services needed by the eligible veteran due to a deterioration of a progressive condition or an intervening medical event or condition, such as a stroke that results in further clinical impairment.

In proposed paragraph (c), we would state that reassessments may occur on a less than annual basis if a determination is made and documented by VA that an annual reassessment is unnecessary. Through policy, we would require VA to document the clinical factors relied upon in concluding that less frequent reassessment is needed. We have found that there are eligible veterans who are not expected to improve over the long term and will continue to need the same amount and degree of personal care services over time. As a result, we believe it is reasonable to exclude such eligible veterans and their Family Caregivers from ongoing reassessments entirely or to require reassessments on a less than annual basis for such eligible veterans and their Family Caregivers. For example, VA may determine that an eligible veteran who is bed-bound and ventilator dependent, and requires the presence of a Family Caregiver to perform tracheotomy care to ensure uninterrupted ventilator support, may not need an annual reassessment because the eligible veteran's condition is expected to remain unchanged long-term. Even if VA is not conducting an annual reassessment (or is conducting reassessments less frequently than annually), VA would continue to conduct ongoing wellness contacts pursuant to proposed § 71.40(b)(2) (*i.e.,* monitoring as used in current § 71.40(b)(2)), as discussed in more detail in the following section. We believe it is reasonable under the authorizing statute to require more or less frequent than annual reassessments given the unique circumstances of each eligible veteran and his or her Family Caregiver(s).

In proposed paragraph (d), we would state that failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to this section will result in revocation pursuant to § 71.45, Revocation and Discharge of Family Caregivers, as such section would be revised by this rulemaking. Proposed § 71.30(d) would also be consistent with the language in proposed § 71.25(f) that would condition approval and designation of the Family Caregiver on, among other things, the eligible veteran and Family Caregiver participating in reassessments. These requirements would ensure that eligible veterans and Family Caregivers participate in reassessments so that VA is able to continue to evaluate the needs of eligible veterans and Family Caregivers.

We propose to conduct reassessments of legacy participants and legacy applicants pursuant to proposed § 71.30 within one year of the effective date of the rule to determine their continued eligibility for PCAFC under the new criteria in proposed § 71.20(a). In proposed paragraph (e)(1), we would state that if the eligible veteran meets the requirements of § 71.20(b) or (c) (*i.e.,* is a legacy participant or a legacy applicant), the eligible veteran and Family Caregiver will be reassessed by VA within the one-year period beginning on the effective date of the rule to determine whether the eligible veteran meets the requirements of § 71.20(a), and that such reassessment may include a visit to the eligible veteran's home. For example, if the rule becomes effective on April 1, 2020, then the eligible veteran and his or her Family Caregiver would be reassessed between April 1, 2020 and March 31, 2021. Additionally, proposed paragraph (e)(1) would provide that if the eligible veteran meets the requirements of § 71.20(a), these reassessments would include consideration of whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A). This reassessment would be consistent with the

requirements in proposed paragraph (a) of this section except that legacy participants and legacy applicants would be reassessed under different eligibility criteria than the criteria applied by VA at the time their Family Caregivers were approved and designated. Like with proposed paragraph (a), reassessments of legacy participants and legacy applicants would provide another opportunity to ensure appropriate care and support is available to eligible veterans and Family Caregivers, but reassessments under proposed paragraph (e)(1) would also be necessary since eligibility under proposed § 71.20(b) and (c) would only be in effect for the one-year period beginning on the effective date of the rule.

In proposed paragraph (e)(2) we would explain that a reassessment will not be completed under paragraph (e)(1) if at some point before a reassessment is completed during the one-year period, the individual no longer meets the requirements of § 71.20(b) or (c). We believe it would be reasonable to forgo completing a reassessment because the veteran or servicemember would no longer be a legacy participant or legacy applicant. This would arise in instances where the Primary Family Caregiver for the legacy participant or legacy applicant is revoked or discharged under proposed § 71.45 (*e.g.,* revocation for cause or non-compliance; or discharge due to death, institutionalization, or request of the eligible veteran or Primary Family Caregiver), or where the same or a new Primary Family Caregiver is approved and designated for the veteran or servicemember pursuant to a joint application received by VA on or after the effective date of the rule. If the veteran or servicemember is no longer considered a legacy participant or legacy applicant before a reassessment is completed, then the Primary Family Caregiver for the legacy participant or legacy applicant would not receive any retroactive stipend increase that they may have been eligible to receive under proposed § 71.40(c)(4)(ii)(C)(2)(*i*), discussed further below, had they not been revoked or discharged before the reassessment was completed. In some cases, reassessment would not be feasible because of the death or institutionalization of the veteran or servicemember or his or her caregiver. In other cases, revocation or discharge would be the result of actions taken or not taken by the veteran or servicemember or his or her caregiver (*e.g.,* discharge at the request of the eligible veteran or Family Caregiver, or revocation for cause or noncompliance).

§ 71.40 Caregiver Benefits

Current § 71.40 describes the benefits available to General Caregivers, Secondary Family Caregivers, and Primary Family Caregivers. This section implements 38 U.S.C. 1720G(a)(3) and (b)(3) which establish the benefits available to Family Caregivers and General Caregivers, respectively. We propose to revise current paragraph (b)(2), restructure and revise current paragraphs (c)(4) and (d), and add new paragraphs (c)(5) and (6). These proposed changes are discussed in detail further below.

We would revise current paragraph (b)(2) which states that the primary care team will maintain the eligible veteran's treatment plan and collaborate with clinical staff making home visits to monitor the eligible veteran's well-being, adequacy of care and supervision being provided. This monitoring is required to occur at least every 90 days, unless otherwise clinically indicated. See § 71.40(b)(2). While monitoring is generally intended to be conducted every 90 days, we have found some Family Caregivers and eligible veterans find such requirements, including home and telephone visits, to be burdensome. We also acknowledge that we have experienced difficulty conducting monitoring due to limited resources. See VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, pp. 11–13.

As part of the proposed revisions to paragraph (b)(2), we propose to change the 90-day general timeframe to a minimum of once every 180 days. We believe this frequency would allow VA more than adequate opportunity to review the eligible veteran's and Family Caregiver's well-being and the adequacy of care and supervision being provided. We would conduct this monitoring (which we propose to refer to as ''wellness contacts'' as explained in the subsequent paragraph) via home visits, phone calls, or through other means; however, we would require at least one wellness contact to occur in the eligible veteran's home on an annual basis. We note that reducing the required frequency of these wellness contacts and conducting them through other means in addition to home visits, would allow VA to conduct these contacts on a semi-annual basis using means individualized to the eligible veterans and Family Caregivers while ensuring that the needs of eligible veterans and Family Caregivers are met. This would also be less burdensome on eligible veterans and their Family Caregivers and would allow VA to effectively manage limited resources. We note that not all eligible veterans or Family Caregivers participating in PCAFC benefit from the current frequency of contacts with VA. For example, an eligible veteran whose condition is generally unchanged, who is receiving care from a Family Caregiver well-versed in the provision of care, and who has established a routine that supports the wellness of himself or herself and the Family Caregiver, may experience significant disruption in the daily routine when having to make scheduling changes to accommodate a home visit or other monitoring contact by VA. Thus, we believe it would be appropriate to conduct these wellness contacts via home visits at least once a year and allow VA to use other means for the other wellness contacts based on the individual needs and circumstances of the eligible veteran and Family Caregiver. We note that the proposed changes would establish a minimum baseline for the frequency of wellness contacts (*i.e.,* every 180 days) and that these contacts (including home visits) may occur more frequently, if needed, to address the individual needs of the eligible veteran and his or her Family Caregiver.

As mentioned above, we propose to change the terminology from ''monitoring'' to ''wellness contacts'' as we believe this is a more accurate description of the purpose of these visits. We also note that in addition to reviewing the eligible veteran's well-being and adequacy of care and supervision being provided as we currently do during the monitoring visits and which is explained in current paragraph (b)(2), these wellness contacts would also include a review of the well-being of the Family Caregiver. The review of the Family Caregiver's well-being is equally as important as the review of the eligible veteran's well-being and adequacy of care. Wellness contacts ensure the opportunity to provide any additional support, services, or referrals for services needed by the eligible veteran or Family Caregiver. We would describe the purposes of these wellness contacts in proposed paragraph (b)(2), but change ''adequacy of care and supervision being provided'' to ''adequacy of personal care services being provided'' for consistency with the terminology used elsewhere in part 71 describing the role of Family Caregivers. We would also state that failure of the eligible veteran and Family Caregiver to participate in any

wellness contacts pursuant to proposed paragraph (b)(2) will result in revocation, pursuant to § 71.45, Revocation and Discharge of Family Caregivers. This requirement would also be consistent with the language in proposed § 71.25(f) that would condition approval and designation of the Family Caregiver on, among other things, the eligible veteran and Family Caregiver participating in wellness contacts. This requirement would ensure that eligible veterans and Family Caregivers participate in any required wellness contacts so that VA is able to continue to review the eligible veteran's and Family Caregiver's well-being, as well as the adequacy of personal care services being provided.

The VA MISSION Act of 2018 requires VA to periodically evaluate the needs of the eligible veteran and the skills of the Family Caregiver to determine if additional instruction, preparation, training, and technical support is necessary. See 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). VA believes that this ''wellness contact'' as described in proposed paragraph (b)(2) and the proposed reassessments under proposed § 71.30, would meet this periodic evaluation requirement in section 161(a)(5) of the VA MISSION Act of 2018. During these wellness contacts and reassessments, VA would determine whether any additional instruction, preparation, training, and technical support is needed in order for the eligible veteran's needs to be met by the Family Caregiver.

The remaining language in current paragraph (b)(2), that the primary care team will maintain the eligible veteran's treatment plan and collaborate with clinical staff making home visits, would be removed from proposed paragraph (b)(2), as discussed above regarding our proposed definition of ''primary care team'' in § 71.15. We note that the primary care team would still be involved in monitoring the well-being of eligible veterans, including maintaining the treatment plan, and home visits and other wellness contacts, based on the needs of the eligible veterans (*e.g.,* the primary care team will be alerted to the results of visits, order consults, schedule a clinic appointment). The language would also be revised to reflect the change in terminology from ''home visits'' to ''wellness contacts.''

Current § 71.40(c) provides that VA will provide to Primary Family Caregivers all the benefits listed in paragraphs (c)(1) through (4) of this section. As explained later in this rulemaking we propose to add two new benefits (*i.e.,* financial planning services and legal services) for Primary Family Caregivers. Thus, in proposed § 71.40(c) we would replace the phrase ''(c)(1) through (4)'' with ''(c)(1) through (6).''

Current paragraph (c)(4) provides Primary Family Caregivers will receive a monthly stipend for each prior month's participation as a Primary Family Caregiver. It also explains how that will be determined. We propose to revise and restructure the stipend payment methodology, as further explained below. Therefore, in proposed paragraph (c)(4), we would remove the second sentence, which introduces the current stipend tier determination, and keep only the first sentence.

Additionally, we would replace the phrase ''each prior month's participation'' in the first sentence of paragraph (c)(4) with ''each month's participation.'' VA's current practice is to issue monthly stipend payments at the end of the month in which services are provided. To avoid confusion and allow flexibility depending on administrative needs and requirements, we propose to remove ''prior'' and simply state that Primary Family Caregivers will receive a monthly stipend payment for each month's participation as a Primary Family Caregiver. As further explained below, we would revise, redesignate, or remove the remaining subparagraphs in paragraph (c)(4). We would revise current paragraph (c)(4)(i) to set forth a new methodology for determining the amount of monthly stipend payments and paragraph (c)(4)(ii) to set forth rules for stipend payment adjustments. Current paragraph (c)(4)(vii) would be redesignated as (and replace current) paragraph (c)(4)(iii), current paragraph (c)(4)(iv) would be revised to establish periodic assessments of and, if applicable, adjustments to the monthly stipend rate, and paragraphs (c)(4)(v) through (vii) would be deleted.

The monthly stipend payment is meant to be an acknowledgement of the sacrifices that Primary Family Caregivers make to care for eligible veterans. 76 FR 26155 (May 5, 2011). These payments are made pursuant to 38 U.S.C. 1720G(a)(3)(A)(ii)(V), and 38 U.S.C. 1720G(a)(3)(C)(i) requires VA to base the stipend amount on ''the amount and degree of personal care services provided.'' The stipend amount is, to the extent practicable, not to be ''less than the monthly amount a commercial home health care entity would pay an individual in the geographic area of the eligible veteran;'' and in the instance that the geographic area of the eligible veteran does not have a commercial home health entity, VA is required to take into ''consideration the costs of commercial providers of personal care services in providing personal care services in geographic areas other than the geographic area of the eligible veteran with similar costs of living.'' 38 U.S.C. 1720G(a)(3)(C)(ii), (iv), as amended by Public Law 115–182, section 161(a)(4). Additionally, in making this determination ''with respect to an eligible veteran whose need for personal care services is based in whole or in part on a need for supervision or protection . . . or regular instruction or supervision,'' VA is required to take into account, ''[t]he extent to which the veteran can function safely and independently in the absence of such supervision, protection, or instruction,'' and ''[t]he amount of time required for the family caregiver to provide such supervision, protection, or instruction to the veteran.'' See 38 U.S.C. 1720G(a)(3)(C)(iii)(II) and (III), as amended by section 161(a)(4)(B) of the VA MISSION Act of 2018.

Currently, the calculation of the stipend amount is based upon the amount and degree of assistance an eligible veteran needs to perform one or more activities of daily living (ADL), or the amount and degree to which an eligible veteran is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury. See § 71.40(c)(4)(i) and (ii). VA clinically rates and scores the eligible veteran's level of dependency based on the degree to which the eligible veteran is unable to perform one or more ADLs, or the degree to which the eligible veteran is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury. See § 71.40(c)(4)(i) through (iii). The ratings are added together, and if the sum is 21 or higher, the Primary Family Caregiver receives a stipend that is equivalent to 40 hours per week of caregiver assistance. 38 CFR 71.40(c)(4)(iv)(A). If the sum is 13 to 20, the Primary Family Caregiver receives a stipend that is equivalent to 25 hours per week of caregiver assistance. Id. at § 71.40(c)(4)(iv)(B). If the sum is one to 12, the Primary Family Caregiver receives a stipend that is equivalent to 10 hours per week of caregiver assistance. Id. at § 71.40(c)(4)(iv)(C). Current § 71.40(c)(4) explains that the monthly stipend payment that Primary Family Caregivers receive under the program will be calculated by multiplying the combined rate (*i.e.,* the Bureau of Labor Statistics (BLS) hourly wage rate for home health aides at the 75th percentile in the eligible veteran's

geographic area of residence, multiplied by the Consumer Price Index for All Urban Consumers (CPI–U) as defined in current § 71.15) by the number of weekly hours of caregiver assistance determined to be required under § 71.40(c)(4)(iv), which is then multiplied by 4.35. Id. at § 71.40(c)(4)(v).

In this rulemaking, we propose several changes to this methodology and calculation. We would revise current paragraph (c)(4) to set forth a new stipend payment methodology based on the monthly stipend rate (as that term would be defined in § 71.15). We would also define two levels to distinguish the amount and degree of personal care services provided to an eligible veteran based on whether the eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15). Additionally, we would base stipend payments on a percentage of the monthly stipend rate (as that term would be defined in § 71.15) instead of presuming that the eligible veteran needs a certain number of weekly hours of caregiver assistance. Paragraph (c)(4) would also include provisions to ensure that the Primary Family Caregivers of legacy participants and legacy applicants are not disadvantaged by our proposed changes for the one-year period beginning on the effective date of the rule. Eventually, as described in detail below, all Primary Family Caregivers in the program would have their stipend payments calculated using the new proposed payment methodology in paragraph (c)(4)(i)(A).

First, instead of using the combined rate to determine the monthly stipend payment, we now propose to use the term monthly stipend rate as that term would be defined in proposed § 71.15. We propose to use this rate instead of the combined rate because of the combined rate's reliance on BLS rates, which have experienced drastic fluctuations across the country in both increases and decreases. As explained in VA's final rule implementing PCAFC, VA only adjusts the stipend rate for a geographic area each year if it results in an hourly wage increase, and if changing the stipend rate for a geographic area would result in a decrease in the hourly wage rate, the stipend rate remains at the rate applied for the previous year. See 80 FR 1370 (January 9, 2015). We have found that since implementing the combined rate to determine stipend amounts, the stipend rates have not always been reflective of actual wage rates, and the hourly rate assigned to many areas is well above the average hourly rate of a home health aide. These inflated rates have been identified in locations such as, College Station, TX; Albany, GA; Vineland-Bridgeton, NJ; Clarksville, TN; Santa Rose, CA; and Central Utah non-metropolitan area.

We have also found that there have been increases in the combined rate because the geographic areas for this rate continue to be redefined. Beginning with the May 2015 estimates, the BLS Occupational Employment Statistics (OES) program has implemented redefined metropolitan area definitions, as designated by the Office of Management and Budget (OMB) and based on the results of the 2010 census. As of May 2015, OES data is available for 394 metropolitan areas, 38 metropolitan divisions that make up 11 of the metropolitan areas, and 167 OES-defined nonmetropolitan areas. Prior to implementing the new area definitions, OES data was available for 380 metropolitan areas, 34 metropolitan divisions, and 172 OES-defined nonmetropolitan areas. For purposes of the combined rate, these changes resulted in an increase for certain areas that otherwise would have had lower rates. This is because a BLS geographic area can only have a single rate; thus, when a geographic area with a higher stipend rate is redefined to encompass another geographic area that had a lower stipend rate, the higher stipend rate applies to the entire new geographic area. If VA were to continue to use the combined rate in its calculations of stipend amounts, rates would continue to be inflated.

As noted above, the term ''monthly stipend rate'' would be defined in proposed § 71.15 as the OPM GS Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12. OPM's GS scale is an appropriate reference point for establishing the PCAFC stipend amounts because GS wage growth has historically tracked closely with median wage growth for home health aides, and it accounts for variations in cost-of-living across the U.S. Additionally, relying on a single GS grade and step across the U.S. would ensure more consistent, transparent, and predictable stipend payments for Primary Family Caregivers. Moreover, the monthly stipend rate would be consistent with 38 U.S.C. 1720G(a)(3)(C)(ii) and (iv), as it would, to the extent practicable, not be less than the monthly amount a commercial home health care entity would pay an individual to provide equivalent personal care services in the eligible veteran's geographic area or geographic area with similar costs of living.

To determine whether GS wage rates track the private sector wages for home health aides, we analyzed data from the BLS OES and GS pay tables from OPM. Relying on data from 2012 to 2018, we tracked the BLS median wages across the U.S. for home health aides and wage growth in the GS scale over the same time period. Our findings indicate that BLS wage growth for home health aides and GS wage growth have tracked closely in the past both at a national level and for GS adjusted localities. This leads VA to presume that the GS wage rates, regardless of which grade and step, would grow on a similar trajectory to the median private wages for home health aides.

Additionally, relying on the GS scale in VA's stipend payment methodology would address some of the challenges VA has experienced with the combined rate. First, using the GS rate would allow VA to easily account for variations in cost-of-living depending on the geographic area of the eligible veteran. Utilizing the GS scale would allow for automation of stipend payments and reduce the potential for errors associated with the manual calculations required with the combined rate. Unlike the hundreds of geographic areas associated with the combined rate, for 2020, there are fifty-three locality pay tables for designated geographic areas, which include 50 metropolitan locality pay areas, the rest of the United States, Alaska, and Hawaii. VA would apply the GS–4, step 1 rate applicable to the eligible veteran's geographic area of residence using OPM's locality area designations. Second, using the GS scale would cause less fluctuation in monthly personal caregiver stipends than the combined rate because wages for a particular grade and step do not typically decrease. It would also ensure there is transparency with eligible veterans and Family Caregivers, as the rates are published and updated on an annual basis by OPM. OPM's GS rates are published annually and can be found at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/.*

In determining the appropriate GS grade and step for stipend payments, we assessed the 2018 BLS wage rates for commercial home health aides, which was the most current information available from BLS. To ensure an accurate comparison with the 2020 GS pay scale, we inflated the 2018 BLS home health aide wage rates to 2020 dollars. We found that for 2020, the BLS national median wage for home health aides is equivalent to the base GS rate at grade 3, step 3 (without a locality pay adjustment). Our findings also reflect

that the 2020 GS rate at grade 3, step 3 is representative of the BLS median wage for home health aides in nearly all geographic areas. While this is not true for every locality, this would mean that in most U.S. geographic areas for 2020, stipend payments based on the GS rate at grade 3, step 3 would be equal to or higher than the BLS median wage for home health aides in the same geographic areas.

For those geographic areas where the 2020 GS rate at grade 3, step 3 was less than the inflation-adjusted BLS median wage for home health aides, we considered applying a unique GS grade and step based on the median home health aide wage rate in each of those geographic areas. However, we determined that would not be appropriate or practicable. As noted above, VA has found that historically the BLS rates for home health aides have experienced drastic fluctuations across the country in both increases and decreases. Additionally, there has been variation in the level of growth from year to year across the U.S. and in each GS locality pay area, with some year's wages growing faster or slower than in the previous years. Therefore, point-in-time comparisons between the GS rates and the median home health aide wages in the future may reflect the same or other geographic areas where the median wage for home health aides is higher or lower than the applicable GS rate. It would not be practicable to adjust the GS grade and step for a particular geographic area every time there is new data reflecting a higher or lower median wage rate relative to the applicable GS rate. Moreover, wage data can fluctuate up or down in one year, but not indicate a continuing trend.

Because VA cannot predict over time which localities will have higher home health aide wage rates than the GS rate at grade 3, step 3, and which GS grade and step will be most equivalent to the median rate in those areas, we propose to use the slightly higher GS rate at grade 4, step 1 for all localities. Although there would still be certain areas where the 2020 GS rate at grade 4, step 1 is lower than the inflation-adjusted BLS median wage for home health aides, we reiterate that our findings are based only on the most current available data and could change when updated BLS data becomes available and based on changes to GS locality pay adjustments from year to year. Therefore, as discussed below regarding proposed § 71.40(c)(4)(iv), VA would periodically assess the monthly stipend rate, and if appropriate, VA would make adjustments through future rulemaking.

For these reasons, we believe the GS rate for grade 4, step 1 is, to the extent practicable, not less than the annual salary paid to home health aides in the commercial sector, particularly after considering that the monthly personal caregiver stipend is a nontaxable benefit. To illustrate, the 2020 base GS rate for grade 4, step 1 (without a locality pay adjustment) is $26,915. The 2018 BLS national median annual wage for a home health aide was $24,200, which after accounting for inflation, equates to $25,277 as of December 2019.

Additionally, the GS rate for grade 4 is the mid-range in which VA hires and staffs nursing assistant positions (GS–0621). Nursing assistants perform similar work to that of a home health aide including nonprofessional nursing care work, providing support and observation, and monitoring behavioral changes. See OPM's Position Classification Standard for Nursing Assistant Series, GS–0621 at *https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/standards/0600/gs0621.pdf.*

Second, we propose to establish two levels for the stipend payments versus the three tiers that are set forth in current § 71.40(c)(4)(iv)(A) through (C). VA has found that utilization of the three tiers set forth in the current regulations has resulted in inconsistent assignment of ''amount and degree of personal care services provided.'' Although VA utilizes clinical ratings to assign stipend amounts, there can often be little variance in the personal care services provided by Primary Family Caregivers between assigned tier levels (*e.g.,* between tier 1 and tier 2, and between tier 2 and tier 3). The lack of clear thresholds that are easily understood and consistently applied has contributed to an emphasis on reassessment to ensure appropriate stipend tier assignment. To better focus on supporting the health and wellness of eligible veterans and their Family Caregivers, VA believes it is necessary to base stipend payments on only two levels of need that establish a clear delineation between the amount and degree of personal care services provided to the eligible veteran.

The proposed two levels would be set forth in proposed paragraphs (c)(4)(i)(A)(*1*) and (*2*), and as discussed further below would, subject to certain exceptions, apply to Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(a). The two levels would align with other proposed changes in this rulemaking, which are aimed at targeting PCAFC to those veterans and servicemembers with moderate and severe needs, with the higher level paid to Primary Family Caregivers of eligible veterans with severe needs. Whether the Primary Family Caregiver qualifies for a stipend at the higher level would depend on whether the eligible veteran is determined to be ''unable to self-sustain in the community'' (as that term would be defined in § 71.15). The lower stipend level would apply to all other Primary Family Caregivers of eligible veterans such that the eligibility criteria under proposed § 71.20(a) would establish eligibility at the lower level.

To be determined to be ''unable to self-sustain in the community,'' the eligible veteran must either (1) require personal care services each time he or she completes three or more of the seven activities of daily living (ADL) listed in the definition of an inability to perform an activity of daily living, and be fully dependent on a caregiver to complete such ADLs; or (2) have a need for supervision, protection, or instruction on a continuous basis. The Primary Family Caregiver of an eligible veteran meeting both of these criteria would also qualify for the higher-level stipend, but we would only require that one of the two criteria be met.

Paragraph (1) of this definition would establish the higher-level criteria for an eligible veteran with physical impairment, and address both the ''amount'' and ''degree'' of personal care services provided by the Family Caregiver. Unlike the eligibility criterion in proposed § 71.20(a)(3)(i), which refers to an eligible veteran requiring personal care services each time he or she completes one or more ADLs (based on the definition of ''inability to perform an activity of daily living''), the higher-level criteria would state that the eligible veteran requires personal care services each time he or she completes three or more ADLs. An eligible veteran needing assistance with three or more ADLs would need personal care services on a more frequent basis, and the Family Caregiver would thus provide a greater amount of personal care services to the eligible veteran. Additionally, to qualify for the higher-level stipend on this basis, the eligible veteran must be fully dependent on the caregiver in three of the specified ADLs. This would mean that the eligible veteran is completely reliant on the caregiver to complete the three specified ADLs (*i.e.,* those ADLs for which the eligible veteran requires personal care services each time he or she completes). As distinguished from a Family Caregiver of an eligible veteran who requires a moderate amount of assistance to complete an ADL, an eligible veteran at

this higher level would require more intensive care, and the Family Caregiver would thus provide a greater degree of personal care services to the eligible veteran. For example, an eligible veteran who has no use of his or her upper and lower extremities may be determined to be unable to self-sustain in the community based on his or her total dependence on a caregiver in dressing and undressing, bathing, and grooming, such that the eligible veteran can complete no steps of those tasks on his or her own. In contrast another eligible veteran may need help with multiple ADLs but be fully dependent on a caregiver only in regard to one. For example, an eligible veteran may be completely reliant on his or her Family Caregiver in regard to his or her mobility, such that he or she is fully dependent on the Family Caregiver every time the eligible veteran walks, transfers, stands, and sits. Because of his or her physical impairment, the eligible veteran may also require a moderate amount of personal care services from his or her Family Caregiver in bathing and toileting, (*e.g.,* needs assistance with washing lower extremities but is independent with upper body washing, and needs assistance with perineal care after bowel movements). Because the eligible veteran can otherwise complete bathing and toileting without assistance (*e.g.,* dress and undress, operate the faucet, and wash and clean himself or herself), the eligible veteran would only require a moderate amount of personal care services for bathing and toileting, such that he or she would be considered fully dependent in only one ADL, and thus not considered unable to self-sustain in the community.

Paragraph (2) of the ''unable to self-sustain in the community'' definition would establish the higher-level criteria for an eligible veteran with a significant cognitive, neurological, or mental health impairment. We would address the ''amount'' and ''degree'' of personal care services provided only by reference to the frequency with which such services are provided by the Family Caregiver. Given the varying types of functional impairment that can give rise to a need for supervision, protection, or instruction, we would not enumerate the specific nature or intensity of personal care services provided. Instead, to qualify for the higher-level stipend on this basis, the eligible veteran must have a need for supervision, protection, or instruction on a ''continuous basis.'' As distinguished from a Family Caregiver of an eligible veteran who requires intermittent supervision, protection, or instruction to maintain their personal safety on a daily basis (who may qualify under proposed § 71.20(a)(3)(ii) based on the definition of ''need for supervision, protection, or instruction''), an eligible veteran at this higher level would require more frequent and possibly more intensive care on a continuous basis, and the Family Caregiver would thus provide a greater amount and degree of personal care services to the eligible veteran. In determining whether an eligible veteran is in need of supervision, protection or instruction on a continuous basis, VA would consider the extent to which the eligible veteran can function safely and independently in the absence of such personal care services, and the amount of time required for the Family Caregiver to provide such services to the eligible veteran consistent with 38 U.S.C. 1720G(a)(3)(C)(iii)(II) and (III), as amended by section 161(a)(4)(B) of the VA MISSION Act of 2018. For example, an individual with dementia who wanders, is unable to re-orient, or engages in dangerous behaviors, may be determined to be unable to function safely and independently in the absence of continuous supervision, protection, or instruction; thus, he or she may be determined to be unable to self-sustain in the community. In contrast, an individual with dementia who only experiences changes in memory or behavior at certain times of the day, such as individuals who experience sundowning or sleep disturbances, may not be determined to have a need for supervision, protection, or instruction on a continuous basis.

We believe these requirements would provide a clear distinction between eligible veterans with moderate and severe needs.

Third, instead of basing the stipend payment on a presumed number of hours of caregiver assistance required by the eligible veteran, we propose to apply a specified percentage of the monthly stipend rate (as that term would be defined in § 71.15). VA has found that calculating stipends based on a set number of hours per week of caregiver assistance as described in current § 71.40(c)(4)(iv)(A) through (C) creates significant confusion and discord among Family Caregivers. These categories of hours were never intended to be equal to the number of hours of caregiving being provided but rather were based on a presumed level of need of the eligible veteran. See 76 FR 26155 (May 5, 2011). Additionally, the stipend is meant to be an acknowledgement of the sacrifices that Primary Family Caregivers make to care for eligible veterans. Id. It is not and never has been VA's intent that the stipend amount directly correlate with a specific number of caregiving hours. See 80 FR 1369 (January 9, 2015). VA recognizes that the reference to a number of hours in the current regulations has caused confusion and is therefore seeking to change the stipend calculation to instead use a percentage of the monthly stipend rate.

The percentages proposed in this rulemaking for purposes of paragraphs (c)(4)(i)(A) and (B), discussed further below, have been developed based on the hours set forth in current paragraphs (c)(4)(iv)(A) through (C) relative to a 40-hour total (*i.e.,* 40 of 40 hours, 25 of 40 hours, and 10 of 40 hours), such that proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*) reference 100 percent, 62.5 percent and 25 percent of the monthly stipend rate, respectively. Proposed paragraphs (c)(4)(i)(A)(*1*) and (*2*) reference 62.5 percent and 100 percent of the monthly stipend rate, respectively, for consistency with the higher percentages in proposed paragraph (c)(4)(i)(B). Based on program experience, we believe these proposed percentages are consistent with the time and level of personal care services needed by an eligible veteran from a Family Caregiver. Also, as previously discussed, we are proposing to shift the focus of the program to those with moderate and severe needs and we believe 62.5 and 100 percent correspond to these thresholds. However, as we implement the proposed new stipend payment methodology, and in particular, the two-level stipend methodology in proposed paragraph (c)(4)(i)(A), we would evaluate whether the percentages should be adjusted to better and more accurately reflect the amount and degree of personal care services provided by Primary Family Caregivers of eligible veterans.

While the changes we are proposing to the PCAFC stipend methodology and levels would result in an increase in stipend payments for many Primary Family Caregivers of legacy participants, for others, these changes may result in a reduction in the stipend amount that they were eligible to receive before the effective date of the rule. To help minimize the impact of such changes, we would make accommodations for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) and (c) (*i.e.,* legacy participants and legacy applicants) to ensure their stipend is not reduced for one year beginning on the effective date of the rule, except in cases where the reduction is the result of the eligible veteran relocating to a new address. To accomplish this, we would restructure paragraph (c)(4)(i), which we would title

''Stipend amount,'' to accommodate and describe the stipend amount for three cohorts of Primary Family Caregivers based on whether the eligible veteran meets the requirements of proposed § 71.20(a); § 71.20(b) or (c); or § 71.20(a) and (b) or (c). These three cohorts would be described in paragraphs (c)(4)(i)(A) through (C), and paragraph (c)(4)(i)(D) would provide an additional special rule for Primary Family Caregivers of legacy participants subject to a stipend decrease because of our proposed changes.

Paragraph (c)(4)(i)(A) would set forth a stipend amount for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(a), that is the new PCAFC eligibility criteria for veterans and servicemembers proposed above. Unless eligible for a higher amount under another subparagraph of paragraph (c)(4)(i), such Primary Family Caregivers would receive a stipend equivalent to 62.5 percent or 100 percent of the monthly stipend rate (*i.e.,* the OPM GS Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12). This would represent the two stipend levels discussed above. The higher stipend level (*i.e.,* 100 percent of the monthly stipend rate) would be applied if the eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15), and the lower stipend level (*i.e.,* 62.5 percent of the monthly stipend rate) would apply for all other Primary Family Caregivers of eligible veterans. The lower level would be described in paragraph (c)(4)(i)(A)(*1*), and the higher level would be described in paragraph (c)(4)(i)(A)(*2*). Veterans and servicemembers who apply for PCAFC on or after the effective date of the rule who are determined to be eligible for PCAFC under proposed § 71.20(a) would be assigned a monthly stipend amount pursuant to paragraphs (c)(4)(i)(A)(*1*) or (*2*).

Paragraph (c)(4)(i)(B) would set forth a stipend amount for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) or (c) (*i.e.,* legacy participants and legacy applicants). The payment rate in paragraph (c)(4)(i)(B) would apply for one year beginning on the effective date of the rule and only if the Primary Family Caregiver is not eligible for a higher amount under another subparagraph of paragraph (c)(4)(i). In proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*) we would maintain the current dependency determination in current paragraphs (c)(4)(i) through (iii) and the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) for the Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) or (c) by referencing the clinical rating in 38 CFR 71.40(c)(4)(i) through (iii) (2019) and the definitions applicable to such section under 38 CFR 71.15 (2019) (*i.e.,* the clinical rating and applicable definitions that were in effect on the day before the effective date of this rule); however, instead of referencing the number of hours per week of caregiver assistance in current paragraphs (c)(4)(iv)(A) through (C) used to calculate the stipend payment, we would apply a percentage of the monthly stipend rate (as that term would be defined in proposed § 71.15). Stipends calculated under proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*) would equate to 100 percent, 62.5 percent, and 25 percent of the monthly stipend rate, respectively, depending on the clinical rating total set forth in current paragraphs (c)(4)(iv)(A) through (C). Under proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*), a clinical rating of 21 or higher would correspond with 100 percent of the monthly stipend rate; a clinical rating of 13 to 20 would correspond with 62.5 percent of the monthly stipend rate; and a clinical rating of 1 to 12 would correspond with 25 percent of the monthly stipend rate.

Recognizing that legacy participants and legacy applicants may also meet the requirements of proposed § 71.20(a), proposed paragraph (c)(4)(i)(C), would set forth the stipend amount for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(a) and § 71.20(b) or (c). Like with proposed paragraph (c)(4)(i)(B), proposed paragraph (c)(4)(i)(C) would apply for one year beginning on the effective date of the rule. Under proposed paragraph (c)(4)(i)(C), if the eligible veteran meets the requirements of proposed § 71.20(a) and § 71.20(b) or (c), the Primary Family Caregiver's monthly stipend would be the amount the Primary Family Caregiver is eligible to receive under proposed paragraph (c)(4)(i)(A) or (B) of this section, whichever is higher. This paragraph would also reference proposed § 71.40(c)(4)(ii)(C)(*2*)(*i*), which as discussed further below, would describe the adjustment of the monthly stipend payments in cases where the amount under proposed paragraph (c)(4)(i)(A) is higher.

In proposed paragraph (c)(4)(i)(D), which we would title ''Special rule for Primary Family Caregivers subject to decrease because of monthly stipend rate,'' we would establish a special rule for Primary Family Caregivers of legacy participants subject to decrease as a result of VA's transition from the combined rate to the new monthly stipend rate. This special rule would state that, notwithstanding the other subparagraphs of paragraph (c)(4)(i), for one year beginning on the effective date of the rule, if the eligible veteran meets the requirements of proposed § 71.20(b) (*i.e.,* legacy participants), the Primary Family Caregiver's monthly stipend would be not less than the amount the Primary Family Caregiver was eligible to receive as of the day before the effective date of the rule (based on the eligible veteran's address on record with PCAFC on such date) so long as the eligible veteran resides at the same address on record with PCAFC as of the day before the effective date of the rule. This paragraph would also reference proposed § 71.40(c)(4)(ii)(B), which as discussed further below, would describe the adjustment of the monthly stipend payments in cases where the eligible veteran relocates to a new address. VA is proposing this special rule to provide legacy participants and their Primary Family Caregivers time to adjust to the proposed changes in PCAFC eligibility and the stipend payment methodology. If a legacy participant chooses to relocate, however, VA believes it is reasonable to no longer apply this special rule. This would include all instances in which a legacy participant relocates, no matter the distance between the old and new addresses and regardless of the potential increase or decrease in the combined rate that would result based on the relocation, even if only a few cents or a few dollars. This is because we do not want to set an arbitrary threshold for when a relocation would result in the ability to maintain the combined rate or transition to the monthly stipend rate. In some metropolitan areas, an eligible veteran may experience a decrease or increase in the combined rate by simply relocating across the street because the new address is in a different geographic area. To maintain consistency for all legacy participants who are subject to the special rule, any relocation would result in a transition to the monthly stipend rate under proposed paragraph (c)(4)(i)(A), (B), or (C). The special rule would be applied based on circumstances on the day before the effective date of the rule and a change to those circumstances would nullify the basis upon which the special rule would be applied. We note that proposed paragraph (c)(4)(i)(D) would apply only to Primary Family Caregivers of legacy participants, not legacy applicants. We believe this is reasonable

as the Primary Family Caregivers of legacy applicants would not be approved until after the effective date of the rule and would not have come to rely on a monthly stipend based on the combined rate.

In the subsequent discussion, we explain how these rules would be applied for purposes of determining the applicable stipend amount for Primary Family Caregivers of legacy participants and legacy applicants. We emphasize that proposed paragraphs (c)(4)(i)(B) through (D)—applicable to the Primary Family Caregivers of legacy participants and legacy applicants—would apply only for the one-year period beginning on the effective date of the rule, after which time all PCAFC stipends would be determined in accordance with proposed paragraph (c)(4)(i)(A). As explained above, we are providing a one-year transition period because it would allow individuals participating in PCAFC as of the day before the effective date of the rule to remain in the program while VA completes a reassessment to determine their eligibility under revised § 71.20(a). We also emphasize, as discussed above, that legacy participants and legacy applicants could be revoked or discharged pursuant to proposed § 71.45 (for reasons other than not meeting the proposed § 71.20(a) eligibility criteria), as discussed elsewhere in this rulemaking, in the one-year period beginning on the effective date of the rule, in which case stipend payments and other Family Caregiver benefits would terminate as set forth in proposed § 71.45.

Upon the effective date of the rule, VA would calculate the monthly stipend rate under proposed paragraph (c)(4)(i)(B) for all legacy participants based on their tier as assigned under current paragraphs (c)(4)(iv)(A) through (C) before the effective date of the rule. It is not VA's intent to reevaluate the clinical ratings of legacy participants based on the dependency determination in current paragraphs (c)(4)(i) through (iii), but rather continue to apply the rating and tier level that applied to each legacy participant as of the day before the effective date of the rule. Thus, VA would apply proposed paragraph (c)(4)(i)(B) to mean that the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) assigned for the legacy participant on the day before the effective date of the rule would continue to be applied for purposes of determining his or her Primary Family Caregiver's stipend amount under proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*). As calculated, the stipend amount for Primary Family Caregivers of legacy participants would correspond to a percentage of the monthly stipend rate (100 percent, 62.5 percent, or 25 percent).

VA would then compare the monthly stipend amount calculated under proposed paragraph (c)(4)(i)(B) to the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule (based on the eligible veteran's address on record with PCAFC on such date). If the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule is higher, then pursuant to proposed paragraph (c)(4)(i)(D), the Primary Family Caregiver would continue to receive that amount so long as the eligible veteran resides at the same address on record with PCAFC as of the day before the effective date of the rule. If the monthly stipend payment under proposed paragraph (c)(4)(i)(B) is not less than the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule, the Primary Family Caregiver would be transitioned to a monthly stipend payment under proposed paragraph (c)(4)(i)(B) effective as of the date of the rule.

For example, if on the day before the effective date of the rule a Primary Family Caregiver is eligible to receive a monthly stipend for a legacy participant who has a clinical rating of 21 or higher under current § 71.40(c)(4)(iv)(A) and lives in locality A, VA would compare that amount to the monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*1*) for locality A (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the locality pay area of locality A). If the monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*1*) is lower, then the Primary Family Caregiver would continue to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule, as long as the legacy participant does not relocate to a new address. If the legacy participant relocates to a different address during the one-year period beginning on the effective date of the rule, the proposed special rule would no longer apply, and the Primary Family Caregiver would transition to a monthly stipend payment determined in accordance with proposed paragraph (c)(4)(i)(A) or (B), as discussed further below.

For legacy applicants, VA would conduct the dependency determination in current paragraphs (c)(4)(i) through (iii) and calculate the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) at the time of evaluating the joint application. However, the clinical ratings would correspond to a percent of the monthly stipend rate as set forth in proposed paragraph (c)(4)(i)(B) and a stipend amount would be assigned accordingly. After the stipend amount is calculated for legacy applicants during VA's evaluation of the joint application, it is not VA's intent to subsequently recalculate the clinical ratings of legacy participants based on the dependency determination in current paragraphs (c)(4)(i) through (iii) in the one-year period following the effective date of the rule. This means that the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) assigned for a legacy applicant during VA's evaluation of the joint application would continue to apply for purposes of determining his or her Primary Family Caregiver's stipend amount under new paragraphs (c)(4)(i)(B)(*1*) through (*3*) for the one-year period following the effective date of the rule.

Accordingly, upon the effective date of the rule, legacy participants would be assigned a stipend amount under proposed paragraph (c)(4)(i)(B) or (D); and on the effective date of the rule or shortly thereafter, legacy applicants would be assigned a stipend amount under proposed paragraph (c)(4)(i)(B). However, we recognize that legacy participants and legacy applicants may also qualify under the proposed eligibility criteria in proposed § 71.20(a), which would trigger a new stipend payment determination under proposed paragraph (c)(4)(i)(A). The two-level stipend payment methodology in proposed paragraph (c)(4)(i)(A) would be based on whether the eligible veteran is determined to be unable to self-sustain in the community (as such term would be defined in § 71.15) whereas the stipend amounts set forth in proposed paragraphs (c)(4)(i)(B) and (D) would be based on the three-tier clinical ratings in current paragraphs (c)(4)(i) through (iv). Therefore, the new two-level assignment may not directly align with three-tier assignment, and for legacy participants and legacy applicants meeting the new criteria in proposed § 71.20(a), the new two-level assignment may result in a higher or lower stipend payment. For example, a legacy participant whose assigned stipend amount is 62.5 percent of the monthly stipend rate under proposed paragraph (c)(4)(i)(B)(*2*) (because the legacy participant's clinical rating presumes he or she requires 25 hours of caregiver assistance per week), may qualify for the higher 100 percent of the monthly stipend rate in proposed paragraph (c)(4)(i)(A)(*2*) (because he or she is determined to be unable to self-

sustain in the community). Alternatively, a legacy participant whose assigned stipend amount is 100 percent of the monthly stipend rate under proposed paragraph (c)(4)(i)(B)(*1*) (because his or her clinical rating presumes he or she requires 40 hours of caregiver assistance per week), may only qualify for the lower 62.5 percent of the monthly stipend rate in proposed paragraph (c)(4)(i)(A)(*1*) (because the legacy participant is not determined to be unable to self-sustain in the community). Determination of the applicable stipend amount under proposed paragraph (c)(4)(i)(A) for legacy participants and legacy applicants meeting the requirements of proposed § 71.20(a) would be adjudicated during VA's reassessment of legacy participants and legacy applicants under proposed § 71.30(e)(1).

As discussed above with respect to proposed § 71.30(e)(1), legacy participants and legacy applicants would be reassessed by VA within the one-year period beginning on the effective date of the rule to determine whether they meet the requirements of proposed § 71.20(a). If a legacy participant or legacy applicant is found to meet the requirements of proposed § 71.20(a), VA would determine the applicable stipend amount under proposed paragraph (c)(4)(i)(A). If the stipend amount under proposed paragraph (c)(4)(i)(A) (*i.e.,* the two-level stipend) is less than the amount the Primary Family Caregiver was eligible to receive under proposed paragraph (c)(4)(i)(B) or (D) (*i.e.,* the three-tier stipend), under proposed paragraphs (c)(4)(i)(C) and (D), the Primary Family Caregiver would continue to receive the higher stipend under proposed paragraph (c)(4)(i)(B) or (D). If the stipend amount under proposed paragraph (c)(4)(i)(A) is not less than the amount the Primary Family Caregiver was eligible to receive under proposed paragraph (c)(4)(i)(B) or (D), the Primary Family Caregiver would transition to the higher rate in proposed paragraph (c)(4)(i)(A). If the legacy participant or legacy applicant is determined to not meet the requirements of proposed § 71.20(a) pursuant to the reassessment under proposed § 71.30(e)(1), the Primary Family Caregiver of the legacy participant or legacy applicant would continue to receive a stipend pursuant to the rate in proposed paragraph (c)(4)(i)(B) or (D).

As illustrated in this discussion, paragraphs (c)(4)(i)(A) through (D) can apply to the same legacy participant or legacy applicant at different points during the one-year period beginning on the effective date of the rule, and VA would apply the rules of each paragraph depending on the applicable circumstances. For example, the special rule in proposed paragraph (c)(4)(i)(D) would no longer apply if the legacy participant relocates to a new address during the one-year period, but the legacy participant could move before or after a reassessment is conducted under proposed § 71.30. In the scenario where a Primary Family Caregiver is continuing to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule pursuant to proposed paragraph (c)(4)(i)(D), and the legacy participant relocates to a new location prior to being reassessed under proposed § 71.30(e), then the Primary Family Caregiver would be transitioned to the monthly stipend rate under proposed paragraph (c)(4)(i)(B) based on the legacy participant's new geographic location. Upon reassessment, if the legacy participant is determined to meet the requirements of proposed § 71.20(a), VA would compare and apply the higher of the monthly stipend rates in proposed paragraphs (c)(4)(i)(A) and (B) based on the legacy participant's new geographic area of residence. If instead the reassessment is performed before the legacy participant relocates to a new address, and upon reassessment, the legacy participant is determined to meet the requirements of proposed § 71.20(a), VA would compare and apply the higher of the stipend rates in proposed paragraphs (c)(4)(i)(A) and (D). If the stipend rate in proposed paragraph (c)(4)(i)(D) is higher, the Primary Family Caregiver of the legacy applicant would continue to receive that rate until the legacy applicant relocates to a new address. Upon relocating to the new address, the stipend rate in proposed paragraph (c)(4)(i)(D) would no longer apply, and VA would compare and apply the higher of the monthly stipend rates in proposed paragraphs (c)(4)(i)(A) and (B) in accordance with proposed paragraph (c)(4)(i)(C).

Circumstances beyond the reassessments or relocating could also affect monthly stipend payments under these proposed requirements. For example, if the GS rate for grade 4, step 1 is adjusted in January following the effective date of the rule, for Primary Family Caregivers continuing to receive stipend payments pursuant to proposed paragraph (c)(4)(i)(D), VA would again calculate the monthly stipend amount that the Primary Family Caregivers would be eligible to receive under proposed paragraph (c)(4)(i)(A) or (B) (depending on whether the proposed § 71.30(e) reassessment had been completed), and compare that amount to the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule (based on the eligible veteran's address on record with PCAFC on such date). (As noted in one of the examples above, the new comparison between the rates in proposed paragraphs (c)(4)(i)(A) and (D) would occur if the reassessment resulted in a determination that the legacy participant meets the requirements of proposed § 71.20(a) but the Primary Family Caregiver's stipend under proposed paragraph (c)(4)(i)(A) would have been less than what he or she was eligible to receive under proposed paragraph (c)(4)(i)(D).) If the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule is still higher than the new amount calculated under proposed paragraph (c)(4)(i)(A) or (B), as appropriate, then pursuant to proposed paragraph (c)(4)(i)(D), the Primary Family Caregiver would continue to receive that amount so long as the eligible veteran resides at the same address on record with PCAFC as of the day before the effective date of the rule. If the monthly stipend payment under proposed paragraph (c)(4)(i)(A) or (B) is determined to be not less than the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule, the Primary Family Caregiver would be transitioned to a monthly stipend payment under proposed paragraph (c)(4)(i)(A) or (B), as applicable.

Also, we note that once the stipend amount for a Primary Family Caregiver is transitioned from proposed paragraph (c)(4)(i)(D) to another stipend amount under proposed paragraph (c)(4)(i)(A) or (B), the Primary Family Caregiver's monthly stipend payment would not revert back to the amount in proposed paragraph (c)(4)(i)(D).

In short, it is our intent that the stipend amount for the Primary Family Caregivers of legacy participants and legacy applicants generally remain unchanged during the one-year period beginning on the effective date of the rule, unless it is to their benefit, and so long as they do not relocate to a new address. We believe this is fair and reasonable to ensure a transition period for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) or (c). Primary Family Caregivers of legacy participants in particular have come to rely on the monthly stipend payments based on the combined rate authorized under current paragraph (c)(4). Our proposed changes would allow time for VA to communicate potential changes to

affected individuals and assist them in preparing for any potential reduction in their stipend payment before such changes take effect.

As previously mentioned, we propose to revise current paragraph (c)(4)(ii) to address adjustments to stipend payments and would title it ''Adjustments to stipend payments.'' Specifically, this paragraph would address adjustments resulting from OPM's updates to the GS annual rate at grade 4, step 1, the eligible veteran relocating to a new address, and reassessments under proposed § 71.30.

Paragraph (c)(4)(ii)(A) would state that adjustments to stipend payments that result from OPM's updates to the GS annual rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides, would take effect as of the date the update to such rate is made effective by OPM. This would ensure VA adjusts PCAFC stipend amounts consistent with how the Federal Government makes changes to these salary rates for its employees. The GS pay schedule is usually adjusted annually each January based on nationwide changes in the cost of wages and salaries of private industry workers. See OPM General Schedule Overview, General Schedule Classification and Pay, *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/*. Notification of any increase in the GS rates occurs once the President signs an Executive Order confirming the GS rates. This Executive Order is usually signed in December of every year, and any changes in the GS rates are effective the following January.

Paragraph (c)(4)(ii)(B) would state that adjustments to stipend payments that result from the eligible veteran relocating to a new address are effective the first of the month following the month in which VA is notified that the eligible veteran has relocated to a new address. For example, if an eligible veteran notifies VA on August 15th that they have relocated, the effective date for any resulting changes to the stipend amount would take effect on September 1st. Paragraph (c)(4)(ii)(B) would also state that VA must receive notification within 30 days from the date of relocation. For example, if an eligible veteran relocates on June 15th, VA must be notified by July 15th of their relocation. Furthermore, paragraph (c)(4)(ii)(B) would state that if VA does not receive notification within 30 days from the date of relocation, VA would seek to recover overpayments of benefits under paragraph (c)(4) of this section back to the latest date on which the adjustment would have been effective if VA had been notified within 30 days from the date of relocation, as provided in proposed § 71.47, which is discussed further below. For example, if an eligible veteran relocates to a geographic area with a lower monthly stipend rate (based on the GS rate for grade 4, step 1 in the new locality) on January 15th but does not notify VA until June 15th, VA may seek to recover overpayments of benefits back to March 1st. In this example, VA should have been notified by February 14th such that March 1st would be the latest date on which the adjustment would have been effective, assuming that VA had been notified within 30 days from the date of relocation. We note that VA would not make retroactive payments to account for stipend increases as a result of an eligible veteran's relocation. For example, if an eligible veteran relocates to a geographic area with a higher monthly stipend rate (based on the GS rate for grade 4, step 1 in the new locality) on January 15th but does not notify VA until June 15th, the Primary Family Caregiver's monthly stipend adjustment would take effect on July 1st. We believe it is fair and reasonable to request that VA be notified within 30 days of relocation and would not provide retroactive payments in these circumstances. If relocating to a geographic area with a higher monthly stipend rate (based on the GS rate for grade 4, step 1 in the new locality), it would behoove the eligible veteran or Family Caregiver to notify VA as soon as possible to start receiving the increased stipend payment. Recovery of overpayments would be consistent with the Federal Claims Collection Standards. We note that proposed paragraph (c)(4)(ii)(B) would not modify or expand VA's legal authority to initiate collections, but would help ensure that PCAFC participants are on notice of the potential for collections actions by VA under this paragraph.

Proposed paragraph (c)(4)(ii)(C) would establish how monthly stipends may be adjusted pursuant to reassessments conducted by VA under proposed § 71.30. Proposed paragraph (c)(4)(ii)(C)(*1*) would focus on eligible veterans who meet the requirements of proposed § 71.20(a) only (*i.e.,* eligible veterans in PCAFC who applied on or after the effective date of the rule). In paragraph (c)(4)(ii)(C)(*1*)(*i*), we propose that if a reassessment conducted pursuant to proposed § 71.30 results in an increase in the monthly stipend, then the increase would take effect as of the date of the reassessment. This would arise if, upon reassessment, an eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15), but had not previously been determined to be unable to self-sustain in the community. In paragraph (c)(4)(ii)(C)(*1*)(*ii*), we propose that in the case of a reassessment that results in a decrease in the monthly stipend payment, the decrease would take effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. This would arise if an eligible veteran who had previously been determined to be unable to self-sustain in the community (as that term would be defined in § 71.15), was, upon reassessment, determined to not meet that threshold. We would additionally state that the effective date of the decrease will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver. Advanced notice of findings would include the basis upon which VA has made the determination to decrease the monthly stipend payment. Additional discussion of VA's proposed advanced notice requirements is below in the context of proposed changes to § 71.45.

In proposed paragraph (c)(4)(ii)(C)(*2*), we would focus on adjustments to monthly stipends pursuant to reassessments conducted by VA under proposed § 71.30(e) for eligible veterans who meet the requirements of proposed § 71.20(b) or (c) (*i.e.,* legacy participants and legacy applicants receiving monthly stipends pursuant to proposed § 71.40(c)(4)(i)(B) or (D)). As discussed above, for legacy participants and legacy applicants meeting the new criteria in proposed § 71.20(a), their two-level assignment (based on whether the eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15)) may not directly align with their three-tier assignment (based on the eligible veteran's clinical rating in current § 71.40(c)(4)(iv)(A) through (C)) and therefore may result in a higher or lower stipend payment upon reassessment. In paragraph (c)(4)(ii)(C)(*2*)(*i*), we propose that if the reassessment results in an increase in the monthly stipend, then the increase would take effect as of the date of the reassessment. Additionally, the Primary Family Caregiver would be paid the difference between the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) of this section and the amount under paragraph (c)(4)(i)(B) or (D) of this section, whichever the Primary Family Caregiver received for the time period beginning on the effective date of the

rule up to the date of the reassessment, based on the eligible veteran's address on record with PCAFC on the date of the reassessment and the monthly stipend rate on such date. For example, if the effective date of the rule is April 1, 2020, and a legacy participant or legacy applicant is reassessed on August 1, 2020, and determined to meet the requirements of proposed § 71.20(a), and the reassessment results in an increase in the monthly stipend payment, the increase would become effective on August 1, 2020, and the Primary Family Caregiver would receive retroactive payment for the increase back to April 1, 2020, based on the address of the eligible veteran as of August 1, 2020. The purpose of providing retroactive payments back to the effective date of the rule would be to recognize that not all legacy participants and legacy applicants would be reassessed at one time, and therefore would be reassessed at different points during the first year following the effective date of the rule. Retroactive payments would ensure that the Primary Family Caregivers of all legacy participants and legacy applicants meeting the requirements of proposed § 71.20(a) receive the benefit of any stipend increase as of the effective date of the rule—regardless of when the reassessment is completed during the one-year period following the effective date of the rule.

The retroactive payment would consist of the difference between the new stipend amount authorized under proposed paragraph (c)(4)(i)(A) and the amount under proposed paragraph (c)(4)(i)(B) or (D), whichever the Primary Family Caregiver received beginning on the effective date of the rule up to the date of the reassessment, except that the amount under paragraph (c)(4)(i)(B) or (D), as applicable, would be based on the address of the eligible veteran and the monthly stipend rate on the date of the reassessment. We believe using the address on record with PCAFC on the date of the reassessment is reasonable because of the significant administrative complexity that would be required to track the relocation of legacy participants and legacy applicants for purposes of these retroactive payments. We have found that eligible veterans and their Family Caregivers frequently relocate, and tracking every address on record with PCAFC in order to calculate prorated retroactive stipend payments based upon differing localities would be overly burdensome. Similarly, we believe using the monthly stipend rate on the date of the reassessment would be reasonable. While we recognize that OPM may adjust the GS rate at some point during the one-year transition period, which could impact the amount of the retroactive payment under proposed paragraph (c)(4)(ii)(C)(*2*)(*i*), we would not delay reassessments in anticipation of an adjustment to the GS rate or undertake an administratively complex process of reconciling previously-made retroactive payments against a new GS rate.

Furthermore, we would state that if more than one reassessment is completed during the one-year period beginning on the effective date of the rule, the retroactive payment would only apply if the first reassessment during the one-year period beginning on the effective date of the rule results in an increase in the monthly stipend payment, and that retroactive payments only apply as a result of the first assessment. Any subsequent reassessment completed after the initial reassessment of a legacy participant or legacy applicant during the first year following the effective date of the rule would likely be based on changes in the circumstances of the legacy participant or legacy applicant, such that retroactive payments back to a date before a previous reassessment would not be warranted.

Furthermore, as previously explained with respect to proposed § 71.30(e)(2), if an individual no longer meets the requirements of proposed § 71.20(b) or (c) before a reassessment is completed, the provisions of proposed § 71.40(c)(4)(ii)(C)(*2*)(*i*) would no longer apply. This means that any retroactive increase that would have been applied had the discharge or revocation not occurred before the reassessment would not be applied.

In proposed paragraph (c)(4)(ii)(C)(*2*)(*ii*), we propose that in the case of a reassessment that results in a decrease in the monthly stipend payment for a legacy participant or legacy applicant who meets the requirements of proposed § 71.20(a), the decreased stipend amount would take effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. We would also state that the effective date of the decrease will be no earlier than 60 days after the date that is one year after the effective date of the rule. Additionally, we would state that on the date that is one year after the effective date of the rule, VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver. Advanced notice of findings would include the basis upon which VA has made the determination to decrease the monthly stipend payment. Additional discussion of VA's proposed advanced notice requirements is below in the context of proposed changes to § 71.45. We recognize that changes to the PCAFC eligibility criteria and stipend determinations would mean that some Primary Family Caregivers of legacy participants and legacy applicants would have their stipends reduced after the one-year transition period. To help minimize the negative impact of such changes, we would not apply the decrease until the end of the one-year period and after a 60-day notice period. For example, if the effective date of the rule is April 1, 2020, and a legacy participant or legacy applicant is reassessed on August 1, 2020, and determined to meet the requirements of proposed § 71.20(a), but the reassessment results in a decrease in the monthly stipend payment, an advanced notice of VA's findings would be provided on April 1, 2021, and the decreased stipend payment would become effective no earlier than May 30, 2021. This paragraph would also apply to any decreases resulting from any additional reassessment(s) that may occur following the initial reassessment of the legacy participant or legacy applicant during the one-year period beginning on the effective date of the rule. We note VA would communicate the results of the reassessment with eligible veterans and Family Caregivers at the time of the reassessments to ensure that the eligible veterans and Family Caregivers receive as much notice as possible in advance of the advanced notice described in proposed paragraph (c)(4)(ii)(C)(*2*)(*ii*).

We would also add a note to proposed paragraph (c)(4)(ii)(C)(*2*) explaining that if an eligible veteran who meets the requirements of proposed § 71.20(b) or (c) is determined, pursuant to a reassessment conducted by VA under proposed § 71.30, to not meet the requirements of proposed § 71.20(a), the monthly stipend would not be increased or decreased pursuant to proposed paragraph (c)(4)(ii)(C)(*2*)(*i*) or (*ii*). The effective date for discharge would be no earlier than the date that is 60 days after the date that is one year after the effective date of rule, unless the Family Caregiver is revoked or discharged pursuant to § 71.45 before then. The eligible veteran and Family Caregiver would receive advanced notice of VA's findings one year after the effective date of the rule. We note that VA would communicate the results of the reassessment to eligible veterans and Family Caregivers at the time of the reassessments to ensure that the eligible veterans and Family Caregivers receive

as much notice as possible in advance of the advanced notice described in the proposed note to paragraph (c)(4)(ii)(C)(*2*). Additional discussion of VA's proposed advanced notice requirements is below in the context of proposed changes to § 71.45.

As previously explained elsewhere in this rulemaking, if a legacy participant or legacy applicant is revoked or discharged pursuant to proposed § 71.45 (for reasons other than not meeting proposed § 71.20(a) eligibility criteria) prior to a reassessment or otherwise in the one-year period beginning on the effective date of the rule, or before the end of the 60-day notice period that would be provided in paragraph (c)(4)(ii)(C)(*2*)(*ii*), stipends and other Family Caregiver benefits would terminate as set forth in proposed § 71.45.

The following examples illustrate how the requirements in proposed paragraph (c)(4)(ii)(C)(*2*) would be implemented. We anticipate that most legacy participants and legacy applicants would be reassessed only once during the transition year, but for illustrative purposes below, our examples include multiple reassessments during the transition year. In these examples, we refer to percentages of the ''GS rate for grade 4, step 1'' for clarity, but as noted in the proposed definition of ''monthly stipend rate,'' the monthly stipend would be calculated by dividing the GS annual rate for grade 4, step 1 (for the locality pay area in which the eligible veteran resides) by 12.

Example 1: A Primary Family Caregiver for a legacy applicant who has a clinical rating of 1 to 12 under current § 71.40(c)(4)(iv)(C) would receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*3*) (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). If the effective date of the rule is April 1, 2020 and the legacy applicant is reassessed on August 1, 2020 and determined to meet the requirements of proposed § 71.20(a) but not determined to be unable to self-sustain in the community, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective on August 1, 2020, and receive retroactive payments for the difference between 62.5 percent of the GS rate for grade 4, step 1 and 25 percent of the GS rate for grade 4, step 1 for four months (April–July) based on the legacy applicant's address on record with PCAFC as of August 1, 2020. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy applicant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020 that results in another increase in the monthly stipend amount (*i.e.,* because the eligible veteran is determined to be unable to self-sustain in the community), then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective on November 1, 2020, but would not receive any additional retroactive payment for the difference between 100 percent of the GS rate for grade 4, step 1 and 62.5 percent of the GS rate for grade 4, step 1 for August through October.

Example 2: A Primary Family Caregiver for a legacy applicant who has a clinical rating of 1 to 12 under current § 71.40(c)(4)(iv)(C) would receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*3*) (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). If the effective date of the rule is April 1, 2020 and the legacy applicant is reassessed on August 1, 2020 and determined to meet the requirements of proposed § 71.20(a) and is determined to be unable to self-sustain in the community, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective August 1, 2020, and receive retroactive payments for the difference between 100 percent of the GS rate for grade 4, step 1 and 25 percent of the GS rate for grade 4, step 1 for four months (April–July) based on the legacy applicant's address on record with PCAFC as of August 1, 2020. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy applicant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020, that results in a decrease in the monthly stipend amount (*i.e.,* the eligible veteran is no longer determined to be unable to self-sustain in the community), then the Primary Family Caregiver would continue to receive his or her monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). On April 1, 2021 (one year after the effective date of the rule), VA would provide advanced notice of the decrease to the eligible veteran and Primary Family Caregiver. The new monthly stipend rate in § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) would go into effect no earlier than May 30, 2021 (60 days from April 1, 2021—the date the advanced notice is provided). The effective date of the decrease would be provided in VA's final notice of such decrease.

Example 3: A Primary Family Caregiver for a legacy participant who has a clinical rating of 13 to 20 under current § 71.40(c)(4)(iv)(B) would be eligible to receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*2*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area); however, if that rate is lower than the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule based on the combined rate, then pursuant to proposed § 71.40(c)(4)(i)(D), the Primary Family Caregiver would continue to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule. If the effective date of the rule is April 1, 2020, and the legacy participant is reassessed on August 1, 2020, and determined to meet the requirements of proposed § 71.20(a), but not determined to be unable to self-sustain in the community, then the Primary Family Caregiver would be eligible to receive the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). However, if 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area is lower than the monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule, the Primary Family Caregiver would continue to receive a monthly stipend based on the combined rate. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy applicant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020, that results in an increase in the monthly stipend amount (*i.e.,* the eligible veteran is determined to be unable to self-sustain in the community) and the new monthly stipend rate is higher than the monthly stipend based on the combined rate, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective

November 1, 2020, but would not receive retroactive payments for the difference between 100 percent of the GS rate for grade 4, step 1 and the stipend the Primary Family Caregiver received based on the combined rate (for three months (August–October) or for seven months (April–October)).

Example 4: A Primary Family Caregiver for a legacy participant who has a clinical rating of 1 to 12 under current § 71.40(c)(4)(iv)(C) would be eligible to receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*3*) (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in the applicable locality pay area); however, because that rate is lower than the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule based on the combined rate, then pursuant to proposed § 71.40(c)(4)(i)(D), the Primary Family Caregiver would continue to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule. If the effective date of the rule is April 1, 2020, and the legacy participant lives in locality A on such date, but relocates to a new address in locality B on May 1, 2020, the Primary Family Caregiver of the legacy participant would, pursuant to proposed § 71.40(c)(4)(i)(D), no longer be eligible to receive the stipend he or she was eligible to receive on the day before the effective date of the rule. If VA is notified of the legacy participant relocating on May 15, 2020, then effective June 1, 2020, the Primary Family Caregiver's stipend would be paid in accordance with proposed § 71.40(c)(4)(i)(B)(*3*) in locality B (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in locality B). If the legacy participant relocates to a new address in locality C on July 1, 2020 and notifies VA on July 15, 2020, then effective August 1, 2020, the Primary Family Caregiver's stipend would be paid in accordance with proposed § 71.40(c)(4)(i)(B)(*3*) in locality C (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in locality C). If the legacy participant is reassessed on September 1, 2020, and determined to meet the requirements of proposed § 71.20(a), but not determined to be unable to self-sustain in the community, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) in locality C (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in locality C) effective September 1, 2020, and receive retroactive payments for the difference between 62.5 percent of the GS rate for grade 4, step 1 and 25 percent of the GS rate for grade 4, step 1 in locality C for five months (April–August) because the legacy participant's address on record with PCAFC as of September 1, 2020 is in locality C. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy participant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020 that results in a determination that the legacy participant no longer meets the requirements of proposed § 71.20(a), then the Primary Family Caregiver would continue to receive his or her monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). Unless another basis for revocation or discharge applies under proposed § 71.45, the Family Caregiver would be discharged under proposed § 71.45(b)(1)(i)(A), discussed further below. In the case of discharge under § 71.45(b)(1)(i)(A), VA would provide advanced notice of its eligibility findings to the eligible veteran and Family Caregiver on April 1, 2021 (one year after the effective date of the rule). Discharge would be effective no earlier than May 30, 2021 (60 days from April 1, 2021—the date the advanced notice is provided). The effective date of discharge would be provided in VA's final notice, and as discussed further below, caregiver benefits would continue for 90 days after the date of discharge in cases of discharge under proposed § 71.45(b)(1).

In proposed paragraph (c)(4)(ii)(D), we would state that adjustments to stipend payments for the first month would take effect on the date specified in proposed § 71.40(d) and that stipend payments for the last month would end on the date specified in § 71.45, as such section would be revised as proposed in this rulemaking. This is similar to language in current paragraph (c)(4)(vi), which address adjustments to stipend payments for the first month and in cases where a Primary Family Caregiver's status is revoked or a new Primary Family Caregiver is designated before the end of a month; however, we would revise the language for clarity and remove the language regarding replacement Primary Family Caregivers. Proposed paragraphs (d)(4) and (5), discussed later in this rulemaking, would address the effective dates of benefits when a Family Caregiver is replaced by a new Family Caregiver.

Current paragraph (c)(4)(vii) states that ''[n]othing in this section shall be construed to create an employment relationship between the Secretary and an individual in receipt of assistance or support under this part.'' As previously mentioned, we propose to move this language to paragraph (c)(4)(iii) and would make no edits to the language.

As previously discussed, current paragraph (c)(4)(iv) sets forth three tiers for stipend payments based on a presumed number of hours per week of caregiver assistance, and we propose to replace the current three tiers with two levels for the stipend payments in proposed paragraphs (c)(4)(i)(A)(*1*) and (*2*). Therefore, the current language in paragraph (c)(4)(iv) would no longer be needed and we propose to replace it with a requirement for periodic assessment of the monthly stipend payment.

As discussed above, while VA believes that the monthly stipend rate (*i.e.,* the OPM GS Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12) is generally not less than the annual salary paid to home health aides in the commercial sector, we recognize that may not always be the case. We note that over time, factors such as changes in the health care industry and workforce, the demand for long-term care, and the overall U.S. economy could impact the amount that commercial home health care entities pay individuals to provide services equivalent to those provided by Primary Family Caregivers. Moreover, additional measures of home health aide pay may become available that could help inform VA's analysis of applicable commercial rates. Therefore, VA proposes to revise current (c)(4)(iv) to require that VA, in consultation with other appropriate agencies of the Federal government, periodically assess whether the monthly stipend rate meets the requirements of 38 U.S.C. 1720G(a)(3)(C)(ii) and (iv) (*i.e.,* that to the extent practicable, the stipend rate is not less than the monthly amount a commercial home health care entity would pay an individual to provide equivalent personal care services in the eligible veteran's geographic area or geographic area with similar costs of living). If VA determines that adjustments to the stipend amount are necessary due to a continuing trend, VA would be required to make such adjustments through future rulemaking.

Section 161(a)(3) of the VA MISSION Act of 2018 amended 38 U.S.C. 1720G(a)(3)(A)(ii) to provide additional benefits to Primary Family Caregivers. These expanded benefits consist of: (1) Financial planning services relating to the needs of injured veterans and their caregivers, and (2) legal services, including legal advice and consultation, relating to the needs of injured veterans and their caregivers. See 38 U.S.C. 1720G(a)(3)(A)(ii)(VI)(aa) and (bb), as

amended by Public Law 115–182, section 161(a)(3). To comply with the VA MISSION Act of 2018, we would amend § 71.40(c) by adding new paragraphs (c)(5) and (6) to include these financial planning services and legal services.

In proposed paragraph (c)(5), we would state that Primary Family Caregivers are eligible for financial planning services as that term is defined in proposed § 71.15. As explained in the discussion of our proposed definition for financial planning services, these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities. In this proposed rule, we are not proposing to place a limitation on the number of issues or sessions relating to this benefit for which a Primary Family Caregiver would be eligible, as the amount of financial planning services needed will vary depending on the complexity of the issues being addressed and the needs of the Primary Family Caregiver.

In proposed paragraph (c)(6), we would state that Primary Family Caregivers are eligible for legal services as that term would be defined in proposed § 71.15. As explained in the discussion of our proposed definition of legal services, these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities. In this proposed rule, we are not proposing to place a limitation on the number of issues or referrals relating to this benefit for which a Primary Family Caregiver would be eligible, as the amount of legal services needed will vary depending on the complexity of the issues being addressed and the needs of the Primary Family Caregiver.

We would revise current § 71.40(d) introductory text and (d)(1) and (2) to clarify and revise the effective date of benefits under PCAFC. Current paragraph (d)(1) explains that caregiver benefits are effective as of the date VA receives the signed joint application or on the date on which the eligible veteran begins receiving care at home, whichever date is later; but caregiver benefits are not provided until the Family Caregiver is designated as such. This paragraph further addresses the timeline for designation of a Family Caregiver following VA's receipt of a joint application. As discussed previously, we would revise these requirements and address them in proposed § 71.25, among other requirements pertaining to the PCAFC application process.

Current paragraph (d)(2) states that the stipend is paid for personal care services the Primary Family Caregiver provided in the prior month, and like in current paragraph (d)(1) states that benefits due prior to the Family Caregiver's designation are paid retroactive to the date the joint application is received by VA or the date on which the eligible veteran begins receiving care at home, whichever is later. As previously explained with respect to paragraph (c)(4), we also propose to remove the reference to ''prior month'' in current paragraph (d)(2) in order to allow flexibility depending on administrative needs and requirements. As stated above, VA's current practice is to issue monthly stipends at the end of the month in which services are provided. Therefore, the first sentence of current paragraph (d)(2) would no longer be needed and would be removed. The remaining provisions of current paragraph (d)(2) would be revised and addressed in revised paragraph (d).

We propose to revise paragraph (d) by focusing only on the effective date of benefits under PCAFC and titling it ''Effective date of benefits under the Program of Comprehensive Assistance for Family Caregivers.'' Proposed paragraph (d) would state that except for benefits listed in paragraphs (b)(6) and (c)(3) and (4) of this section (related to beneficiary travel, CHAMPVA, and stipends, respectively), caregiver benefits under paragraphs (b) and (c) of § 71.40 would be effective upon approval and designation under § 71.25(f). We would make this change because it is generally not feasible or practicable to provide certain benefits offered to Primary and Secondary Family Caregivers retroactively. For example, respite care in current § 71.40(b)(1) and (c)(1) and (2) is generally limited in duration, furnished on an intermittent basis, and furnished for the purpose of helping a veteran continue to reside at home. See 38 U.S.C. 1720B. We note, that we do provide respite care if needed during the application process under § 71.25(d); however, it is limited to the period of initial caregiver instruction, preparation and training if participation would interfere with the provision of personal care services to the eligible veteran. Additionally, VA arranges and pays for respite care directly rather than reimbursing an applicant under § 71.25(d), or Family Caregiver under § 71.40(b)(1) and (c)(1) and (2). Furthermore, respite care is generally available to enrolled veterans under 38 U.S.C. 1720B. Similarly, it is not feasible to provide benefits under current paragraphs (b)(2) through (5) retroactively. Monitoring (*i.e.,* wellness contacts as proposed earlier in this rulemaking) under paragraph (b)(2) does not begin until the Family Caregiver is approved and designated. Continuing instruction, preparation and training, and ongoing technical support does not begin until the Family Caregiver has completed their initial training under § 71.25 and is approved and designated. We note, that the Caregiver Support Line is a service available to any caregiver, provided without charge, and provides caregivers with support such as information on assistance available from VA and local Caregiver Support Coordinators. Finally, counseling does not begin until the Family Caregiver is approved and designated because it is arranged by VA using the consult process (*i.e.,* referral to a provider) and not through a reimbursement model. We note that although counseling under § 71.40(b)(5) is provided upon the approval and designation of a Family Caregiver, § 71.50 provides certain counseling, training, and mental health services to certain family members of and caregivers veterans pursuant to 38 U.S.C. 1782. These benefits include consultation, professional counseling, marriage and family counseling, training, and mental health services when necessary in connection with the treatment of a disability for which a veteran is receiving treatment through VA; and a referral to an appropriate community provider when such need is not necessary in the connection with the treatment of a veteran.

Family Caregiver benefits such as beneficiary travel in current § 71.40(b)(6), enrollment in CHAMPVA in current § 71.40(c)(3), and a monthly stipend in current § 71.40(c)(4), can be provided retroactively based on the effective date of benefits specified in proposed paragraphs (d)(1) through (7) based on already-established payment and reimbursement processes. We note that beneficiary travel and CHAMPVA benefits would still be subject to the requirements in 38 CFR part 70 and 38 CFR 17.270 through 17.278, respectively, including application timelines. Proposed § 71.40(d) would state that caregiver benefits under paragraphs (b)(6) and (c)(3) and (4) are effective on the latest of the following dates: The date the joint application that resulted in approval and designation of the Family Caregiver is received by VA; the date the eligible veteran begins receiving care at home; the date the Family Caregiver begins providing personal care services to the eligible veteran at home; in the case of a new Family Caregiver applying to be the

Primary Family Caregiver for an eligible veteran, the day after the effective date of revocation or discharge of the previous Primary Family Caregiver for the eligible veteran (such that there is only one Primary Family Caregiver designated for an eligible veteran at one time); in the case of a new Family Caregiver applying to be a Secondary Family Caregiver for an eligible veteran who already has two Secondary Family Caregivers approved and designated by VA, the day after the effective date of revocation or discharge of a previous Secondary Family Caregiver for the eligible veteran (such that there are no more than two Secondary Family Caregivers designated for an eligible veteran at one time); in the case of a current or previous Family Caregiver reapplying with the same eligible veteran, the day after the date of revocation or discharge under proposed § 71.45, or in the case of extended benefits under proposed § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv), the day after the last date on which such Family Caregiver received caregiver benefits; and the day after the date a joint application is denied. These would be listed in proposed paragraphs (d)(1) through (7).

Proposed paragraphs (d)(1) and (2) would be similar to the first sentence in current paragraph (d)(1) and the second sentence in current paragraph (d)(2) that caregiver benefits are effective as of and retroactive to the date VA receives the signed joint application or on the date on which the eligible veteran begins receiving care at home, whichever date is later; but caregiver benefits are not provided until the Family Caregiver is designated as such. Additionally, as previously explained, we are proposing a new definition for joint application in § 71.15. This definition would describe the requirements for a joint application to be considered complete by VA to include all signatures. Therefore, the phrase ''signed joint application'' in current paragraph (d)(1) would be redundant since it would be encompassed in the proposed definition for joint application. Thus, we would use the phrase ''joint application'' in paragraph (d)(1). Furthermore, we would add new language to clarify that benefits would be based on the date the joint application ''that resulted in approval and designation of the Family Caregiver'' is received by VA. For example, if a joint application is received by VA on July 1st, that results in a denial on August 31st, and another joint application is received by VA on September 30th from the same applicants that results in approval and designation of the Family Caregiver, then the earliest benefits would be effective is September 30th. This is consistent with current practice and would prevent VA from providing benefits at an earlier date based on a previous joint application that did not result in the approval and designation of a Family Caregiver.

Proposed paragraph (d)(3) would address situations where the Family Caregiver may be institutionalized during the application process and does not begin providing personal care services to the eligible veteran until a later date. This would ensure that benefits are provided no earlier than the date that the Family Caregiver actually begins providing personal care services to the eligible veteran at home. This would also be consistent with the requirement that would be established in proposed § 71.25(f), which would condition approval and designation on the Family Caregiver providing the personal care services required by the eligible veteran.

Proposed paragraphs (d)(4) and (5) would address situations where an eligible veteran submits a new joint application with a different caregiver. In this situation, if approved, the replacement Family Caregiver would not begin to receive caregiver benefits until the day after the date of revocation or discharge of the replaced Family Caregiver. The effective date of benefits for the replacement Family Caregiver under these paragraphs would not be affected by a previous Family Caregiver's receipt of extended benefits. Accordingly, we propose to remove current § 71.45(b)(4)(ii) and (iii), which currently ensure there is no overlap in caregiver benefits in cases of replacement caregivers. Current paragraph (b)(4)(ii) explains that benefits for a Primary Family Caregiver who is revoked will terminate the day before the date a new Primary Family Caregiver is designated in the instance that the new Primary Family Caregiver is designated within 30 days after the date of revocation. Current paragraph (b)(4)(iii) further explains that if another individual is designated to be a Family Caregiver within 30 days after the date of revocation, such that there are three Family Caregivers, the benefits for the revoked Family Caregiver will terminate the day before the date the new Family Caregiver is designated. We would remove these paragraphs and instead allow for some benefit overlap in the case of extended benefit periods for Family Caregivers who have been revoked or discharged and a new Family Caregiver is designated. However, we still want to ensure that on any given day, no more than three Family Caregivers are designated for an eligible veteran, with no more than one Family Caregiver designated as a Primary Family Caregiver and no more than two Family Caregivers designated as a Secondary Family Caregiver for an eligible veteran for consistency with the proposed changes to § 71.25(a)(1) (which would require that ''no more than three individuals may serve as Family Caregivers at one time for an eligible veteran, with no more than one serving as the Primary Family Caregiver and no more than two serving as Secondary Family Caregivers''). Proposed paragraph (d)(4) would provide that in the case of a new Family Caregiver applying to be the Primary Family Caregiver for an eligible veteran, the specified benefits would be effective for the new Primary Family Caregiver no earlier than the day after the effective date of revocation or discharge of the previous Primary Family Caregiver for the eligible veteran. For example, if a Primary Family Caregiver requests discharge from PCAFC as of July 1st under proposed § 71.45(b)(3), discussed further below, and receives a 30-day continuation of benefits pursuant to proposed § 71.45(b)(3)(iii)(A), discussed further below, the Primary Family Caregiver would receive 30 additional days of stipend benefits and other PCAFC benefits such as CHAMPVA, if applicable, through July 31st. If a new Family Caregiver applies and is designated as the new Primary Family Caregiver, the earliest possible effective date for benefits for the new Primary Family Caregiver would be July 2nd. Should the new Primary Family Caregiver be designated as the Primary Family Caregiver on July 2nd, the previous Primary Family Caregiver would still receive a stipend payment and other PCAFC benefits through July 31st. Similarly, proposed paragraph (d)(5) would provide that in the case of a new Family Caregiver applying to be a Secondary Family Caregiver for an eligible veteran who already has two Secondary Family Caregivers approved and designated by VA, benefits would be effective for the new Secondary Family Caregiver no earlier than the day after the effective date of revocation or discharge of a previous Secondary Family Caregiver for the eligible veteran. See the discussion in proposed § 71.45 regarding those instances in which we would provide extended benefits following revocation or discharge.

Proposed paragraph (d)(6) would address the situation where a current or

previous Family Caregiver reapplies and is approved and designated to be a Family Caregiver again for the same eligible veteran. Because we would provide 30- or 90-day extended benefit periods to Family Caregivers who are discharged for specified reasons (under proposed § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv)), if a previous Family Caregiver reapplies, they may already be receiving caregiver benefits for 30 or 90 days, and may have already received a lump sum stipend payment to cover such extended benefit period. Current Family Caregivers who are reapplying would also still be receiving caregiver benefits. In these situations, benefits resulting from the new joint application would begin the day after the date of revocation or discharge under § 71.45, or in the case of extended benefits under proposed § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv), the day after the last date on which the Family Caregiver received caregiver benefits. For example, if a Primary Family Caregiver requests to be discharged as of September 30 under proposed § 71.45(b)(3) and receives 30-day continuation of benefits pursuant to proposed § 71.45(b)(3)(iii)(A), the Primary Family Caregiver would receive 30 additional days of stipend benefits and other PCAFC benefits such as CHAMPVA, if applicable, through October 30. If the Primary Family Caregiver submits a new joint application with the same eligible veteran, the earliest the Primary Family Caregiver may begin to receive benefits would be October 31 (*i.e.,* the day after the last date on which the Family Caregiver received caregiver benefits, which in this case would be 30 days from September 30).

Proposed paragraph (d)(7) would address the situation where more than one joint application is received by VA from the same veteran or servicemember. In this situation, the specified benefits would be effective no earlier than the day after the date of the denied joint application. We have found that the submission of multiple joint applications from the same veteran or servicemember results in a significant loss of efficiency through unnecessary duplication of resources and we believe this requirement would reduce the incentive for a veteran or servicemember, and individuals who apply to be his or her Family Caregiver, from submitting multiple joint applications before the first joint application received by VA is adjudicated.

§ 71.45 Revocation and Discharge of Family Caregivers

We would amend § 71.45 by restructuring and revising current paragraphs (a), (b), and (c), and adding new paragraphs (d), (e), and (f). These proposed changes are discussed in detail below.

The process for revocation and the extension of benefits to caregivers after revocation are described in current § 71.45. Current § 71.45 delineates between whether the revocation is initiated by the Family Caregiver, the eligible veteran or his or her surrogate, or VA. We propose to revise current § 71.45 to distinguish between revocation and discharge from PCAFC and would thus revise the title of this section to reflect that this section concerns ''Revocation and Discharge of Family Caregivers.''

As explained in each of the proposed paragraphs of § 71.45 below, we propose to distinguish between revocation and discharge. The term ''revocation'' is used in current § 71.45 in reference to all cases of removal from PCAFC, and is consistent with the terminology used in the governing statute (see 38 U.S.C. 1720G(a)(9)(C)(ii)(II), which refers to VA ''suspending or revoking'' a Family Caregiver's approval and designation). By referring to this process as ''revocation,'' it can be perceived by eligible veterans and Family Caregivers as punitive or corrective in nature. While some removals are the result of fraud or safety concerns, in most situations, revocation is based on improvement in the eligible veteran's condition such that the Family Caregiver is no longer needed, or is requested by the Family Caregiver or eligible veteran. In these and other situations, we believe it is appropriate to use term ''discharge,'' rather than ''revocation.'' The term ''discharge'' is commonly used in healthcare settings to describe the process that occurs when a patient no longer meets the criteria for the level of care being provided or when a patient is transferred to another facility or program to receive care. We believe this term is appropriate in situations where a Family Caregiver is removed from PCAFC due to the eligible veteran no longer meeting the eligibility requirements of the program (*e.g.,* based on improvement in the eligible veteran's condition), the death of the eligible veteran or Family Caregiver, institutionalization of the eligible veteran or Family Caregiver, or by the request of either the Family Caregiver or the eligible veteran, and we would revise § 71.45 accordingly. We would continue to use the term ''revocation'' in instances in which a Family Caregiver is removed from PCAFC ''for cause'' (to include instances of fraud, abuse, or safety concerns), noncompliance with program requirements, and certain cases of VA error. Revocation would apply to removals based on a VA error or a deliberate action or inaction on the part of the eligible veteran or Family Caregiver.

Additionally, with certain exceptions, we propose to add requirements for VA to provide a 60-day advanced notice in cases of revocation or discharge under this section. As discussed above in the context of proposed § 71.40, 60-day advanced notice requirements would also apply before a stipend payment is decreased as a result of a reassessment. While current § 71.45 provides a period of extended benefits in certain cases of revocation, it does not set forth measures to ensure advanced notice and an opportunity to contest VA's findings before a stipend decrease or revocation are effective. We believe providing advanced notice and opportunity to contest VA's findings before benefits are reduced or terminated would benefit both VA and eligible veterans and Family Caregivers. Although eligible veterans and Family Caregivers have the opportunity to dispute decisions made under PCAFC through the VHA clinical appeals process, we have heard concerns from former PCAFC participants who feel like they unfairly had their stipend decreased, were wrongly revoked from PCAFC, or lacked an opportunity to provide input into VA's clinical determinations surrounding stipend payments and revocation. By adding a requirement for advanced notice before stipend payment decreases and certain revocations and discharges, it is our hope that communication between VA and eligible veterans and their Family Caregivers would improve, and that PCAFC participants would have a better understanding of VA's decision-making process. The 60-day time frame would also provide the eligible veteran and Family Caregiver time to adapt and plan for a lower stipend payment or removal from PCAFC, as well as the opportunity to provide additional information to VA regarding its findings prior to VA issuing a final notice of its decision. We believe 60 days before a stipend is decreased or a Family Caregiver is revoked or discharged is an appropriate period of time for providing notice, as it would give eligible veterans and Family Caregivers a sufficient opportunity to dispute VA's findings, as appropriate, but would also ensure that benefits are not provided by VA for an

extended period of time when the participants are determined to be eligible at a lower stipend amount or no longer eligible for PCAFC. We would deviate from providing a 60-day advance notice in certain situations in proposed § 71.45, to include instances in which revocation is initiated by VA for cause (in proposed paragraph (a)(1)(i)), discharge based on death or institutionalization of the eligible veteran or Family Caregiver (in proposed paragraphs (b)(1)(i)(B) and (b)(2)), and discharge based on the request of the Family Caregiver or eligible veteran (in proposed paragraphs (b)(3) and (4)). We emphasize here that adding such advanced notice requirements would not affect the clinical nature of PCAFC or the benefits provided thereunder. PCAFC is a clinical benefit program and decisions under 38 U.S.C. 1720G are considered medical determinations (38 U.S.C. 1720G(c)(1)), and thus not appealable to the Board of Veterans' Appeals (38 CFR 20.104(b)). As such, 38 U.S.C. 1720G(c)(1) makes clear that all decisions made by VA under 38 U.S.C. 1720G affecting the furnishing of assistance or support are considered medical determinations and are thus only appealable through the VHA clinical appeals process.

We propose to revise current paragraph (a), which describes the process for revocation requested by a Family Caregiver, to instead address all instances of revocation under revised § 71.45. We would thus revise paragraph (a) by titling it ''Revocation of the Family Caregiver'' and adding new paragraphs (a)(1)(i)(A) through (D), (a)(1)(ii)(A) through (E), (a)(1)(iii), (a)(2)(i) through (iv), and (a)(3). As discussed further below, we propose to address discharge requested by a Family Caregiver in proposed paragraph (b)(3) of this section, and our discussion of that proposed paragraph outlines how we would revise the language in current § 71.45(a).

Proposed paragraph (a)(1), which we would title ''Bases for revocation of the Family Caregiver,'' would describe the bases for revocation of the Family Caregiver. In new paragraph (a)(1)(i), which we would title ''For Cause,'' we would explain that VA would revoke the designation of a Family Caregiver for cause when VA determines any of the following: The Family Caregiver or eligible veteran committed fraud under this part; the Family Caregiver neglected, abused, or exploited the eligible veteran; personal safety issues exist for the eligible veteran that the Family Caregiver is unwilling to mitigate; or the Family Caregiver is unwilling to provide personal care services to the eligible veteran or, in the case of the Family Caregiver's temporary absence or incapacitation, fails to ensure (if able to) the provision of personal care services to the eligible veteran. These would be listed in new paragraphs (a)(1)(i)(A) through (D). We believe it is appropriate to revoke a Family Caregiver's designation when it is based on fraud committed by the eligible veteran or Family Caregiver in order to maintain the integrity of PCAFC and ensure benefits are provided only to individuals who qualify for them. The other bases of revocation in paragraph (a)(1)(i) would list instances in which we believe revocation of the Family Caregiver's designation is warranted because the eligible veteran may be harmed or in an unsafe situation. As discussed further below, and in current § 71.45(b)(3) and (c), if the eligible veteran's safety is suspected to be at risk, VA will also take action to ensure his or her welfare. We note that the bases for revocation in proposed paragraph (a)(1)(i) are already covered by current § 71.45(b)(4)(i), which addresses fraud committed by the Family Caregiver and abuse and neglect of the eligible veteran by the Family Caregiver; § 71.45(b)(4)(iv), which addresses a Family Caregiver abandoning or terminating his or her relationship with the eligible veteran; and (c), which addresses other instances in which the eligible veteran or Family Caregiver no longer meet the requirements of part 71. In this rulemaking we propose to delineate and better distinguish these bases of revocation from other bases of revocation and discharge under revised § 71.45. For example, instead of referring just to a Family Caregiver's fraud, we would also reference fraud by the eligible veteran because both the eligible veteran and Family Caregiver must meet the requirements of 38 CFR part 71 to participate in PCAFC and receive benefits; thus, we believe it was an oversight to hold only Family Caregivers to this standard. We believe the addition of the eligible veteran would ensure that VA continues to be a good financial steward of the taxpayer's dollar by only providing benefits to individuals who are eligible for PCAFC. For example, if an eligible veteran performs a fraudulent action such as misrepresenting his or her need for personal care services, we believe it would be appropriate to revoke participation in PCAFC. Furthermore, the joint application is signed by both the eligible veteran and Family Caregiver and we believe that both parties are jointly responsible for being truthful with regard to their participation in PCAFC, and that fraud on the part of either the eligible veteran and Family Caregiver should not be tolerated. In addition to a Family Caregiver's abuse or neglect of an eligible veteran, we would also reference exploitation of the eligible veteran because abuse, neglect, and exploitation are commonly used together in the health care industry and by Federal and State agencies charged with protecting vulnerable populations. We note that these terms overlap such that neglect and exploitation may be considered types of abuse; however, because exploitation is so commonly tied to vulnerable populations, we propose to update our terminology in acknowledgement that the population being served by PCAFC is a vulnerable population. We also believe it is important to distinguish for purposes of revocation for cause those Family Caregivers who are unwilling to or fail (if able) to mitigate personal safety issues for the eligible veteran or provide personal care services to the eligible veteran. Unlike Family Caregivers described in other proposed paragraphs of this section, who are subject to revocation and discharge for other reasons, Family Caregivers meeting the criteria in proposed paragraphs (a)(1)(i)(C) and (D) pose a significant risk to the well-being of eligible veterans.

In new paragraph (a)(1)(ii), which we would title ''Noncompliance,'' we would state that except as provided in proposed § 71.45(f), VA would revoke the designation of a Family Caregiver when the Family Caregiver or eligible veteran are noncompliant with the requirements of part 71. Under this paragraph, noncompliance would mean: The eligible veteran does not meet the requirements of proposed § 71.20(a)(5), (6), or (7); the Family Caregiver does not meet the requirements of § 71.25(b)(2); failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to § 71.30; failure of the eligible veteran or Family Caregiver to participate in any wellness contact pursuant to § 71.40(b)(2); or failure to meet any other requirement of this part except as provided in paragraph (b)(1) or (2) of this section. These would be listed in new paragraphs (a)(1)(ii)(A) through (E). We believe it is appropriate to revoke the Family Caregiver's designation in these instances because noncompliance with the requirements of part 71 would be the direct result of a deliberate action or inaction on the part of the eligible veteran or Family Caregiver.

Terminating benefits in these instances would ensure that VA continues to be a good financial steward of the taxpayer's dollar by only providing benefits to individuals who are eligible for PCAFC. These provisions would also help ensure compliance with statutory and regulatory requirements, such as preventing duplicative personal care services (pursuant to current § 71.20(e) and proposed § 71.20(a)(5)), the eligible veteran receiving care at home (pursuant to current § 71.20(f) and proposed § 71.20(a)(6)), the eligible veteran receiving ongoing care from a primary care team (pursuant to current § 71.20(g) and proposed § 71.20(a)(7)), the Family Caregiver being a family member (as defined in 38 U.S.C. 1720G(d)(3) and pursuant to § 71.25(b)(2)), and participation in reassessments and wellness contacts in proposed § 71.30 and revised § 71.40(b)(2), respectively. With the exception of proposed paragraphs (a)(1)(ii)(C) and (D), these bases of revocation are already covered by current § 71.45(b)(4)(iv) and (c), but in this rulemaking we propose to delineate and better distinguish them from other bases of revocation and discharge under this section. Failure to meet the requirements of proposed § 71.20(a)(5), (6), and (7), and § 71.25(b)(2) would require deliberate non-compliance or other willful action or inaction that would result in either the eligible veteran or Family Caregiver no longer meeting the requirements of part 71. For example, this would include instances where the personal care services that would be provided by the Family Caregiver are provided to the eligible veteran by or through another person or entity, the eligible veteran refuses to receive care at home or ongoing care from a primary care team, or the Family Caregiver is no longer a family member or someone who lives with the eligible veteran. As previously discussed regarding proposed §§ 71.30 and 71.40(b)(2), we propose for participation in reassessments and wellness contacts to be mandatory, so we would add additional bases of revocation based on an eligible veteran's or Family Caregiver's failure to participate in either because such failure would result from deliberate action or inaction. Proposed paragraph (a)(1)(ii)(E) would authorize revocation in instances that the eligible veteran or Family Caregiver fail to meet any other requirement of part 71, except as set forth in proposed paragraphs (b)(1) and (2). We believe the other paragraphs of revised § 71.45, as proposed here, would account for all bases of revocation or discharge; however, we included this catch-all category in case there is a requirement under part 71 that is not otherwise accounted for to ensure that we have a clear basis to revoke a Family Caregiver's designation if the eligible veteran or Family Caregiver are found to be out of compliance with the requirements of part 71. We believe revocation on this basis would be appropriate to ensure that PCAFC is provided only to eligible veterans and Family Caregivers who meet the requirements of part 71. If we find that this basis for revocation is frequently relied upon, then we would consider proposing additional specific criteria for revocation or discharge under this section in a future rulemaking. For the aforementioned reasons, we believe revocation is reasonable if any of the requirements of proposed paragraphs (a)(1)(ii)(A) through (E) are met. We note that legacy participants and legacy applicants meeting the requirements of proposed § 71.20(b) and (c), respectively, would not be subject to proposed § 71.20(a), and their Family Caregivers therefore would not be revoked under proposed paragraph (a)(1)(ii)(A), but could be revoked based on paragraphs (a)(1)(ii)(B) through (E) during the one-year period beginning on the effective date of the rule. The Family Caregivers of legacy participants and legacy applicants could also have their designation revoked pursuant to proposed paragraphs (a)(1)(i) and (iii).

In proposed paragraph (a)(1)(iii), which we would title ''VA error,'' we would explain that except as provided in proposed § 71.45(f), VA will revoke the designation of the Family Caregiver if the Family Caregiver's approval and designation under part 71 was authorized because of an erroneous eligibility determination by VA. An example of such an error would be the mistaken designation of a Family Caregiver who is not a family member of the eligible veteran and who does not reside with the eligible veteran, when such error was an oversight by VA and not due to fraud or dishonesty on the part of the veteran or caregiver. It is VA's current practice to revoke the designation of a Family Caregiver when VA discovers that caregiver benefits were provided under part 71 as a result of an erroneous VA eligibility determination. These revocations are initiated by VA under current § 71.45(c) on the basis that the eligible veteran or Family Caregiver no longer meet the requirements of part 71. The current regulatory language does not explicitly capture revocations based on VA error (because the eligible veteran or Family Caregiver may have never met the requirements of part 71), so we would make this basis of revocation explicit in proposed paragraph (a)(1)(iii). We believe revocation on this basis would be appropriate to ensure that VA continues to be a good financial steward of the taxpayer's dollar by only providing benefits to individuals who are eligible for PCAFC.

We propose to add a new paragraph (a)(2), which we would title ''Revocation Date,'' to provide the effective dates for revocation for cause, non-compliance, and VA error. In proposed new paragraph (a)(2)(i), we would explain that if VA determines that the Family Caregiver or eligible veteran committed fraud under this part, the date of revocation will be the date the fraud began. If VA cannot identify when the fraud began, the date of revocation would be the earliest date that fraud is known by VA to have been committed, and no later than the date on which VA identifies that fraud was committed. For example, if VA determines that an eligible veteran or Family Caregiver committed fraud on the joint application when it was submitted, then the date of revocation would be the date of the joint application since the fraud was identified as having commenced during the application process prior to approval. If VA determines that the Family Caregiver or eligible veteran committed fraud at some later point following the approval and designation of the Family Caregiver, VA may determine the date of revocation to be the date on which the fraud is identified as having commenced. VA already makes fraud determinations and terminates benefits immediately in instances of fraud pursuant to current § 71.45(b)(4)(i) and (c). However, this has not been done consistently, with some facilities seeking to terminate benefits on the date the fraud commenced, and others seeking to terminate benefits when the fraud is discovered by VA. This proposed new paragraph would clarify the date of revocation when fraud is identified as having commenced sometime before it was actually discovered (*e.g.,* during the application process or at a later point before VA actually learns of it). Making the revocation effective retroactively would, as discussed further below, create an overpayment, allowing VA to initiate collections for benefits provided after the fraud commenced. We believe this is reasonable because fraud generally involves willful action taken to misrepresent facts and had such facts been accurately reported, benefits

would not have been provided in the first place. VA believes it is appropriate to remove a Family Caregiver's designation retroactively, if applicable, and recover overpayments because it adheres to fiscal stewardship. Additionally, VA has the authority to revoke a Family Caregiver's designation retroactively and recover overpayments to the date of revocation but has not consistently sought to apply this authority, and this proposed rule would clarify VA's authority. Furthermore, VA OIG has identified fraud as a program risk because of inaccurate program eligibility determinations and we are seeking to mitigate this risk by making explicit VA's authority to revoke a Family Caregiver's designation retroactively. VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, p. 11.

Proposed new paragraph (a)(2)(ii) would set forth the effective date of revocation for all of the other ''for cause'' bases in proposed paragraphs (a)(1)(i)(B) through (D). In proposed new paragraph (a)(2)(ii), we would state that the date of revocation will be the date VA determines any of the criteria in proposed paragraphs (a)(1)(i)(B) through (D) has been met. In these instances, VA will revoke the Family Caregiver's approval and designation immediately upon such a determination. We believe this is appropriate as such knowing or willful actions clearly do not support the health and well-being of PCAFC participants. This would be generally consistent with the current regulation, which provides that ''VA may immediately revoke the designation of a Family caregiver if the eligible veteran or individual designated as a Family Caregiver no longer meets the requirements of [part 71].'' 38 CFR 71.45(c). Additionally, where VA determines that the Family Caregiver abused or neglected the eligible veteran, benefits also terminate immediately. Id. at § 71.45(b)(4)(i). Under proposed paragraphs (a)(2)(i) and (ii), VA would not provide advanced notice prior to the revocation or any extension of benefits. Because of the egregious nature of the actions that would support revocation for cause, we believe benefits should be terminated immediately. However, if the eligible veteran or Family Caregiver disagrees with VA's revocation for cause under this section, he or she would still have the opportunity to appeal the revocation through VHA's clinical appeals process.

In proposed paragraph (a)(2)(iii), we would state that in the case of revocation based on noncompliance under proposed paragraph (a)(1)(ii), revocation takes effect as of the effective date provided in VA's final notice. We would state that the effective date of revocation will be no earlier than 60 days after the date VA provides advanced notice of its findings to the eligible veteran and Family Caregiver. Advanced notice of findings would include the specific program requirements with which the eligible veteran or Family Caregiver are out of compliance. The 60-day advanced notice would provide the Family Caregiver or eligible veteran the opportunity to redress noncompliance prior to VA's issuance of a final notice of revocation, to the extent possible. Therefore, we would not provide a period of extended benefits in cases of revocation for noncompliance. If the Family Caregiver or eligible veteran does not come into compliance prior to VA's issuance of a final notice, then the Family Caregiver would forgo continued participation in PCAFC. Like with revocation for cause, if the eligible veteran or Family Caregiver disagrees with VA's revocation for noncompliance under this section, he or she could appeal the revocation through VHA's clinical appeals process.

In proposed paragraph (a)(2)(iv), we would explain that if VA determines the approval and designation of a Family Caregiver under this part was the result of VA error, the date of revocation would be the date of the error. If VA cannot identify when the error was made, the date of revocation would be the earliest date that the error is known by VA to have occurred, and no later than the date on which the error is identified. For example, if VA determines that an error was made on the date the joint application was received by VA, then the date of revocation would be the date the joint application was received since the error was identified as having occurred on that date. If VA determines that the error occurred at some later point following the approval and designation of the Family Caregiver, but cannot determine when it occurred, the date of revocation would be no later than the date on which the error is identified. We believe this would be reasonable to prevent VA from providing any more benefits to a Family Caregiver who is not eligible for PCAFC. As previously discussed with revocation due to fraud, VA has the authority to revoke a Family Caregiver's designation retroactively, if applicable, and recover overpayments. Like with other bases of revocation discussed above, if the eligible veteran or Family Caregiver disagrees with VA's determination regarding VA error, he or she could appeal the revocation through VHA's clinical appeals process.

In proposed paragraph (a)(3), which we would title ''Continuation of Benefits,'' we explain that caregiver benefits would continue for 60 days after the date of revocation in the case of VA error under proposed paragraph (a)(1)(iii) and that such benefits would be considered an overpayment. Paragraph (a)(3) would also state that VA will seek to recover overpayment of benefits under this paragraph as provided in § 71.47. This extended period of benefits would give the Family Caregiver time to adjust before benefits are terminated. In such cases, the Family Caregiver may have come to rely on the benefits that were authorized as a result of a VA error. However, this continuation of benefits would be an overpayment and thus subject to collection so we would allow a Family Caregiver to opt out of receiving the 60-day extension of benefits. As discussed below with respect to proposed § 71.47, collection of overpayments made under PCAFC occurs under existing procedures and authorities. Therefore, in the case of an overpayment under proposed paragraph (a)(3), the Family Caregivers would receive a notice of rights and obligations pursuant to a collection.

We propose to address all instances of Family Caregiver discharge in a revised paragraph (b) and would title it ''Discharge of the Family Caregiver.'' Therefore, the language in current paragraph (b) would be addressed in other paragraphs of this section or removed altogether. Current paragraphs (b)(1) and (2) would be addressed in proposed paragraph (b)(4)(i), current paragraph (b)(3) would be addressed in proposed paragraphs (b)(4)(iii) and (c), current paragraph (b)(4) would be addressed in proposed paragraphs (b)(4)(iv), (e), and (f), and current paragraphs (b)(4)(i) and (iv) would be addressed in proposed paragraphs (a)(1)(i) and (ii) and (a)(2). We would remove current paragraphs (b)(4)(ii) and (iii) and address the effective date of benefits for newly designated Family Caregivers in proposed § 71.40(d)(4) and (5), as discussed above.

We propose to revise paragraph (b) to establish all bases under which a Family Caregiver may be discharged due to: the eligible veteran no longer meeting the requirements of § 71.20 (except as specified elsewhere), and the eligible veteran's death or institutionalization; the death or institutionalization of the Family Caregiver; the request of the Family Caregiver; and the request of the eligible veteran or surrogate. These

would be provided in revised paragraphs (b)(1) through (4), respectively, as discussed further in this rulemaking.

In revised paragraph (b)(1), which we would title ''Discharge due to the eligible veteran,'' we would explain that except as provided in proposed § 71.45(f), the Family Caregiver will be discharged from PCAFC on the bases set forth in proposed paragraphs (b)(1)(i)(A) and (B). Paragraph (b)(1)(i)(A) would address discharge in cases where the eligible veteran is no longer eligible under proposed § 71.20 because of improvement in the eligible veteran's condition or otherwise. We would add an exception in this paragraph for those sections in proposed § 71.20 that would result in revocation of the eligible veteran's Family Caregiver due to noncompliance with proposed § 71.20(a)(5), (6), or (7), and for the circumstances described in proposed paragraph (b)(1)(i)(B). Other reasons that an eligible veteran would no longer be eligible under proposed § 71.20 would include, a change in the eligible veteran's service connection rating such that the eligible veteran no longer meets the criteria for a serious injury (as such term would be defined in proposed § 71.15), it would no longer be in the best interest of the individual to participate in PCAFC, or the eligible veteran no longer meets the requirements of proposed § 71.20(b) or (c) (*e.g.,* based on a change in the Primary Family Caregiver). We note that legacy participants and legacy applicants would be considered to meet the requirements of proposed § 71.20 for one year beginning on the effective date of the rule, and therefore their Family Caregivers would not be discharged under proposed paragraph (b)(1)(i)(A) within the one-year period beginning on the effective date of the rule, so long as they continue to meet the definitions of legacy participant and legacy applicant in proposed § 71.15. The Family Caregivers of legacy participants and legacy applicants could, however, be discharged based on other bases of discharge under proposed § 71.45(b) during the one-year period beginning on the effective date of the rule. Discharges by VA under proposed paragraph (b)(1)(i)(A) are already covered in current § 71.45(c) when an eligible veteran ''no longer meets the requirements of [part 71],'' including instances in which ''having the Family Caregiver is no longer in the best interest of the eligible veteran'' and when ''revocation is due to improvement in the eligible veteran's condition.'' We propose to characterize these removals as ''discharges,'' as discussed above, to more accurately characterize them in the context of PCAFC as a clinical benefit program. We believe this term is more appropriate in situations where a Family Caregiver is removed from PCAFC due to the eligible veteran no longer meeting the eligibility requirements of the program (*e.g.,* based on improvement in the eligible veteran's condition).

Additionally, a Family Caregiver would be discharged upon the death or institutionalization of the eligible veteran. These bases of discharge would be listed in proposed paragraph (b)(1)(i)(B). We note that discharge due to the eligible veteran in proposed paragraph (b)(1)(i)(A) would be based on a VA determination; however, discharge due to the death or institutionalization of the eligible veteran in proposed paragraph (b)(1)(i)(B) would primarily be based on VA receiving notification of the death or institutionalization of the eligible veteran. This is because, in the absence of notification, VA may not become aware of the death or institutionalization of an eligible veteran until a reassessment or monitoring (*i.e.,* wellness contact in proposed § 71.40(b)(2)) is conducted, which could be up to 180 days later. The frequency of reassessments in proposed § 71.30 would be annually, unless there is a clinical determination to conduct reassessments on a more or less frequent basis, and monitoring (*i.e.,* wellness contacts) in proposed § 71.40(b)(2) would be a minimum of once every 180 days. Thus, we would add a note to proposed paragraph (b)(1)(i)(B) stating that VA must receive notification of the death or institutionalization of an eligible veteran as soon as possible but not later than 30 days from the date of death or institutionalization of the eligible veteran. Furthermore, we would add that notification of institutionalization must indicate whether the eligible veteran is expected to be institutionalized for 90 or more days from the onset of institutionalization. This information would be relevant for purposes of establishing the discharge date in proposed paragraph (b)(1)(ii)(B), discussed further below. Notification to VA is essential to avoiding overpayments of benefits to the Family Caregiver that would subsequently be collected by VA.

Discharges by VA under proposed paragraph (b)(1)(i)(B) are already covered in current § 71.45(c), which specifically accounts for cases of ''death, or permanent institutionalization.'' As previously explained regarding proposed § 71.15, we would define institutionalization, and the bases of institutionalization set forth in VA's proposed definition of that term in proposed § 71.15 would be applied for purposes of discharge under proposed paragraph (b)(1)(i)(B). Because those bases are consistent with our current understanding of ''institutionalization'' under current § 71.45(c), discharge based on institutionalization under proposed paragraph (b)(1)(i)(B) would be generally consistent with our current practices. However, as discussed above in the context of proposed paragraph (b)(1)(i)(A), we propose to characterize these removals as ''discharges,'' to more accurately characterize them in the context of PCAFC as a clinical benefit program.

Proposed paragraph (b)(1)(ii), which we would title ''Discharge Date,'' would describe the discharge date for a Family Caregiver discharged due to the eligible veteran. In proposed paragraph (b)(1)(ii)(A), we would explain that in the case of discharge pursuant to proposed paragraph (b)(1)(i)(A), the discharge would take effect as of the effective date provided in VA's final notice. The effective date of the discharge would be no earlier than 60 days after VA provided advanced notice of its findings to the eligible veteran and Family Caregiver that the eligible veteran does not meet the requirements of § 71.20. Advanced notice of findings would include the basis upon which VA has made its determination that the individual is no longer eligible. The 60-day time frame prior to the effective date for discharge coupled with a 90-day timeframe for continued caregiver benefits after the date of discharge proposed in paragraph (b)(1)(iii), would permit the eligible veteran and Family Caregiver a reasonable adjustment time to adapt and plan for discharge from the program. The 60-day time frame would also give the eligible veteran and Family Caregiver the opportunity to provide additional information prior to VA issuing a final notice.

In proposed paragraph (b)(1)(ii)(B), we would explain that discharge pursuant to proposed paragraph (b)(1)(i)(B) would be effective the earliest of the following dates, as applicable: Date of death of the eligible veteran; date that institutionalization begins, if it is determined that the eligible veteran is expected to be institutionalized for a period of 90 days or more; or the date of the 90th day of institutionalization. These would be listed in proposed paragraphs (b)(1)(ii)(B)(*1*) through (*3*). In the case of an eligible veteran's death that is not preceded by institutionalization, the date of discharge would be the date of the

eligible veteran's death. We would explain that when it is determined that an eligible veteran is expected to be institutionalized for a period of 90 days or more, the eligible veteran and Family Caregiver will be discharged as of the date that institutionalization begins. Otherwise, we would explain that the Family Caregiver would be discharged on the 90th day of the eligible veteran being institutionalized. However, if the eligible veteran dies before the 90th day of institutionalization, the discharge would be effective on the date of the eligible veteran's death. We recognize that proposed paragraphs (b)(1)(ii)(B)(*2*) and (*3*) may appear to create an incentive for individuals to not notify VA if it is known at the time institutionalization begins that the eligible veteran is expected to be institutionalized for a period of 90 days or more; however, we note that there would be separate provisions for revocation due to fraud and associated retroactive revocation, as appropriate. Additionally, we believe that such notification (as would be required in proposed paragraph (b)(1)(i)(B)) is nonetheless important to ensure the well-being of eligible veterans. For instance, in a situation where it is known in advance that an eligible veteran will be institutionalized at a future date, notification would allow VA to take appropriate steps to ensure that the eligible veteran continues to receive appropriate care until the date of institutionalization. VA would not provide 60-day advance notice prior to discharge as a result of the death or institutionalization of the eligible veteran. We believe that death or institutionalization is a fact rather than a VA determination that would warrant an advanced 60-day notice. Thus, the date of discharge would be based on the applicable date in proposed paragraph (b)(1)(ii)(B). Additionally, VA would proactively provide notification to all PCAFC participants through an initial notification upon approval and designation of a Family Caregiver and regular notifications outlining the date of discharge should the eligible veteran die or be institutionalized. Furthermore, to the extent the eligible veteran or Family Caregiver disagrees with a discharge by VA pursuant to paragraphs (b)(1)(i)(B) and (b)(1)(ii)(B), the eligible veteran or Family Caregiver, as applicable, would still have the opportunity to appeal the discharge pursuant to VHA's clinical appeals process.

In new paragraph (b)(1)(iii), which we would title ''Continuation of Benefits,'' we would explain that caregiver benefits will continue for 90 days after the date of discharge in cases of discharge based on paragraph (b)(1)(i). While continuing benefits for 90 days after discharge is not contemplated under the authorizing statute, we have provided a 90-day extension of benefits under current § 71.45(c) in cases of revocation ''due to improvement in the eligible veteran's condition, death, or permanent institutionalization,'' as we believe it is an appropriate and compassionate way to interpret and enforce the law. 76 FR 26156 (May 5, 2011). We believe that this extended period of benefits supports Family Caregivers during their transition out of PCAFC. Particularly in the case of an unexpected death of an eligible veteran, the extended benefits period provides for a period of adjustment following their discharge from PCAFC and is generally consistent with current § 71.45(c).

In new paragraph (b)(2), which we would title ''Discharge due to the Family Caregiver,'' we would describe discharge due to the death or institutionalization of the Family Caregiver. Proposed paragraph (b)(2)(i) would state that, except as provided in § 71.45(f), a Family Caregiver will be discharged due to the death or institutionalization of the Family Caregiver. The term ''institutionalization'' in this paragraph would be defined in proposed § 71.15 and applied accordingly. Similar to the death or institutionalization of the eligible veteran, VA would primarily rely on receiving notification of the death or institutionalization of the Family Caregiver. This is because, in the absence of notification, VA may not become aware of the death or institutionalization of a Family Caregiver until a reassessment or monitoring visit (*i.e.,* wellness contact) is conducted, which could be up to 180 days later. The frequency of reassessments in proposed § 71.30 would be annually, unless there is a clinical determination to conduct reassessments on a more or less frequent basis, and monitoring visits (*i.e.,* wellness contacts) in proposed § 71.40(b)(2) would be a minimum of once every 180 days. Thus, we would add a note that VA must receive notification of the death or institutionalization of the Family Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization of the Family Caregiver. Furthermore, we would add that notification of institutionalization must indicate whether the Family Caregiver is expected to be institutionalized for 90 or more days from the onset of institutionalization. This information would be relevant for purposes of establishing the discharge date in proposed paragraph (b)(2)(ii), discussed further below. This would be similar to the proposed note in proposed paragraph (b)(1)(i)(B). Notification to VA is essential to avoiding overpayments of benefits to the Family Caregiver that would subsequently be collected by VA. Additionally, notification would allow VA to take appropriate steps to ensure that the eligible veteran is safe and continues to receive appropriate care in the absence of the Family Caregiver.

In proposed paragraph (b)(2)(ii), which we would title ''Discharge Date,'' we would explain that the Family Caregiver would be discharged from PCAFC as of the earliest of the following dates: The date of death of the Family Caregiver; the date that the institutionalization begins, if it is determined that the Family Caregiver is expected to be institutionalized for a period of 90 days or more; or the date of the 90th day of institutionalization. These would be listed in proposed paragraphs (b)(2)(ii)(A) through (C) and applied in the same manner as described above regarding proposed paragraph (b)(1)(ii)(B). Again, we recognize that proposed paragraphs (b)(2)(ii)(B) and (C) may appear to create an incentive for individuals to not notify VA if it is known at the time institutionalization begins that the Family Caregiver is expected to be institutionalized for a period of 90 days or more; however, separate provisions for revocation due to fraud and retroactive revocation may be applied in such cases, as appropriate. VA would not provide a 60-day advanced notice of discharge as a result of the death or institutionalization of the Family Caregiver. We believe that death or institutionalization is a fact rather than a VA determination that would warrant an advanced 60-day notice. Thus, the date of discharge would be based on the applicable date in proposed paragraph (b)(2)(ii). Additionally, VA would proactively provide notification to all PCAFC participants through an initial notification upon approval and designation of a Family Caregiver and regular notifications outlining the date of discharge should the Family Caregiver die or be institutionalized. Furthermore, as noted above with respect to discharges under proposed paragraph (b)(1)(i)(B), to the extent the eligible veteran or Family Caregiver disagrees with a discharge by VA pursuant to paragraphs (b)(2)(i) and (ii), the eligible veteran or Family Caregiver,

as applicable, can appeal pursuant to VHA's clinical appeals process.

Current § 71.45(c) provides an extended period of benefits for 90 days in cases where ''revocation is due to improvement in the eligible veteran's condition, death, or permanent institutionalization'' (with certain exceptions). While the references to ''death'' and ''permanent institutionalization'' are not specific to the eligible veteran, that is how VA has applied the current regulations, such that there is currently no extended period of benefits in cases of a Family Caregiver's death or institutionalization. In paragraph (b)(2)(iii), which we would title ''Continuation of Benefits,'' we would continue with current practice in cases of a Family Caregiver's death, but continue caregiver benefits for 90 days after the date of discharge in paragraph (b)(2)(ii)(B) or (C) as a result of the Family Caregiver's institutionalization. Providing 90 days of extended benefits in cases of the Family Caregiver's institutionalization would support the Family Caregiver during their transition out of PCAFC at a time when they may be particularly vulnerable as a result of the institutionalization, especially if it is unexpected. As previously explained, while continuing benefits for this period of time is not contemplated under the authorizing statute, we have provided these benefits for an extended period of time under the current regulations pursuant to other bases of revocation, as we believe it is an appropriate and compassionate way to interpret and enforce the law. 76 FR 26156 (May 5, 2011). However, we would not provide a continuation of benefits when discharge is due to the death of the Family Caregiver. We believe it is reasonable to discontinue benefits and discharge a Family Caregiver as of the date of the Family Caregiver's death. We note that any benefits owed to the Family Caregiver prior to his or her death would continue to be provided as is our current practice (*e.g.,* the monthly stipend for Primary Family Caregivers provided in the current or previous month). The same rationale that supports an extended period of benefits in other instances of discharge (*e.g.,* to support the Family Caregiver as he or she transitions out of PCAFC) does not apply in cases of the Family Caregiver's death.

In new paragraph (b)(3), which we would title ''Discharge of the Family Caregiver by request of the Family Caregiver,'' we would describe discharge of the Family Caregiver by request of the Family Caregiver and in paragraph (b)(3)(i) we would explain that except as provided in proposed § 71.45(f), a Family Caregiver would be discharged at the request of the Family Caregiver for discharge of his or her caregiver designation. Paragraph (b)(3)(i) would further provide that the request may be made verbally or in writing and must provide the present or future date of discharge. We would also explain that if the discharge request is received verbally, VA will provide to the Family Caregiver written confirmation of receipt of the verbal discharge request and the effective date of discharge. We would also state that VA will notify the eligible veteran verbally and in writing of the request for discharge and the effective date of discharge. In proposed paragraph (b)(3)(ii), which we would title ''Discharge Date,'' we would state the date of discharge will be the present or future date of discharge provided by the Family Caregiver. Such paragraph would further provide that if the request does not include an identified date of discharge, VA would contact the Family Caregiver to request a date. If unable to successfully obtain this date, discharge would be effective as of the date of the request. We believe this is reasonable as in such circumstances VA would be unable to know if the Family Caregiver is continuing to provide personal care services to the eligible veteran after the request for discharge is received. We note that if VA's efforts to contact the Family Caregiver to obtain a date of requested discharge are subsequently successful, VA would correct the date of discharge to reflect the past or future date the Family Caregiver identifies as the date the caregiver did or will cease to provide personal care services to the eligible veteran. However, in the case that VA in unable to successfully obtain a date of requested discharge, using the date of the request for discharge rather than a future date would prevent VA from having to recover an overpayment if the Family Caregiver stops providing personal care services prior to a future date assumed by VA.

Most of the language in proposed paragraphs (b)(3)(i) and (ii) would be generally consistent with current § 71.45(a) and our current practices. However, we would allow caregivers to make a discharge request verbally as well as in writing, because we often receive verbal revocation requests from Family Caregivers, and the current regulation does not address whether the Family Caregiver is able to request revocation verbally. It currently states that the Family Caregiver may request revocation in writing but does not require it be in writing and does not explicitly prohibit a verbal request. 38 CFR 71.45(a). We now propose to clarify that we will accept a request for revocation in writing or verbally. We have found that written requests sent via mail can be time consuming for Family Caregivers and there is potential for such requests to get lost in transit. Requiring written notification can be burdensome on the Family Caregiver and can result in delays in VA receiving such requests, creating the potential for overpayment of caregiver benefits. Allowing the Family Caregiver to request discharge verbally would improve efficiency and result in less burden on Family Caregivers. In proposed paragraph (b)(3)(i), we would clarify that in instances when we receive a verbal revocation request from the Family Caregiver, we would provide to the Family Caregiver written confirmation of receipt of the verbal revocation request, as we would want to document receipt of the verbal request. The current language in § 71.45(a) states that VA will notify the eligible veteran verbally and in writing of the request for revocation, and that would also be included in new paragraph (b)(3)(i).

Other language in current § 71.45(a) would either be removed or addressed in other sections of revised § 71.45. In particular, the current language in § 71.45(a) concerning the Family Caregiver's transition to alternative health care coverage and mental health services would be addressed in proposed paragraph (e). Additionally, the current language that ''[a]ll caregiver benefits will continue to be provided to the Family Caregiver until the date of revocation,'' would be addressed in proposed paragraph (a)(2). We note that this language would not be provided in proposed paragraph (b) which addresses discharge of the Family Caregiver (to include a Family Caregiver's request for discharge) because as discussed below, Family Caregivers generally would receive continuation of benefits after the date of discharge.

Additionally, current § 71.45(a) states that the date of revocation is the present or future date provided by the Family Caregiver. It does not, however, specify the applicable revocation date when the Family Caregiver does not provide one. Therefore, for the reasons outlined above, in proposed paragraphs (b)(3)(i) and (ii), we would clarify that in these cases, VA would contact the Family Caregiver to request that a date be provided, and specify that if the Family Caregiver does not provide a date, discharge would be effective as of the date of the request by the Family Caregiver.

In proposed paragraph (b)(3)(iii), which we would title ''Continuation of Benefits,'' we would set forth periods

for extended benefits in cases of discharge requested by the Family Caregiver. Proposed paragraph (b)(3)(iii)(A) would explain that, except as provided for in paragraph (b)(3)(iii)(B) of this section, caregiver benefits will continue for 30 days after the date of discharge. We believe 30 days is a reasonable period of time for a Family Caregiver to receive extended benefits following discharge. This is the same period of extended caregiver benefits under current § 71.45(b)(4) in cases where an eligible veteran or surrogate requests revocation of the Family Caregiver. Current § 71.45(a) does not provide a period of extended benefits for a Family Caregiver requesting revocation, but we believe that adding one would support Family Caregivers as they transition out of PCAFC and would remedy the current inequity between current § 71.45(a) and (b)(4). Currently, if a Family Caregiver and eligible veteran both desire for the Family Caregiver's designation to be revoked, the Family Caregiver may or may not receive a 30-day period of extended benefits, depending only on which of them—the Family Caregiver or eligible veteran—makes the revocation request. We have found that in many cases, it is a mutual decision for the Family Caregiver's designation to be revoked. We would remedy this inequity and promote consistency by adding a 30-day period of extended benefits for the Family Caregiver in instances of both a Family Caregiver's and eligible veteran's or surrogate's request for discharge.

In proposed paragraph (b)(3)(iii)(B), we would describe the process for continuing benefits for a Family Caregiver requesting discharge due to DV or IPV, as those terms would be defined in proposed § 71.15. In proposed paragraph (b)(3)(iii)(B), we would explain that benefits would continue for 90 days after the date of discharge in instances where the Family Caregiver requests discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver when any of the following can be established: The issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran; a police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver; or documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (*e.g.,* physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist, or counselor. We have found that oftentimes, a caregiver may remain in a DV or IPV situation due to financial concerns. They may choose to not leave such a situation because doing so would result in financial insecurity, including loss of caregiver benefits such as the stipend payment and health care benefits. We propose to extend caregiver benefits for a period of 90 days after discharge in such instances where there is DV or IPV perpetrated by the eligible veteran against the Family Caregiver and the designated Family Caregiver requests removal from the Program. We do not want to encourage caregivers to remain in such situations and we believe that continuing to provide caregiver benefits for a period of 90 days is reasonable as this would help to mitigate concerns about the loss of the monthly caregiver stipend and health care benefits after the caregiver transitions away from his or her caregiver responsibilities. The 90-day period of extended benefits would also give the caregiver time to seek alternative health care coverage and mental health services, as needed, before caregiver benefits are discontinued. We believe 90 days is reasonable, as it is consistent with the extension of caregiver benefits that we provide to caregivers in other circumstances under current § 71.45(c). In order to provide this extended benefit period, we would require that at least one of the following be provided as documentation that the request for discharge is due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver: Issuance of a protective order, to include interim, temporary and/or final protective orders; police report indicating DV or IPV or a record of an arrest related to DV or IPV; or documentation of disclosure of DV or IPV to a treating provider (*e.g.,* physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, IPVAP Coordinator, therapist, or counselor. These would be listed in new paragraphs (b)(3)(iii)(B)(*1*) through (*3*). We would require this documentation to ensure that individuals do not take advantage of these continued benefits and that we are being good stewards of the taxpayers' dollars. We note that the disclosure of DV or IPV can be to clinical staff through counseling, routine care, or otherwise. Additionally, we note that the terminology used for protective orders may vary by state (*e.g.,* order of protection, restraining order, injunction for protection), and we intend for this proposed paragraph to include any such order issued pursuant to state law for the protection of a victim of DV or IPV.

In revised paragraph (b)(4), which we would title ''Discharge of the Family Caregiver by request of the eligible veteran or eligible veteran's surrogate,'' we would describe discharge of a Family Caregiver by request of the eligible veteran or eligible veteran's surrogate. Current paragraph (b) describes revocation in instances in which the eligible veteran or eligible veteran's surrogate requests revocation of a Family Caregiver's designation. Currently, such requests must be made in writing, and VA will notify the Family Caregiver of such request and review the request within 30 days. Family Caregiver benefits currently continue for 30 days after the date of revocation unless an exemption applies such as fraud, abuse, neglect, abandonment, and certain replacement caregivers. See current § 71.45(b)(1) through (4). In revised paragraph (b)(4), we would use some of the language from current paragraphs (b)(1) through (3) of § 71.45 but further update it. We would also incorporate portions of current paragraph (b)(4) of § 71.45, but other provisions of current paragraph (b)(4), including (b)(4)(i) through (iv) would be addressed elsewhere in § 71.45 or removed as discussed further above.

In proposed paragraph (b)(4)(i), we would state that except as provided in § 71.45(f), the Family Caregiver will be discharged from PCAFC by request of the eligible veteran or the eligible veteran's surrogate, and that the discharge request may be made verbally or in writing and must express an intent to remove the Family Caregiver's approval and designation. We would further state that if the discharge request is received verbally, VA will provide to the eligible veteran written confirmation of receipt of the verbal discharge request and effective date of discharge. VA would also notify the Family Caregiver verbally and in writing of the request for discharge and the effective date of discharge. We believe allowing discharge requests to be made verbally or in writing is necessary because we often receive verbal revocation requests from individuals, including the eligible veteran or eligible veteran's surrogate. For example, there have been instances when the veteran or surrogate informs us of a request to remove the designation of the eligible veteran's

designated Primary Family Caregiver and apply with a different Family Caregiver. Under the current regulations, we are unable to process or confirm this request for discharge until the veteran or surrogate provides the request in writing. We have found that written requests sent via mail can be time consuming for eligible veterans and eligible veterans' surrogates, and there is potential for such requests to get lost in transit. Requiring written notification can be burdensome on the eligible veteran or eligible veteran's surrogate and can result in delays in VA receiving such requests, creating the potential for overpayments of benefits. Allowing eligible veterans and eligible veterans' surrogates to verbally request discharge would improve efficiency and result in less burden on eligible veterans and eligible veterans' surrogates.

In proposed paragraph (b)(4)(ii), which we would title ''Discharge Date,'' we would state that the date of discharge will be the present or future date of discharge provided by the eligible veteran or eligible veteran's surrogate. Such paragraph would further provide that if the request does not provide a present or future date of discharge, VA will ask the eligible veteran or eligible veteran's surrogate to provide one, and if VA is unable to successfully obtain this date, discharge would be effective as of the date of the request. As stated above with respect to proposed paragraphs (b)(3)(i) and (ii), we believe that making discharge effective the date of the request is reasonable because VA would be unable to know if the Family Caregiver is continuing to provide personal care services to the eligible veteran after a request for discharge is received. We note that if VA's efforts to contact the eligible veteran or eligible veteran's surrogate to obtain a date of requested discharge is subsequently successful, VA would correct the date of discharge to reflect the past or future date the eligible veteran or eligible veteran's surrogate identifies as the date the Family Caregiver did or will cease to provide personal care services to the eligible veteran. However, in the case that VA is unable to successfully obtain a date of requested discharge, using the date of the request rather than a future date would prevent VA from having to recover an overpayment if the Family Caregiver stops providing personal care services prior to a future date assumed by VA.

In revised paragraph (b)(4)(iii), which we would title ''Rescission,'' VA would allow the eligible veteran or eligible veteran's surrogate to rescind the discharge request and have the Family Caregiver reinstated if the rescission is made within 30 days of the date of discharge. This would be generally consistent with language in current paragraph (b)(3). However, we would remove the language stating that VA will review the request for revocation and that the review will take no longer than 30 days. VA has found that it is not uncommon for an eligible veteran to request discharge of his or her Family Caregiver as a result of an argument followed by a request to rescind the request a few days later. Therefore, VA believes it may not always be necessary or appropriate to conduct a review as a result of a request by an eligible veteran or his or her surrogate. Instead of referring to a formal review, proposed paragraph (b)(4)(iii) would refer to a 30-day period for an eligible veteran or eligible veteran's surrogate to rescind the discharge request. Additionally, to the extent VA believes a formal review or other intervention is required, VA could conduct a wellness contact under proposed § 71.40(b)(2) or reassessment under proposed § 71.30, as appropriate. Additionally, we would add that if the eligible veteran or eligible veteran's surrogate expresses a desire to reinstate the Family Caregiver more than 30 days from the date of discharge, a new joint application would be required. This is consistent with current practice.

In revised paragraph (b)(4)(iv), which we would title ''Continuation of Benefits,'' we would provide for 30 days of continued caregiver benefits after the date of discharge as we believe this is fair, reasonable, and compassionate, and allows for a period of transition out of the PCAFC for the caregiver. Additionally, providing caregiver benefits for 30 days after the date of discharge would be consistent with the current transition period following revocation initiated by the eligible veteran or eligible veteran's surrogate. See current § 71.45(b)(4) which provides for 30 days of caregiver benefits after the date of revocation except in limited circumstances as set forth in current § 71.45(b)(4)(i) through (iv).

As discussed above, other provisions of current § 71.45(b) not addressed in proposed paragraph (b)(4) would be addressed in other paragraphs of this section. For example, proposed paragraph (f) would address situations where there are multiple bases of revocation or discharge like in current § 71.45(b)(4), proposed paragraph (c) would address the safety and welfare of eligible veterans like in current § 71.45(b)(3), assistance regarding the Family Caregiver's transition to alternative health care coverage and mental health services addressed in current § 71.45(b)(4) would be addressed in proposed paragraph (e), and current § 71.45(b)(4)(i) and (iv) would be addressed in proposed paragraphs (a)(1)(i) and (ii) and (a)(2) in the context of revocation.

We propose to revise paragraph (c), which currently describes the process for revocation by VA and extension of benefits in limited circumstances. Current paragraph (c) explains that VA may revoke a Family Caregiver's designation immediately if the eligible veteran or Family Caregiver no longer meets the requirements of part 71 or if VA makes the clinical determination that having the Family Caregiver is no longer in the best interest of the eligible veteran. Additionally, current paragraph (c) explains that VA will, if requested by the Family Caregiver, assist him or her in transitioning to alternative health care coverage and mental health services. Current paragraph (c) also explains that if VA revokes the Family Caregiver's designation due to improvement in the eligible veteran's condition, death, or permanent institutionalization, VA will provide the Family Caregiver with continued benefits for 90 days unless any of the conditions in current paragraphs (b)(4)(i) through (iv) of this section are met, and that bereavement counseling may be available pursuant to 38 U.S.C. 1783. Further, current § 71.45(c) provides that if VA suspects the eligible veteran's safety is at risk, VA may suspend the caregiver's responsibilities and remove the eligible veteran from the home or take any other appropriate action, prior to making a formal revocation.

We would revise paragraph (c) to state that if VA suspects the eligible veteran's safety is at risk, VA may suspend the caregiver's responsibilities and facilitate appropriate referrals to protective agencies or emergency services if needed, to ensure the welfare of the eligible veteran, prior to initiating discharge or revocation. This would be similar to the language in the last sentence of current paragraph (c) and the last sentence of current paragraph (b)(3); however, we would replace the phrase ''remove the eligible veteran from the home if requested by the eligible veteran or take other appropriate action'' with ''facilitate appropriate referrals to protective agencies or emergency services if needed,'' and we would replace the phrase ''prior to making a formal revocation'' with ''prior to discharge or revocation.'' We believe the language in proposed paragraph (c) better describes the appropriate protocol and response when VA suspects the eligible veteran's

safety and welfare is at risk because VA does not have the authority to remove an eligible veteran from the home. Rather, VA refers to local or state protective service agencies and emergency services with authority to remove and place an eligible veteran in a safe setting. Also, we would maintain consistency with the proposed changes in this section by replacing ''prior to making a formal revocation'' with ''prior to discharge or revocation.''

Other portions of current § 71.45(c) are addressed in other proposed paragraphs of this section. For example, the determination that the eligible veteran no longer meets the requirements of part 71, and the improvement in the veteran's condition, death, or institutionalization are addressed in proposed paragraphs (a)(1) and (b)(1). The language in current paragraph (c) regarding VA revocation when the Family Caregiver no longer meets the requirements of part 71 would be addressed in proposed paragraphs (a)(1) and (b)(2). Additionally, the current language in paragraph (c) relating to revocation in the instance that having the Family Caregiver is no longer in the best interest of the eligible veteran would be addressed in proposed paragraph (b)(1)(i). Furthermore, the language in current paragraph (c) relating to bereavement counseling and assistance with transitioning to alternative health care coverage and mental health services would be addressed in proposed in new paragraph (e).

In new paragraph (d), we would state that VA will seek to recover overpayments of benefits provided under this section, as provided in proposed § 71.47. We believe recovery of overpayments of benefits would be reasonable, is within VA's authority, and would ensure we are being a good steward of the taxpayer's dollar. Overpayments may result in cases of revocation for fraud pursuant to the revocation date in proposed paragraph (a)(2)(i) if fraud is determined to have commenced sometime before VA actually learned of it. Overpayments may also result pursuant to the discharge dates in proposed paragraphs (b)(1)(ii)(B) and (b)(2)(ii) if VA is not informed of an eligible veteran's or Family Caregiver's death or institutionalization in a timely manner. Additionally, overpayment may result due to VA error under proposed paragraph (a)(2)(iv), including after a Family Caregiver has already been revoked or discharged under proposed paragraph (a)(3). For example, if a Primary Family Caregiver is revoked on July 1st, but due to a VA error, stipend payments continue to be provided to the Primary Family Caregiver for an additional 60 days, VA would recover the overpayments back to the date of revocation (July 1st) as well as back to any previous date on which the error is known to have been made. In addition to overpayments that result in a caregiver being erroneously approved and designated as a Family Caregiver under proposed paragraph (a)(1)(iii), overpayments can also result from other VA errors. For example, if a Primary Family Caregiver is discharged pursuant to proposed paragraph (b)(1)(i)(B) and receives an additional 90 days of benefits, but as the result of a VA error, the Primary Family Caregiver continues to receive a monthly stipend payment beyond the 90 days, VA would recover the overpayments that should not have been made. We note that proposed paragraph (d) would not modify or expand VA's legal authority to initiate collections but would help ensure that PCAFC participants are on notice of the potential for collections actions by VA under this section.

In new paragraph (e), we would state that VA will, if requested and applicable, assist the Family Caregiver in transitioning to alternative health care coverage and mental health services. This would be consistent with similar language in current § 71.45(b)(4) and (c). Also, new paragraph (e) would state that in cases of death of the eligible veteran, bereavement counseling may be available under 38 U.S.C. 1783. This would be consistent with similar language in current § 71.45(c).

In new paragraph (f), which we would title ''Multiple bases for revocation or discharge,'' we would explain that in the instance that a Family Caregiver may be both discharged pursuant to any of the criteria in paragraph (b) of this section and have his or her designation revoked pursuant to any of the criteria in paragraph (a) of this section, the Family Caregiver's designation would be revoked pursuant to paragraph (a). If VA finds that a situation warrants revocation of a Family Caregiver's designation, VA would revoke the Family Caregiver's designation and discontinue benefits as set forth in proposed paragraph (a) regardless of whether there may be another reason to discharge the Family Caregiver under proposed paragraph (b). For example, if an eligible veteran or Family Caregiver is requesting discharge under proposed paragraphs (b)(3) or (4) in order to avoid being revoked for fraud under proposed paragraph (a)(1)(i)(A), VA would revoke the Family Caregiver designation pursuant to proposed paragraph (a)(1)(i)(A) and the revocation would be effective on the date set forth in proposed paragraph (a)(2)(i), not the discharge date specified by the eligible veteran or Family Caregiver in their request for discharge. Similarly, if a Family Caregiver requests discharge from PCAFC or an eligible veteran requests that a Family Caregiver be discharged from PCAFC, but VA also determines the Family Caregiver ceased to provide personal services because of the Family Caregiver's unwillingness to provide personal care services prior to the requested discharge date, VA would revoke the Family Caregiver's designation pursuant to proposed paragraph (a)(1)(i)(D) and the revocation would be effective on the date set forth in proposed paragraph (a)(2)(ii), not the discharge date specified by the eligible veteran or Family Caregiver in their request for discharge. In these situations, the Family Caregiver would receive benefits only until the date of revocation. Another example is the determination of whether the institutionalization of a Family Caregiver would result in discharge under paragraph (b)(2) or revocation under paragraph (a)(1)(i)(D). The determining factor would be if the Family Caregiver, if able to, has taken measures to ensure the personal care services of the eligible veteran are adequately addressed through alternative means (referenced in proposed paragraph (a)(1)(i)(D)). We note that depending on the circumstances, the Family Caregiver may not be able to take such measures such as in the case of emergency hospitalization in which the Family Caregiver is incapacitated, in which case VA would discharge the Family Caregiver in accordance with proposed paragraph (b)(2), as appropriate.

Additionally, we would also explain in proposed paragraph (f) what basis of revocation would apply in the instance that there are multiple bases of revocation. If the designation of a Family Caregiver may be revoked pursuant to proposed paragraph (a)(1)(i) and proposed paragraph (a)(1)(ii) or (iii), the designation of the Family Caregiver would be revoked pursuant to proposed paragraph (a)(1)(i). For example, if VA can revoke the Family Caregiver's designation because of noncompliance, but the Family Caregiver is also found to have committed fraud in his or her application for benefits under this part, VA would revoke the Family Caregiver's designation pursuant to proposed paragraph (a)(1)(i)(A) instead of proposed paragraph (a)(1)(ii). In such circumstances, the revocation would be effective on the date of the Family

Caregiver's application pursuant to proposed paragraph (a)(2)(i), not after a period of 60 days advanced notice as would be the case for revocation based on noncompliance pursuant to proposed paragraph (a)(2)(iii). We believe this is fair and equitable and ensures VA continues to be a good steward of the taxpayer's dollar. In the instance that the designation of a Family Caregiver may be revoked under proposed paragraphs (a)(1)(ii) and (iii) of this section, the designation of the Family Caregiver would be revoked pursuant to proposed paragraph (a)(1)(iii). For example, if the eligible veteran or Family Caregiver fail to participate in reassessments or monitoring visits (*i.e.,* wellness contacts), but VA also discovers an error in the initial eligibility determination, such that the individuals were never eligible for PCAFC, VA would revoke the Family Caregiver's designation based on proposed paragraph (a)(1)(iii) and benefits would be terminated retroactively back to the date of the initial eligibility determination.

Moreover, we would also explain in proposed paragraph (f) what basis of discharge would apply in the instance that there are multiple bases of discharge. While VA may receive simultaneous requests or notifications for discharge for more than one discharge reason; we do not think this will happen frequently. Nonetheless, under such circumstances, we would apply whichever discharge reason is more favorable to the Family Caregiver because we believe this is the most supportive to the Family Caregiver. For example, if the eligible veteran notifies VA that he or she wants to have the Family Caregiver discharged on July 7th pursuant to proposed paragraph (b)(4) of this section which would result in 30-day extension of benefits to the Family Caregiver, but the Family Caregiver also notifies VA that he or she wants to be discharged from PCAFC on July 7th due to DV or IPV pursuant to proposed paragraph (b)(3)(iii)(B), then VA would discharge the Family Caregiver pursuant to proposed paragraph (b)(3)(iii)(B) so long as DV or IPV is established, and the Family Caregiver would receive a 90-day extension of benefits.

§ 71.47 Collection of Overpayment

In § 71.47, we propose a new section to address VA's collection of overpayments made under PCAFC and the authority relied upon by VA for collection activity. Overpayments are most likely to occur based on the requirements of current and proposed §§ 71.40 and 71.45. However, because it is difficult to identify all possible scenarios under which an overpayment may be issued, § 71.47 will serve as a ''catch-all'' to ensure VA does not inadvertently preclude itself from taking collection activity against other overpayments not otherwise explicitly provided for in part 71. Under proposed § 71.47, any collection activity would be conducted in accordance with the FCCS. VA follows FCCS in its collection activities. Proposed § 71.47 would ensure PCAFC collection is consistent with existing procedures and authorities. FCCS also authorizes VA to analyze its collection activities and make case-by-case determinations on individual debts as appropriate. By way of example, FCCS authorizes VA to terminate collection of a debt for which the costs of recovery will exceed collections. Additionally, FCCS authorizes VA to forego collection action for *de minimis* debts. We anticipate certain overpayments may be nominal, and FCCS permits VA the flexibility to make determinations on collection activities in accordance with applicable law, rule, and policy.

Technical Edits

We would make a technical edit to §§ 71.10 through 71.40, and 71.50. We would remove the statutory authority citations at the end of each of these sections and amend the introductory ''Authority'' section of part 71 to include the statutory citations listed in these sections that are not already provided in the ''Authority'' section of part 71 to conform with publishing guidelines established by the Office of the Federal Register. We note that current §§ 71.20 and 71.30 include a citation to 38 U.S.C. 1720G(a)(2) and 1720G(b)(1), (2), respectively. However, we would reference 38 U.S.C. 1720G, not specific subsections and paragraphs. We would also add a reference to 31 U.S.C. 3711, which pertains to collections; 38 U.S.C. 5302, which pertains to waiver of benefits overpayments; and 38 U.S.C. 5314, which pertains to the offset of benefits overpayments. These references would be added for purposes of proposed § 71.47, Collection of Overpayment.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not conduct or sponsor the collection of information, unless it displays a currently valid control number from the Office of Management and Budget (OMB). This proposed rule contains provisions that would constitute a revised collection of information under 38 CFR 71.25, which is currently approved under OMB Control #2900–0768. The revised collections of information will be submitted to OMB for approval and also made available to the public for comment through a separate **Federal Register** (FR) document that will be published in the **Federal Register**. The FR document will provide the public with an opportunity to comment on the revised information collections associated with this proposed rulemaking. A final FR document will also be published in the **Federal Register** if and when the revised collections of information are approved by OMB.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. We note that caregivers are not small entities. However, this proposed rule may directly affect small entities that we would contract with to provide financial planning services and legal services to Primary Family Caregivers; however, matters relating to contracts are exempt from the RFA requirements. We do not anticipate this proposed rule would have a significant economic impact on a substantial number of small entities. Any effects on small entities would be indirect. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Order 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is an economically significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48

hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

This rulemaking is likely to be considered an E.O. 13771 regulatory action if finalized. VA has determined that the net costs are $755.5 million over a five-year period (FY2020–FY2024) and $146 million per year on an ongoing basis discounted at 7 percent relative to year 2016, over a perpetual time horizon.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits.

List of Subjects in 38 CFR Part 71

Administrative practice and procedure, Caregivers program, Claims, Health care, Health facilities, Health professions, Mental health programs, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 28, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 71 as follows:

PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS OFFERED TO FAMILY MEMBERS OF VETERANS

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

Authority: 38 U.S.C. 501, 1720G, unless otherwise noted.

Section 71.40 also issued under 38 U.S.C. 111(e), 1720B, 1782.

Section 71.47 also issued under 31 U.S.C. 3711; 38 U.S.C. 5302, 5314.

Section 71.50 also issued under 38 U.S.C. 1782.

■ 2. Amend § 71.10 by revising paragraph (b) and removing the authority citation at the end of the section.

The revision reads as follows:

§ 71.10 Purpose and scope.

* * * * *

(b) *Scope.* This part regulates the provision of benefits under the Program of Comprehensive Assistance for Family Caregivers and the Program of General Caregiver Support Services authorized by 38 U.S.C. 1720G. Persons eligible for such benefits may be eligible for other VA benefits based on other laws or other parts of this title. These benefits are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20).

■ 3. Amend § 71.15 by:

■ a. Removing the definition of ''Combined rate'';

■ b. Adding in alphabetical order definitions for ''Domestic violence (DV)'', ''Financial planning services'', and ''In need of personal care services'';

■ c. Redesignating in proper alphabetical order the definition of ''In the best interest'' and revising it;

■ d. Revising the definition of ''Inability to perform an activity of daily living (ADL)'';

■ e. Adding in alphabetical order definitions for ''Institutionalization'', ''Intimate partner violence (IPV)'', ''Joint application'', ''Legacy applicant'', ''Legacy participant'', ''Legal services'', and ''Monthly stipend rate'';

■ f. Removing the definition of ''Need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'';

■ g. Adding in alphabetical order definitions for ''Need for supervision, protection, or instruction'' and ''Overpayment'';

■ h. Revising the definitions of ''Primary care team'' and ''Serious injury'';

■ i. Adding in alphabetical order a new definition of ''Unable to self-sustain in the community''; and

■ j. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 71.15 Definitions.

* * * * *

Domestic violence (DV) refers to any violence or abuse that occurs within the domestic sphere or at home, and may include child abuse, elder abuse, and other types of interpersonal violence.

* * * * *

Financial planning services means services focused on increasing financial capability and assisting the Primary Family Caregiver in developing a plan to manage the personal finances of the Primary Family Caregiver and the eligible veteran, as applicable, to include household budget planning, debt management, retirement planning review and education, and insurance review and education.

* * * * *

In need of personal care services means that the eligible veteran requires in-person personal care services from another person, and without such personal care services, alternative in-person caregiving arrangements (including respite care or assistance of an alternative caregiver) would be required to support the eligible veteran's safety.

In the best interest means, for the purpose of determining whether it is in the best interest of the veteran or servicemember to participate in the Program of Comprehensive Assistance for Family Caregivers under 38 U.S.C. 1720G(a), a clinical determination that participation in such program is likely to be beneficial to the veteran or servicemember. Such determination will include consideration, by a clinician, of whether participation in the program significantly enhances the veteran's or servicemember's ability to live safely in a home setting, supports the veteran's or servicemember's potential progress in rehabilitation, if such potential exists, increases the veteran's or servicemember's potential independence, if such potential exists, and creates an environment that supports the health and well-being of the veteran or servicemember.

Inability to perform an activity of daily living (ADL) means a veteran or servicemember requires personal care services each time he or she completes one or more of the following:

(1) Dressing or undressing oneself;

(2) Bathing;

(3) Grooming oneself in order to keep oneself clean and presentable;

(4) Adjusting any special prosthetic or orthopedic appliance, that by reason of the particular disability, cannot be done

without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);

(5) Toileting or attending to toileting;

(6) Feeding oneself due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition; or

(7) Mobility (walking, going up stairs, transferring from bed to chair, etc.).

Institutionalization refers to being institutionalized in a setting outside the home residence to include a hospital, rehabilitation facility, jail, prison, assisted living facility, medical foster home, nursing home, or other similar setting.

Intimate partner violence (IPV) refers to any violent behavior including, but not limited to, physical or sexual violence, stalking, or psychological aggression (including coercive acts or economic harm) by a current or former intimate partner that occurs on a continuum of frequency and severity which ranges from one episode that might or might not have lasting impact to chronic and severe episodes over a period of years. IPV can occur in heterosexual or same-sex relationships and does not require sexual intimacy or cohabitation.

Joint application means an application that has all fields within the application completed, including signature and date by all applicants, with the following exceptions: Social security number or tax identification number, middle name, sex, email, alternate telephone number, and name of facility where the veteran last received medical treatment, or any other field specifically indicated as optional.

Legacy applicant means a veteran or servicemember who submits a joint application for the Program of Comprehensive Assistance for Family Caregivers that is received by VA before [EFFECTIVE DATE OF FINAL RULE] and for whom a Family Caregiver(s) is approved and designated on or after [EFFECTIVE DATE OF FINAL RULE] so long as the Primary Family Caregiver approved and designated for the veteran or servicemember on or after [EFFECTIVE DATE OF FINAL RULE] pursuant to such joint application (as applicable) continues to be approved and designated as such. If a new joint application is received by VA on or after [EFFECTIVE DATE OF FINAL RULE] that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy applicant.

Legacy participant means an eligible veteran whose Family Caregiver(s) was approved and designated by VA under this part as of the day before [EFFECTIVE DATE OF FINAL RULE] so long as the Primary Family Caregiver approved and designated for the eligible veteran as of the day before [EFFECTIVE DATE OF FINAL RULE] (as applicable) continues to be approved and designated as such. If a new joint application is received by VA on or after [EFFECTIVE DATE OF FINAL RULE] that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy participant.

Legal services means assistance with advanced directives, power of attorney, simple wills, and guardianship; educational opportunities on legal topics relevant to caregiving; and referrals to community resources and attorneys for legal assistance or representation in other legal matters. These services would be provided only in relation to the personal legal needs of the eligible veteran and the Primary Family Caregiver. This definition excludes assistance with matters in which the eligible veteran or Primary Family Caregiver is taking or has taken any adversarial legal action against the United States government, and disputes between the eligible veteran and Primary Family Caregiver.

Monthly stipend rate means the Office of Personnel Management (OPM) General Schedule (GS) Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12.

Need for supervision, protection, or instruction means an individual has a functional impairment that directly impacts the individual's ability to maintain his or her personal safety on a daily basis.

Overpayment means a payment made by VA pursuant to this part to an individual in excess of the amount due, to which the individual was not eligible, or otherwise made in error. An overpayment is subject to collection action.

* * * * *

Primary care team means one or more VA medical professionals who care for a patient based on the clinical needs of the patient.

* * * * *

Serious injury means any service-connected disability that:

(1) Is rated at 70 percent or more by VA; or

(2) Is combined with any other service-connected disability or disabilities, and a combined rating of 70 percent or more is assigned by VA.

Unable to self-sustain in the community means that an eligible veteran:

(1) Requires personal care services each time he or she completes three or more of the seven activities of daily living (ADL) listed in the definition of an inability to perform an activity of daily living in this section, and is fully dependent on a caregiver to complete such ADLs; or

(2) Has a need for supervision, protection, or instruction on a continuous basis.

* * * * *

■ 4. Revise § 71.20 to read as follows:

§ 71.20 Eligible veterans and servicemembers.

A veteran or servicemember is eligible for a Family Caregiver under this part if he or she meets the criteria in paragraph (a), (b), or (c) of this section, subject to the limitations set forth in such paragraphs.

(a) A veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she meets all of the following requirements:

(1) The individual is either:

(i) A veteran; or

(ii) A member of the Armed Forces undergoing a medical discharge from the Armed Forces.

(2) The individual has a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service:

(i) On or after September 11, 2001;

(ii) Effective on the date specified in a future **Federal Register** document, on or before May 7, 1975; or

(iii) Effective two years after the date specified in a future **Federal Register** document as described in paragraph (a)(2)(ii) of this section, after May 7, 1975 and before September 11, 2001.

(3) The individual is in need of personal care services for a minimum of six continuous months based on any one of the following:

(i) An inability to perform an activity of daily living; or

(ii) A need for supervision, protection, or instruction.

(4) It is in the best interest of the individual to participate in the program.

(5) Personal care services that would be provided by the Family Caregiver will not be simultaneously and regularly provided by or through another individual or entity.

(6) The individual receives care at home or will do so if VA designates a Family Caregiver.

(7) The individual receives ongoing care from a primary care team or will do so if VA designates a Family Caregiver.

(b) For one year beginning on [EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy participant.

(c) For one year beginning on [EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy applicant.

■ 5. Amend § 71.25:

■ a. By revising paragraph (a);

■ b. In paragraph (c)(1) introductory text, by removing the phrase ''a VA primary care team'' and adding in its place ''VA''; and

■ c. By revising paragraphs (c)(1)(i) and (ii), (c)(2), (e), and (f); and

■ d. By removing the authority citation at the end of the section.

The revisions read as follows:

§ 71.25 Approval and designation of Primary and Secondary Family Caregivers.

(a) *Application requirement.* (1) Individuals who wish to be considered for designation by VA as Primary or Secondary Family Caregivers must submit a joint application, along with the veteran or servicemember. Individuals interested in serving as Family Caregivers must be identified as such on the joint application, and no more than three individuals may serve as Family Caregivers at one time for an eligible veteran, with no more than one serving as the Primary Family Caregiver and no more than two serving as Secondary Family Caregivers.

(2)(i) Upon receiving such application, VA (in collaboration with the primary care team to the maximum extent practicable) will perform the evaluations required to determine the eligibility of the applicants under this part, and if eligible, determine the applicable monthly stipend amount under § 71.40(c)(4). Notwithstanding the first sentence, VA will not evaluate a veteran's or servicemember's eligibility under § 71.20 when a joint application is received to add a Secondary Family Caregiver for an eligible veteran who has a designated Primary Family Caregiver.

(ii) Individuals who apply to be Family Caregivers must complete all necessary eligibility evaluations (along with the veteran or servicemember), education and training, and the initial home-care assessment (along with the veteran or servicemember) so that VA may complete the designation process no later than 90 days after the date the joint application was received by VA. If such requirements are not complete within 90 days from the date the joint application is received by VA, the joint application will be denied, and a new joint application will be required. VA may extend the 90-day period based on VA's inability to complete the eligibility evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is solely due to VA's action.

(3)(i) Except as provided in this paragraph, joint applications received by VA before [EFFECTIVE DATE OF FINAL RULE] will be evaluated by VA based on 38 CFR 71.15, 71.20, and 71.25 (2019). Notwithstanding the previous sentence, the term ''joint application'' as defined in § 71.15 applies to applications described in this paragraph.

(ii) Joint applications received by VA on or after [EFFECTIVE DATE OF FINAL RULE] will be evaluated by VA based on the provisions of this part in effect on or after [EFFECTIVE DATE OF FINAL RULE].

(A) VA will deny any joint application of an individual described in § 71.20(a)(2)(ii), if such joint application is received by VA before the date published in a future **Federal Register** document that is specified in such section. A veteran or servicemember seeking to qualify for the Program of Comprehensive Assistance for Family Caregivers pursuant to § 71.20(a)(2)(ii) should submit a joint application that is received by VA on or after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii).

(B) VA will deny any joint application of an individual described in § 71.20(a)(2)(iii), if such joint application is received by VA before the date that is two years after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii). A veteran or servicemember seeking to qualify for the Program of Comprehensive Assistance for Family Caregivers pursuant to § 71.20(a)(2)(iii) should submit a joint application that is received by VA on or after the date that is two years after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii).

* * * * *

(c) * * *

(1) * * *

(i) Whether the applicant can communicate and understand the required personal care services and any specific instructions related to the care of the eligible veteran (accommodation for language or hearing impairment will be made to the extent possible and as appropriate); and

(ii) Whether the applicant will be capable of performing the required personal care services without supervision, in adherence with the eligible veteran's treatment plan in support of the needs of the eligible veteran.

(2) Complete caregiver training and demonstrate the ability to carry out the specific personal care services, core competencies, and additional care requirements.

* * * * *

(e) *Initial home-care assessment.* VA will visit the eligible veteran's home to assess the eligible veteran's well-being and the well-being of the caregiver, as well as the caregiver's competence to provide personal care services at the eligible veteran's home.

(f) *Approval and designation.* VA will approve the joint application and designate Primary and/or Secondary Family Caregivers, as appropriate, if the applicable requirements of this part are met. Approval and designation is conditioned on the eligible veteran and designated Family Caregiver(s) remaining eligible for Family Caregiver benefits under this part, the Family Caregiver(s) providing the personal care services required by the eligible veteran, and the eligible veteran and designated Family Caregiver(s) complying with all applicable requirements of this part, including participating in reassessments pursuant to § 71.30 and wellness contacts pursuant to § 71.40(b)(2). Refusal to comply with any applicable requirements of this part will result in revocation from the program pursuant to § 71.45, Revocation and Discharge of Family Caregivers.

§ 71.30 [Redesignated as § 71.35 and Amended]

■ 6. Redesignate § 71.30 as § 71.35 and remove the authority citation at the end of the section.

■ 7. Add a new § 71.30 to read as follows:

§ 71.30 Reassessment of Eligible Veterans and Family Caregivers.

(a) Except as provided in paragraphs (b) and (c) of this section, the eligible veteran and Family Caregiver will be reassessed by VA on an annual basis to determine their continued eligibility for participation in PCAFC under this part. Reassessments will include consideration of whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A).

Reassessment may include a visit to the eligible veteran's home.

(b) Reassessments may occur more frequently than annually if a determination is made and documented by VA that more frequent reassessment is appropriate.

(c) Reassessments may occur on a less than annual basis if a determination is made and documented by VA that an annual reassessment is unnecessary.

(d) Failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to this section will result in revocation pursuant to § 71.45, Revocation and Discharge of Family Caregivers.

(e)(1) If the eligible veteran meets the requirements of § 71.20(b) or (c) (*i.e.,* is a legacy participant or a legacy applicant), the eligible veteran and Family Caregiver will be reassessed by VA within the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE] to determine whether the eligible veteran meets the requirements of § 71.20(a). This reassessment may include a visit to the eligible veteran's home. If the eligible veteran meets the requirements of § 71.20(a), the reassessment will consider whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A).

(2) Notwithstanding paragraph (e)(1) of this section, a reassessment will not be completed under paragraph (e)(1) if at some point before a reassessment is completed during the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE] the individual no longer meets the requirements of § 71.20(b) or (c).

■ 8. Amend § 71.40 by revising paragraphs (b)(2), (c) introductory text, and (c)(4), adding paragraphs (c)(5) and (6), revising paragraph (d), and removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 71.40 Caregiver benefits.

* * * * *

(b) * * *

(2) Wellness contacts to review the eligible veteran's well-being, adequacy of personal care services being provided by the Family Caregiver(s), and the well-being of the Family Caregiver(s). This wellness contact will occur at a minimum of once every 180 days, and at least one visit must occur in the eligible veteran's home on an annual basis. Failure of the eligible veteran and Family Caregiver to participate in any wellness contacts pursuant to this paragraph will result in revocation pursuant to § 71.45, Revocation and Discharge of Family Caregivers.

* * * * *

(c) *Primary Family Caregiver benefits.* VA will provide to Primary Family Caregivers all of the benefits listed in paragraphs (c)(1) through (6) of this section.

* * * * *

(4) Primary Family Caregivers will receive a monthly stipend for each month's participation as a Primary Family Caregiver.

(i) *Stipend amount.* (A) Except as provided in paragraph (c)(4)(i)(C) of this section, if the eligible veteran meets the requirements of § 71.20(a), the Primary Family Caregiver's monthly stipend is the amount set forth in paragraph (c)(4)(i)(A)(*1*) or (*2*) of this section.

(*1*) The Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.625.

(*2*) If VA determines that the eligible veteran is unable to self-sustain in the community, the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00.

(B) Except as provided in paragraph (c)(4)(i)(C) of this section, for one year beginning on [EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(b) or (c), (*i.e.,* is a legacy participant or a legacy applicant), the Primary Family Caregiver's monthly stipend is calculated based on the clinical rating in 38 CFR 71.40(c)(4)(i) through (iii) (2019) and the definitions applicable to such paragraphs under 38 CFR 71.15 (2019). If the sum of all of the ratings assigned is:

(*1*) 21 or higher, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00.

(*2*) 13 to 20, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.625.

(*3*) 1 to 12, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.25.

(C) For one year beginning on [EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(a) and (b) or (c), the Primary Family Caregiver's monthly stipend is the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) or (B) of this section, whichever is higher. If the higher monthly stipend rate is the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) of this section, the stipend rate will be adjusted and paid in accordance with paragraph (c)(4)(ii)(C)(*2*)(*i*) of this section.

(D) *Special rule for Primary Family Caregivers subject to decrease because of monthly stipend rate.* Notwithstanding paragraphs (c)(4)(i)(A) through (C) of this section, for one year beginning on [EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(b), the Primary Family Caregiver's monthly stipend is not less than the amount the Primary Family Caregiver was eligible to receive as of the day before [EFFECTIVE DATE OF FINAL RULE] (based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on such date) so long as the eligible veteran resides at the same address on record with the Program of Comprehensive Assistance for Family Caregivers as of the day before [EFFECTIVE DATE OF FINAL RULE]. If the eligible veteran relocates to a different address, the stipend amount thereafter is determined pursuant to paragraph (c)(4)(i)(A), (B), or (C) of this section and adjusted in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Adjustments to stipend payments.*

(A) Adjustments to stipend payments that result from OPM's updates to the General Schedule (GS) Annual Rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides take effect as of the date the update to such rate is made effective by OPM.

(B) Adjustments to stipend payments that result from the eligible veteran relocating to a new address are effective the first of the month following the month in which VA is notified that the eligible veteran has relocated to a new address. VA must receive notification within 30 days from the date of relocation. If VA does not receive notification within 30 days from the date of relocation, VA will seek to recover overpayments of benefits under this paragraph (c)(4) back to the latest date on which the adjustment would have been effective if VA had been notified within 30 days from the date of relocation, as provided in § 71.47.

(C) The Primary Family Caregiver's monthly stipend may be adjusted pursuant to the reassessment conducted by VA under § 71.30.

(*1*) If the eligible veteran meets the requirements of § 71.20(a) only (and does not meet the requirements of § 71.20(b) or (c)), the Primary Family Caregiver's monthly stipend is adjusted as follows:

(*i*) In the case of a reassessment that results in an increase in the monthly

stipend payment, the increase takes effect as of the date of the reassessment.

(*ii*) In the case of a reassessment that results in a decrease in the monthly stipend payment, the decrease takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

(*2*) If the eligible veteran meets the requirements of § 71.20(b) or (c), the Primary Family Caregiver's monthly stipend may be adjusted as follows:

(*i*) In the case of a reassessment that results in an increase in the monthly stipend payment, the increase takes effect as of the date of the reassessment. The Primary Family Caregiver will also be paid the difference between the amount under paragraph (c)(4)(i)(A) of this section that the Primary Family Caregiver is eligible to receive and the amount the Primary Family Caregiver was eligible to receive under paragraph (c)(4)(i)(B) or (D) of this section, whichever the Primary Family Caregiver received for the time period beginning on [EFFECTIVE DATE OF FINAL RULE] up to the date of the reassessment, based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on the date of the reassessment and the monthly stipend rate on such date. If there is more than one reassessment for an eligible veteran during the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE], the retroactive payment described in the previous sentence applies only if the first reassessment during the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE] results in an increase in the monthly stipend payment, and only as the result of the first reassessment during the one-year period.

(*ii*) In the case of a reassessment that results in a decrease in the monthly stipend payment and the eligible veteran meets the requirements of § 71.20(a), the new stipend amount under paragraph (c)(4)(i)(A) of this section takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after the date that is one year after [EFFECTIVE DATE OF FINAL RULE]. On the date that is one year after [EFFECTIVE DATE OF FINAL RULE], VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

Note to paragraph (c)(4)(ii)(C)(2): If an eligible veteran who meets the requirements of § 71.20(b) or (c) is determined, pursuant to a reassessment conducted by VA under § 71.30, to not meet the requirements of § 71.20(a), the monthly stipend payment will not be increased under paragraph (c)(4)(ii)(C)(*2*)(*i*) of this section or decreased under paragraph (c)(4)(ii)(C)(*2*)(*ii*) of this section. Unless the Family Caregiver is revoked or discharged under § 71.45 before the date that is 60 days after the date that is one year after [EFFECTIVE DATE OF FINAL RULE], the effective date for discharge of the Family Caregiver of a legacy participant or legacy applicant under § 71.45(b)(1)(ii) will be no earlier than 60 days after the date that is one year after [EFFECTIVE DATE OF FINAL RULE]. On the date that is one year after [EFFECTIVE DATE OF FINAL RULE], VA will provide advanced notice of its findings to the eligible veteran and Family Caregiver.

(D) Adjustments to stipend payments for the first month will take effect on the date specified in paragraph (d) of this section. Stipend payments for the last month will end on the date specified in § 71.45.

(iii) *No employment relationship.* Nothing in this section shall be construed to create an employment relationship between the Secretary and an individual in receipt of assistance or support under this part.

(iv) *Periodic assessment.* In consultation with other appropriate agencies of the Federal government, VA shall periodically assess whether the monthly stipend rate meets the requirements of 38 U.S.C. 1720G(a)(3)(C)(ii) and (iv). If VA determines that adjustments to the monthly stipend rate are necessary, VA shall make such adjustments through future rulemaking.

(5) Primary Family Caregivers are eligible for financial planning services as that term is defined in § 71.15. Such services will be provided by entities authorized pursuant to any contract entered into between VA and such entities.

(6) Primary Family Caregivers are eligible for legal services as that term is defined in § 71.15. Such services will be provided by entities authorized pursuant to any contract entered into between VA and such entities.

(d) *Effective date of benefits under the Program of Comprehensive Assistance for Family Caregivers.* Except for paragraphs (b)(6) and (c)(3) and (4) of this section, caregiver benefits under paragraphs (b) and (c) of this section are effective upon approval and designation under § 71.25(f). Caregiver benefits under paragraphs (b)(6) and (c)(3) and (4) are effective on the latest of the following dates:

(1) The date the joint application that resulted in approval and designation of the Family Caregiver is received by VA.

(2) The date the eligible veteran begins receiving care at home.

(3) The date the Family Caregiver begins providing personal care services to the eligible veteran at home.

(4) In the case of a new Family Caregiver applying to be the Primary Family Caregiver for an eligible veteran, the day after the effective date of revocation or discharge of the previous Primary Family Caregiver for the eligible veteran (such that there is only one Primary Family Caregiver designated for an eligible veteran at one time).

(5) In the case of a new Family Caregiver applying to be a Secondary Family Caregiver for an eligible veteran who already has two Secondary Family Caregivers approved and designated by VA, the day after the effective date of revocation or discharge of a previous Secondary Family Caregiver for the eligible veteran (such that there are no more than two Secondary Family Caregivers designated for an eligible veteran at one time).

(6) In the case of a current or previous Family Caregiver reapplying with the same eligible veteran, the day after the date of revocation or discharge under § 71.45, or in the case of extended benefits under § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv), the day after the last date on which such Family Caregiver received caregiver benefits.

(7) The day after the date a joint application is denied.

■ 9. Revise § 71.45 to read as follows:

§ 71.45 Revocation and Discharge of Family Caregivers.

(a) *Revocation of the Family Caregiver*—(1) *Bases for revocation of the Family Caregiver*—(i) *For Cause.* VA will revoke the designation of a Family Caregiver for cause when VA determines any of the following:

(A) The Family Caregiver or eligible veteran committed fraud under this part;

(B) The Family Caregiver neglected, abused, or exploited the eligible veteran;

(C) Personal safety issues exist for the eligible veteran that the Family Caregiver is unwilling to mitigate;

(D) The Family Caregiver is unwilling to provide personal care services to the eligible veteran or, in the case of the Family Caregiver's temporary absence or incapacitation, fails to ensure (if able to)

the provision of personal care services to the eligible veteran.

(ii) *Noncompliance.* Except as provided in paragraph (f) of this section, VA will revoke the designation of a Family Caregiver when the Family Caregiver or eligible veteran is noncompliant with the requirements of this part. Noncompliance means:

(A) The eligible veteran does not meet the requirements of § 71.20(a)(5), (6), or (7);

(B) The Family Caregiver does not meet the requirements of § 71.25(b)(2);

(C) Failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to § 71.30;

(D) Failure of the eligible veteran or Family Caregiver to participate in any wellness contact pursuant to § 71.40(b)(2); or

(E) Failure to meet any other requirement of this part except as provided in paragraph (b)(1) or (2) of this section.

(iii) *VA error.* Except as provided in § 71.45(f), VA will revoke the designation of a Family Caregiver if the Family Caregiver's approval and designation under this part was authorized as a result of an erroneous eligibility determination by VA.

(2) *Revocation date.* All caregiver benefits will continue to be provided to the Family Caregiver until the date of revocation.

(i) In the case of revocation based on fraud committed by the Family Caregiver or eligible veteran under paragraph (a)(1)(i)(A) of this section, the date of revocation will be the date the fraud began. If VA cannot identify when the fraud began, the date of revocation will be the earliest date that the fraud is known by VA to have been committed, and no later than the date on which VA identifies that fraud was committed.

(ii) In the case of revocation based on paragraphs (a)(1)(i)(B) through (D) of this section, the date of revocation will be the date VA determines the criteria in any such paragraph has been met.

(iii) In the case of revocation based on noncompliance under paragraph (a)(1)(ii) of this section, revocation takes effect as of the effective date provided in VA's final notice of such revocation to the eligible veteran and Family Caregiver. The effective date of revocation will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver.

(iv) In the case of revocation based on VA error under paragraph (a)(1)(iii) of this section, the date of revocation will be the date the error was made. If VA cannot identify when the error was made, the date of revocation will be the earliest date that the error is known by VA to have occurred, and no later than the date on which VA identifies that the error occurred.

(3) *Continuation of benefits.* In the case of revocation based on VA error under paragraph (a)(1)(iii) of this section, caregiver benefits will continue for 60 days after the date of revocation unless the Family Caregiver opts out of receiving such benefits. Continuation of benefits under this paragraph will be considered an overpayment and VA will seek to recover overpayment of such benefits as provided in § 71.47.

(b) *Discharge of the Family Caregiver*—(1) *Discharge due to the eligible veteran*—(i) *Bases for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers when VA determines any of the following:

(A) Except as provided in paragraphs (a)(1)(ii)(A) and (b)(1)(i)(B) of this section, the eligible veteran does not meet the requirements of § 71.20 because of improvement in the eligible veteran's condition or otherwise; or

(B) Death or institutionalization of the eligible veteran. *Note:* VA must receive notification of death or institutionalization of the eligible veteran as soon as possible but not later than 30 days from the date of death or institutionalization. Notification of institutionalization must indicate whether the eligible veteran is expected to be institutionalized for 90 or more days from the onset of institutionalization.

(ii) *Discharge date.* (A) In the case of discharge based on paragraph (b)(1)(i)(A) of this section, the discharge takes effect as of the effective date provided in VA's final notice of such discharge to the eligible veteran and Family Caregiver. The effective date of discharge will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver that the eligible veteran does not meet the requirements of § 71.20.

(B) For discharge based on paragraph (b)(1)(i)(B) of this section, the date of discharge will be the earliest of the following dates, as applicable:

(*1*) Date of death of the eligible veteran.

(*2*) Date that institutionalization begins, if it is determined that the eligible veteran is expected to be institutionalized for a period of 90 days or more.

(*3*) Date of the 90th day of institutionalization.

(iii) *Continuation of benefits.* Caregiver benefits will continue for 90 days after the date of discharge.

(2) *Discharge due to the Family Caregiver*—(i) *Bases for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers due to the death or institutionalization of the Family Caregiver. *Note:* VA must receive notification of death or institutionalization of the Family Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization. Notification of institutionalization must indicate whether Family Caregiver is expected to be institutionalized for 90 or more days from the onset of institutionalization.

(ii) *Discharge date.* The date of discharge will be the earliest of the following dates, as applicable:

(A) Date of death of the Family Caregiver.

(B) Date that the institutionalization begins, if it is determined that the Family Caregiver is expected to be institutionalized for a period of 90 days or more.

(C) Date of the 90th day of institutionalization.

(iii) *Continuation of benefits.* Caregiver benefits will continue for 90 days after date of discharge in paragraph (b)(2)(ii)(B) or (C) of this section.

(3) *Discharge of the Family Caregiver by request of the Family Caregiver*—(i) *Request for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers if a Family Caregiver requests discharge of his or her caregiver designation. The request may be made verbally or in writing and must provide the present or future date of discharge. If the discharge request is received verbally, VA will provide the Family Caregiver written confirmation of receipt of the verbal discharge request and the effective date of discharge. VA will notify the eligible veteran verbally and in writing of the request for discharge and the effective date of discharge.

(ii) *Discharge date.* The date of discharge will be the present or future date provided by the Family Caregiver or the date of the Family Caregiver's request for discharge if the Family Caregiver does not provide a date. If the request does not include an identified date of discharge, VA will contact the Family Caregiver to request a date. If unable to successfully obtain this date, discharge will be effective as of the date of the request.

(iii) *Continuation of benefits.* (A) Except as provided in paragraph (b)(3)(iii)(B) of this section, caregiver benefits will continue for 30 days after the date of discharge.

(B) If the Family Caregiver requests discharge due to domestic violence (DV) or intimate partner violence (IPV) perpetrated by the eligible veteran against the Family Caregiver, caregiver benefits will continue for 90 days after the date of discharge when any of the following can be established:

(*1*) The issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran.

(*2*) A police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver; or

(*3*) Documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (*e.g.,* physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist or counselor.

(4) *Discharge of the Family Caregiver by request of the eligible veteran or eligible veteran's surrogate*—(i) *Request for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Caregivers if an eligible veteran or the eligible veteran's surrogate requests discharge of the Family Caregiver. The discharge request may be made verbally or in writing and must express an intent to remove the Family Caregiver's approval and designation. If the discharge request is received verbally, VA will provide the eligible veteran written confirmation of receipt of the verbal discharge request and effective date of discharge. VA will notify the Family Caregiver verbally and in writing of the request for discharge and effective date of discharge.

(ii) *Discharge date.* The date of discharge will be the present or future date of discharge provided by the eligible veteran or eligible veteran's surrogate. If the request does not provide a present or future date of discharge, VA will ask the eligible veteran or eligible veteran's surrogate to provide one. If unable to successfully obtain this date, discharge will be effective as of the date of the request.

(iii) *Rescission.* VA will allow the eligible veteran or eligible veteran's surrogate to rescind the discharge request and have the Family Caregiver reinstated if the rescission is made within 30 days of the date of discharge. If the eligible veteran or eligible veteran's surrogate expresses a desire to reinstate the Family Caregiver more than 30 days from the date of discharge, a new joint application is required.

(iv) *Continuation of benefits.* Caregiver benefits will continue for 30 days after the date of discharge.

(c) *Safety and welfare.* If VA suspects that the safety of the eligible veteran is at risk, then VA may suspend the caregiver's responsibilities, and facilitate appropriate referrals to protective agencies or emergency services if needed, to ensure the welfare of the eligible veteran, prior to discharge or revocation.

(d) *Overpayments.* VA will seek to recover overpayments of benefits provided under this section as provided in § 71.47.

(e) *Transition and bereavement counseling.* VA will, if requested and applicable, assist the Family Caregiver in transitioning to alternative health care coverage and mental health services. In addition, in cases of death of the eligible veteran, bereavement counseling may be available under 38 U.S.C. 1783.

(f) *Multiple bases for revocation or discharge.* In the instance that a Family Caregiver may be both discharged pursuant to any of the criteria in paragraph (b) of this section and have his or her designation revoked pursuant to any of the criteria in paragraph (a) of this section, the Family Caregiver's designation will be revoked pursuant to paragraph (a). In the instance that the designation of a Family Caregiver may be revoked under paragraph (a)(1)(i) and paragraph (a)(1)(ii) or (iii) of this section, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(i). In the instance that the designation of a Family Caregiver may be revoked under paragraphs (a)(1)(ii) and (iii) of this section, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(iii). In the instance that a Family Caregiver may be discharged under paragraph (b)(1), (2), (3), or (4) of this section, the Family Caregiver will be discharged pursuant to the paragraph most favorable to the Family Caregiver.

■ 10. Add § 71.47 to read as follows:

§ 71.47 Collection of overpayment.

VA will collect overpayments as defined in § 71.15 pursuant to the Federal Claims Collection Standards.

§ 71.50 [Amended]

■ 11. Amend § 71.50 by removing the statutory authority citation at the end of each section.

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Part VI

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403

Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization Is Interested, Form T–1; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1245–AA09

Labor Organization Annual Financial Reports For Trusts In Which A Labor Organization Is Interested, Form T–1

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule.

SUMMARY: In this rule, the Department revises the forms required by labor organizations under the Labor-Management Reporting and Disclosure Act (''LMRDA'' or ''Act''). Under the rule, specified labor organizations file annual reports (Form T–1) concerning trusts in which they are interested. This document also sets forth the Department's review of and response to comments on the proposed rule. Under this rule, the Department requires a labor organization with total annual receipts of $250,000 or more (and, which therefore is obligated to file a Form LM–2 Labor Organization Annual Report) to also file a Form T–1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA (defining ''trust in which a labor organization is interested''). Such labor organizations will trigger the Form T–1 reporting requirements, subject to certain exemptions, where the labor organization during the reporting period, either alone or in combination with other labor organizations, selects or appoints the majority of the members of the trust's governing board or contributes more than 50 percent of the trust's receipts. When applying this financial or managerial dominance test, contributions made pursuant to a collective bargaining agreement (CBA) shall be considered the labor organization's contributions. The rule provides appropriate instructions and revises relevant sections relating to such reports. The Department issues the rule pursuant to section 208 of the LMRDA.

DATES: This rule is effective April 6, 2020; however, no labor organization is required to file a Form T–1 until 90 days after the conclusion of its first fiscal year that begins on or after June 4, 2020. A Form T–1 covers a trust's most recently concluded fiscal year, and a Form T–1 is required only for trusts whose fiscal year begins on or after June 4, 2020. A trust's ''most recently concluded fiscal year'' is the fiscal year beginning on or before 90 days before the filing union's fiscal year.

FOR FURTHER INFORMATION CONTACT: Andrew Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD), *OLMS-Public@dol.gov.*

SUPPLEMENTARY INFORMATION: The following is the outline of this discussion.

I. Statutory Authority

The Department's statutory authority is set forth in section 208 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under the Act and such other reasonable rules and regulations as he may find necessary to prevent the circumvention or evasion of the reporting requirements in private sector labor unions.[1] This statutory authority also extends to federal public sector labor unions through both the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. 7120, ''Standards of Conduct'' regulations at 29 CFR part 458, and the Foreign Service Act of 1980 (FSA).

[1] The rule utilizes the terms 'union,' 'labor union,' and 'labor organization' interchangeably unless otherwise specified.

The Secretary has delegated his authority under the LMRDA to the Director of the Office of Labor-Management Standards and permitted re-delegation of such authority. See Secretary's Order 03–2012 (Oct. 19, 2012), published at 77 FR 69375 (Nov. 16, 2012).

Section 208 allows the Secretary to issue ''reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of [the Act's] reporting requirements.'' 29 U.S.C. 438.

Section 3(l) of the LMRDA, 29 U.S.C. 402(l) provides that a ''Trust in which a labor organization is interested' means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.''

The authority to prescribe rules relating to section 3(l) trusts augments the Secretary's general authority to prescribe the form and publication of other reports required to be filed under the LMRDA. Section 201 of the Act requires unions to file annual, public reports with the Department, detailing the union's cash flow during the reporting period, and identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the union, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements. 29 U.S.C. 431(b). The statute requires that such information shall be filed ''in such detail as may be necessary to disclose [a union's] financial conditions and operations.'' *Id.* Large unions report this information on the Form LM–2. Smaller unions report less detailed information on the Form LM–3 or LM–4.

II. Background

A. Introduction

On May 30, 2019 the Department proposed to establish a Form T–1 Trust Annual Report to capture financial information pertinent to ''trusts in which a labor organization is interested'' (''section 3(l) trusts''). See 84 FR 25130. Historically, this information has largely gone unreported despite the

significant impact such trusts have on labor organization financial operations and union members' own interests. This proposal was part of the Department's continuing effort to better effectuate the reporting requirements of the LMRDA.

The LMRDA's various reporting provisions are designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their labor organization and its direction when labor organizations disclose financial information as required by the LMRDA. By reviewing a labor organization's financial reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization's own interests as a democratic institution and the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

The rule helps bring the reporting requirements for labor organizations and section 3(l) trusts in line with contemporary expectations for the disclosure of financial information. Today, labor organizations are more complex in their structure and scope than labor organizations of the past. In reaction to an increasingly global, complicated, and sophisticated marketplace, unions must leverage significant financial capital to hire professional economic, financial, legal, political and public relations expertise not readily or traditionally on hand. *See Marick F. Masters, Unions at the Crossroads: Strategic Membership, Financial, and Political Perspectives* 34 (1997).

Labor organization members, no less than consumers, citizens, or creditors, expect access to relevant and useful information in order to make fundamental investment, career, and retirement decisions, evaluate options, and exercise legally guaranteed rights.

B. The LMRDA's Reporting and Other Requirements

In enacting the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(b). The statute was designed to remedy these various ills through a set of integrated provisions aimed at labor organization governance and management. These include a ''bill of rights'' for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, *see* 29 U.S.C. 411–415; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, *see* 29 U.S.C. 431–436, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of labor organization officers, *see* 29 U.S.C. 481–483; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, a prohibition on certain loans by a labor organization to officers or employees, prohibitions on employment by a labor organization of certain convicted felons, and prohibitions on payments to employees, labor organizations, and labor organization officers and employees for prohibited purposes by an employer or labor relations consultant, *see* 29 U.S.C. 501–505; and prohibitions against extortionate picketing, retaliation for exercising protected rights, and deprivation of LMRDA rights by violence, *see* 29 U.S.C. 522, 529, 530.

The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; and its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. *See generally* Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959,* 73 Harv. L. Rev. 851, 851–55 (1960).

During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. Similar arrangements were also found to exist between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. *See generally Interim Report of the Select Committee on Improper Activities in the Labor or Management Field,* S. Report No. 85–1417 (1957); *see also* William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights,* 59 Colum. L. Rev. 96 (1959).

Financial reporting and disclosure were conceived as partial remedies for these improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (''The searchlight of publicity is a strong deterrent.''), aid labor organization governance (labor organizations will be able ''to better regulate their own affairs'' because ''members may vote out of office any individual whose personal financial interests conflict with his duties to members''), facilitate legal action by members for fiduciary violations (against ''officers who violate their duty of loyalty to the members''), and create a record (''the reports will furnish a sound factual basis for further action in the event that other legislation is required''). S. Rep. No. 187 (1959) 16 reprinted in 1 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 412.

The Department has developed several forms for implementing the LMRDA's financial reporting requirements. The annual reports required by section 201(b) of the Act, 29 U.S.C. 431(b) (Form LM–2, Form LM–3, and Form LM–4), contain information

about a labor organization's assets, liabilities, receipts, disbursements, loans to officers and employees and business enterprises, payments to each officer, and payments to each employee of the labor organization paid more than $10,000 during the fiscal year. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

The labor organization's president and treasurer (or its corresponding officers) are personally responsible for filing the reports and for any statement in the reports known by them to be false. 29 CFR 403.6. These officers are also responsible for maintaining records in sufficient detail to verify, explain, or clarify the accuracy and completeness of the reports for not less than five years after the filing of the forms. 29 CFR 403.7. A labor organization ''shall make available to all its members the information required to be contained in such reports'' and ''shall. . .permit such member[s] for just cause to examine any books, records, and accounts necessary to verify such report[s].'' 29 CFR 403.8(a).

The reports are public information. 29 U.S.C. 435(a). The Secretary is charged with providing for the inspection and examination of the financial reports, 29 U.S.C. 435(b). For this purpose, OLMS maintains: (1) A public disclosure room where copies of such reports filed with OLMS may be reviewed and; (2) an online public disclosure site, where copies of such reports filed since the year 2000 are available for the public's review.

C. History of the Form T–1

The Form T–1 report was first proposed on December 27, 2002, as one part of a proposal to extensively change the Form LM–2. 67 FR 79280 (Dec. 27, 2002). The rule was proposed under the authority of Section 208, which permits the Secretary to issue such rules ''prescribing reports concerning trusts in which a labor organization is interested'' as he may ''find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.'' 29 U.S.C. 438. Following consideration of public comments, on October 9, 2003, the Department published a final rule enacting extensive changes to the Form LM–2 and establishing a Form T–1. 68 FR 58374 (Oct. 9, 2003) (2003 Form T–1 rule). The 2003 Form T–1 rule eliminated the requirement that unions report on subsidiary organizations on the Form LM–2, but it mandated that each labor organization filing a Form LM–2 report also file a separate report to ''disclose assets, liabilities, receipts, and disbursements of a significant trust in which the labor organization is interested.'' 68 FR at 58477. The reporting labor organization would make this disclosure by filing a separate Form T–1 for each significant trust in which it was interested. *Id.* at 58524.

To conform to the statutory requirement that trust reporting is ''necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements,'' the 2003 Form T–1 rule developed the ''significant trust in which the labor organization is interested'' test. It used the section 3(l) statutory definition of ''a trust in which a labor organization is interested'' coupled with an administrative determination of when a trust is deemed ''significant.'' 68 FR at 58477–78. The LMRDA defines a ''trust in which a labor organization is interested'' as a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries. *Id.* (29 U.S.C. 402(l)).

The 2003 Form T–1 rule set forth an administrative determination that stated that a ''trust will be considered significant'' and therefore subject to the Form T–1 reporting requirement under the following conditions:

(1) The labor organization had annual receipts of $250,000 or more during its most recent fiscal year, and (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually. *Id.* at 58478.

The portions of the 2003 rule relating to the Form T–1 were vacated by the D.C. Circuit in *AFL–CIO* v. *Chao,* 409 F.3d at 389–391. The court held that the form ''reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade union reporting requirements by, for example, permitting the union to maintain control of the funds.'' *Id.* at 389. The court also vacated the Form T–1 portions of the 2003 rule because its significance test failed to establish reporting based on domination or managerial control of assets subject to LMRDA Title II jurisdiction.

The court reasoned that the Department failed to explain how the test—*i.e.,* selection of one member of a board and a $10,000 contribution to a trust with $250,000 in receipts—could give rise to circumvention or evasion of Title II reporting requirements. *Id.* at 390. In so holding, the court emphasized that Section 208 authority is the only basis for LMRDA trust reporting, that this authority is limited to preventing circumvention or evasion of Title II reporting, and that ''the statute doesn't provide general authority to require trusts to demonstrate that they operate in a manner beneficial to union members.'' *Id.* at 390.

However, the court recognized that reports on trusts that reflect a labor organization's financial condition and operations are within the Department's rulemaking authority, including trusts ''established by one or more unions or through collective bargaining agreements calling for employer contributions, [where] the union has retained a controlling management role in the organization,'' and also those ''established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of that trust.'' *Id.* The court acknowledged that the Department's findings in support of its rule were based on particular situations where reporting about trusts would be necessary to prevent evasion of the related labor organizations' own reporting obligations. *Id.* at 387–88. One example included a situation where ''trusts [are] funded by union members' funds from one or more unions and employers, and although the unions retain a controlling management role, no individual union wholly owns or dominates the trust, and therefore the use of the funds is not reported by the related union.'' *Id.* at 389 (emphasis added). In citing these examples, the court explained that ''absent circumstances involving dominant control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues, a report on the trust's financial condition and operations would not reflect on the related union's financial condition and operations.'' *Id.* at 390. For this reason, while acknowledging that there are circumstances under which the Secretary may require a report, the court disapproved of a broader application of the rule to require reports by any labor organization simply because the labor organization satisfied a reporting threshold (a labor organization with annual receipts of at least $250,000 that

contributes at least $10,000 to a section 3(l) trust with annual receipts of at least $250,000). *Id.*

In light of the decision by the D.C. Circuit and guided by its opinion, the Department issued a revised Form T–1 final rule on September 29, 2006. 71 FR 57716 (Sept. 29, 2006) (2006 Form T–1 rule). The U.S. District Court for the District of Columbia vacated this rule due to a failure to provide a new notice and comment period. *AFL–CIO* v. *Chao,* 496 F. Supp. 2d 76 (D.D.C. 2007). The district court did not engage in a substantive review of the 2006 rule, but the court noted that the AFL–CIO demonstrated that ''the absence of a fresh comment period . . . constituted prejudicial error'' and that the AFL–CIO objected with ''reasonable specificity'' to warrant relief vacating the rule. *Id.* at 90–92.

The Department issued a proposed rule for a revised Form T–1 on March 4, 2008. 73 FR 11754 (Mar. 4, 2008). After notice and comment, the 2008 Form T–1 final rule was issued on October 2, 2008. 73 FR 57412. The 2008 Form T–1 rule took effect on January 1, 2009. Under that rule, Form T–1 reports would have been filed no earlier than March 31, 2010, for fiscal years that began no earlier than January 1, 2009.

Pursuant to *AFL–CIO* v. *Chao,* the 2008 Form T–1 rule stated that labor organizations with total annual receipts of $250,000 or more must file a Form T–1 for those section 3(l) trusts in which the labor organization, either alone or in combination with other labor organizations, had management control or financial dominance. 73 FR at 57412. For purposes of the rule, a labor organization had management control if the labor organization alone, or in combination with other labor organizations, selected or appointed the majority of the members of the trust's governing board. Further, for purposes of the rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the trust's receipts during the annual reporting period. Significantly, the rule treated contributions made to a trust by an employer pursuant to CBA as constituting contributions by the labor organization that was party to the agreement.

Additionally, the 2008 Form T–1 rule provided exemptions to the Form T–1 filing requirements. No Form T–1 was required for a trust: Established as a political action committee (PAC) fund if publicly available reports on the PAC fund were filed with Federal or state agencies; established as a political organization for which reports were filed with the IRS under section 527 of the IRS code; required to file a Form 5500 under ERISA; or constituting a federal employee health benefit plan that was subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), 5 U.S.C. 8901 *et seq.* Similarly, the rule clarified that no Form T–1 was required for any trust that met the statutory definition of a labor organization, 29 U.S.C. 402(i), and filed a Form LM–2, Form LM–3, or Form LM–4 or was an entity that the LMRDA exempts from reporting. *Id.*

In the Spring and Fall 2009 Regulatory Agenda, the Department announced its intention to rescind the Form T–1. It also indicated that it would return reporting of wholly owned, wholly controlled, and wholly financed (''subsidiary'') organizations to the Form LM–2 or LM–3 reports. On December 3, 2009, the Department issued a notice of proposed extension of filing due date to delay for one calendar year the filing due dates for Form T–1 reports required to be filed during calendar year 2010. 74 FR 63335. On December 30, 2009, following notice and comment, the Department published a rule extending for one year the filing due date of all Form T–1 reports required to be filed during calendar year 2010. 74 FR 69023.

Subsequently, on February 2, 2010, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to rescind the Form T–1. 75 FR 5456. After notice and comment, the Department published the final rule on December 1, 2010. In its rescission, the Department stated that it considered the reporting required under the rule to be overly broad and not necessary to prevent circumvention or evasion of Title II reporting requirements. The Department concluded that the scope of the 2008 Form T–1 rule was overbroad because it covered many trusts, such as those funded by employer contributions, without an adequate showing that reporting for such trusts is necessary to prevent the circumvention or evasion of the Title II reporting requirements. *See* 75 FR 74936.

III. Summary and Explanation of the Final Rule

A. Overview of the Rule

This rule requires a labor organization with total annual receipts of $250,000 or more to file a Form T–1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l) (defining ''trust in which a labor organization is interested''). Such labor organizations trigger the Form T–1 reporting requirements where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts. When applying this financial or managerial dominance test, contributions made pursuant to a CBA are considered the labor organization's contributions. As explained further below, this test was tailored to be consistent with the court's holding in *AFL–CIO* v. *Chao,* 409 F.3d 377, 389–391 (D.C. Cir. 2005), as well as the 2008 final Form T–1 rule.

The Form T–1 uses the same basic template as prescribed for the Form LM–2. Both forms require the labor organization to provide specified aggregated and disaggregated information relating to the financial operations of the labor organization and the trust. Typically, a labor organization is required to provide information on the Form T–1 explaining certain transactions by the trust (such as disposition of property by other than market sale, liquidation of debts, loans or credit extended on favorable terms to officers and employees of the labor organization); and identifying major receipts and disbursements by the trust during the reporting period. The Form T–1, however, is shorter and requires less information than the Form LM–2. The Form T–1, unlike the Form LM–2, does not require that receipts and disbursements be identified by functional category.

The Form T–1 includes: 14 questions that identify the trust; six yes/no questions covering issues such as whether any loss or shortage of funds was discovered during the reporting year and whether the trust had made any loans to officers or employees of the labor organizations, which were granted at more favorable terms than were available to others; statements regarding the total amount of assets, liabilities, receipts and disbursements of the trust; a schedule that separately identifies any individual or entity from which the trust receives $10,000 or more, individually or in the aggregate, during the reporting period; a schedule that separately identifies any entity or individual that received disbursements that aggregate to $10,000 or more, individually or in the aggregate, from the trust during the reporting period and the purpose of disbursement; and a schedule of disbursements to officers and employees of the trust who received more than $10,000.

Two threshold requirements that were contained in the 2003 and 2006 rules,

but not the 2008 rule, relating to the amount of a labor organization's contributions to a trust ($10,000 per annum) and the amount of the contributions received by a trust ($250,000 per annum) are not included in the rule. The Department believes that, consistent with the D.C. Circuit's *AFL–CIO* v. *Chao* decision, the labor organization's control over the trust either alone or with other labor organizations, measured by its selection of a majority of the trust's governing body or its majority share of receipts during the reporting period, provides the appropriate gauge for determining whether a Form T–1 must be filed by the participating labor organization.

Under the rule, exemptions are provided for labor organizations with section 3(l) trusts where the trust, as a political action committee (''PAC'') or a political organization (the latter within the meaning of 26 U.S.C. 527), submits timely, complete and publicly available reports required of them by federal or state law with government agencies; federal employee health benefit plans subject to the provision of the Federal Employees Health Benefits Act (FEHBA); or any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843. The Department also exempts credit unions from Form T–1 disclosure, as explained further below. Similarly, no Form T–1 is required for any trust that meets the statutory definition of a labor organization and files a Form LM–2, Form LM–3, or Form LM–4 or is an entity that the LMRDA exempts from reporting. Consistent with the 2008 rule, but in contrast to the 2003 and 2006 rules, today's rule includes an exemption for section 3(l) trusts that are part of employee benefit plans that file a Form 5500 Annual Return/Report under the Employee Retirement Income Security Act of 1974 (''ERISA''). Additionally, a partial exemption is provided for a trust for which an audit was conducted in accordance with prescribed standards and the audit is made publicly available. A labor organization choosing to use this option must complete and file the first page of the Form T–1 and a copy of the audit.

Also, unlike the 2008 rule, the Department exempts unions from reporting on the Form T–1 their subsidiary organizations, retaining the requirement that unions must report their subsidiaries on the union's Form LM–2 report. *See* Part X of the Form LM–2 instructions (defining a ''subsidiary organization'' as ''any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization.'').

Also, unlike the 2008 rule, the Department permits the parent union (*i.e.,* the national/international or intermediate union) to file the Form T–1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test.[2] The affiliates must continue to identify the trust in their Form LM–2 report, and also state in their Form LM–2 report that the parent union will file a Form T–1 report for the trust. The Department will also allow a single union to voluntarily file the Form T–1 on behalf of itself and the other unions that collectively contribute to a multiple-union trust, relieving the Form T–1 obligation on other unions.

This final rule also differs in three specific respects from the proposed rule in response to concerns raised by commenters. These features of the rule are related above, but merit specific recognition here as determinations made by the Department subsequent to the published NPRM. First, unions need not file for trusts that operate as credit unions. Second, the Department will allow a union to voluntarily file the Form T–1 on behalf of one or more other unions where each of those unions would otherwise be obligated to individually file for the same trust. Third, the trust's fiscal year that the union must report on has been changed. Under the proposed rule, the union would have reported on trusts whose most recent fiscal year ended on or before the union's fiscal year. Under the current rule, the union will report on trusts whose most recent fiscal year ended 90 or more days before the end of the union's fiscal year.

B. Policy Justification

The Form T–1 closes a reporting gap whereby labor organizations are required to report only on the funds that they exclusively control, but not those funds over which they exercise domination. As a result, this rule helps prevent the circumvention or evasion of the LMRDA's reporting requirements. Further, this rule is designed to provide labor organization members a proper accounting of how their labor organization's funds are invested or otherwise expended by the trust. Such disclosure helps deter fraud and corruption involving such trusts. Labor organization members have an interest in obtaining information about a labor organization's funds provided to a trust for the member's particular or collective benefit whether solely administered by the labor organization or a separate, jointly administered governing board. Also, because the money an employer contributes to such trusts pursuant to a CBA might otherwise have been paid directly to a labor organization's members in the form of increased wages and benefits, the members on whose behalf the financial transaction was negotiated have an interest in knowing what funds were contributed, how the money was managed, and how it was spent.

In terms of preventing the circumvention or evasion of the LMRDA's reporting requirements, the rule will make it more difficult for a labor organization to avoid, simply by transferring money from the labor organization to a trust, the basic reporting obligation that applies if the funds had been retained by the labor organization. Although the rule will not require a Form T–1 to be filed for all section 3(l) trusts in which a labor organization participates, it will be required where a labor organization, alone or in combination with other labor organizations, appoints or selects a majority of the members of the trust's governing board or where contributions by labor organizations, or by employers pursuant to a CBA, represent greater than 50 percent of the revenue of the trust.

Thus, the rule follows the instruction in *AFL–CIO* v. *Chao,* where the D.C. Circuit concluded that the Secretary had shown that trust reporting was necessary to prevent evasion or circumvention where ''trusts [are] established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of the trust,'' as well as where there are characteristics of ''dominant union control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues.'' 409 F.3d at 389, 390.

As an illustration of how this check will work, consider an instance in which a Form T–1 identifies a $15,000 payment from the trust to a company for printing services. Under this rule, the labor organization must identify on the Form T–1 the company and the purpose of the payment. This information,

[2] If the purported trust actually constitutes a subsidiary of the parent union, then the parent union would need to include the subsidiary within its Form LM–2 report, pursuant to Part X of the Form LM–2 Instructions. *See* OLMS Interpretative Manual Sections 215.200 (Holding of Stock by District Council and Member Locals) and 215.300 (Holding of Stock by Member Locals).

coupled with information about a labor organization official's ''personal business'' interests in the printing company, a labor organization member or the Department may discover whether the official has reported this payment on a Form LM–30.[3]

Additional information from the labor organization's Form LM–2 might allow a labor organization member to ascertain whether the trust and the labor organization have used the same printing company and whether there was a pattern of payments by the trust and the labor organization from which an inference could be drawn that duplicate payments were being made for the same services.[4] Upon further inquiry into the details of the transactions, a member or the government might be able to determine whether the payments masked a kickback or other conflict-of-interest payment, and, as such, reveal an instance where the labor organization, a labor organization official, or an employer may have failed to comply with their reporting obligations under the Act. Furthermore, this rule will provide a missing piece to one part of the Department's system to crosscheck a labor organization's reported holdings and transactions by party, description, and reporting period and thereby helps identify deviations in the reported details, including instances where the reporting obligation appears reciprocal, but one or more parties have not reported the matter.

In reviewing submitted Form LM–2 reports, the Department located several instances in which labor organizations disbursed large sums of money to trusts. As an example, one local disbursed over $700,000 to one trust and over $1.2 million to another of its trusts, in fiscal year 2017. Also in 2017, a national labor organization disbursed almost $400,000 to one of its trusts. Several locals each reported on their FY 17 Form LM–2 reports varying ownership interests in a building corporation that owns the unions' hall. The Form T–1 requires that the labor organizations report the trusts' management of these disbursements and assets. By establishing reporting for their trusts comparable to that for their own funds, the Form T–1 will prevent the unions from circumventing or evading their reporting requirements, ensuring financial transparency for all funds dominated by the unions.

Additionally, as stated, the Form T–1 will establish a deterrent effect on potential labor-management fraud and corruption. Labor organization officials and trustees owe a fiduciary duty to both their labor organization and the trust, respectively. Nevertheless, there are examples of embezzlement of funds held by both labor organizations and their section 3(l) trusts.[5] By disclosing information to labor organization members—the true beneficiaries of such trusts—the Form T–1 will increase the likelihood that wrongdoing is detected and may deter individuals who might otherwise be tempted to divert funds from the trusts.

The following examples illustrate recent situations in which funds held in section 3(l) trusts have been used in a manner that, if subject to LMRDA reporting, could have been noticed by the members of the labor organization and would likely have been scrutinized by this Department:[6]

- In 2011, a former secretary for a union was convicted for embezzling $412,000 from the union and its apprenticeship and training fund.[7]
- In 2015, an employee of a union pled guilty to embezzling over $160,000 from a joint apprenticeship trust fund account that was used to train future union members.[8]
- In 2017, a former business manager and financial secretary for a union local pled guilty to charges that he embezzled between $250,000 and $550,000 in union funds from an operational account and from an apprentice fund.[9]
- In 2018, a former trustee of a trust fund for apprentice and journeyman education and training was sentenced for submitting a false reimbursement request in connection with training events. In his plea, the former trustee admitted that the amount owed to the training fund totaled $12,000.[10]
- In 2018, a union official was sentenced for illegally channeling funds from a union training center to union officials and employees for their personal use.[11]

Under the rule, each labor organization in these examples would have been required to file a Form T–1 because each of these funds is a 3(l) trust that meets the significant contribution test, as outlined in the rule. In each instance, the labor organization's contribution to the trust, including contributions made pursuant to a CBA, made alone or in combination with other labor organizations, represented greater than 50 percent of the trust's revenue in the one-year reporting period. The labor organizations would have been required to annually disclose for each trust the total value of its assets, liabilities, receipts, and disbursements. For each receipt or disbursement of $10,000 or more (whether individually or in the aggregate), the labor organization would have been required to provide: The name and business address of the individual or entity involved in the transaction(s), the type of business or job classification of the individual or entity; the purpose of the receipt or disbursement; its date, and amount. Further, the labor organization would have been required to provide additional information concerning any trust losses or shortages, the acquisition or disposition of any goods or property other than by purchase or sale; the liquidation, reduction, or write off of any liabilities without full payment of principal and interest, and the extension of any loans or credit to any employee or officer of the labor organization at terms that were granted at more favorable terms than were available to others, and any disbursements to officers and employees of the trust.

[3] *See* Form LM–30 Instructions, p.7 (''Complete Part B if you, your spouse, or your minor child held an interest in or derived income or other benefit with monetary value, including reimbursed expenses, from a business . . . any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested.'').

[4] *See* Form LM–2 Instructions, p.21 requires itemization of major disbursements, allowing the union members to see the recipients and the amount paid, as well as the purpose of the payments. (''Schedules 15 through 19 reflect various services provided to union members by the union in which all ''major'' disbursements during the reporting period in the various categories must be separately identified. A ''major'' disbursement includes: (1) any individual disbursement of $5,000 or more; or (2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period.'')

[5] The fiduciary duty of the trustees to refrain from taking a proscribed action has never been thought sufficient in and of itself to protect the interests of a trust's beneficiaries. Although a fiduciary's own duty to the trust's grantors and beneficiaries includes disclosure and accounting components, public disclosure requirements, government regulation, and the availability of civil and criminal process complement these obligations and help ensure a trustee's observance of his or her fiduciary duty. *See* Restatement (Third) of Agency § 8.01 (T.D. No. 6, 2005) *et seq.; see also* 1 American Law Institute, Principles of Corporate Governance § 1.14 (1994).

[6] The trusts in these examples constitute apprenticeship and training funds established under LMRA section 302(C)(6), 29 U.S.C. 186(c)(6). EBSA does not require such funds to file the Form 5500. *See* 29 CFR 2520.104–22 (conditional exemption from Form 5500 filing requirements for apprenticeship and training plans).

[7] *See https://www.wilx.com/home/headlines/Former_Union_Secretary_Sentenced_for_Embezzlement_126151908.html,* July 25, 2011.

[8] *See https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/newsroom/criminal-releases/11-24-015.pdf,* November 24, 2015.

[9] *See https://www.justice.gov/usao-ri/pr/union-officer-plead-guilty-embezzlement-identity-theft,* November 27, 2017.

[10] *See https://www.dol.gov/newsroom/releases/ebsa/ebsa20180323,* March 23, 2018.

[11] *See https://www.dol.gov/olms/regs/compliance/enforce_2018.htm.*

In developing this rule, the Department also relied, in part, on information it received from the public on previous proposals. In its comments on the 2006 proposal, a labor policy group identified multiple instances where labor organization officials were charged, convicted, or both, for embezzling or otherwise improperly diverting labor organization trust funds for their own gain, including the following: (1) Five individuals were charged with conspiring to steal over $70,000 from a local's severance fund; (2) two local labor organization officials confessed to stealing about $120,000 from the local's job training funds; (3) an employee of an international labor organization embezzled over $350,000 from a job training fund; (4) a local labor organization president embezzled an undisclosed amount from the local's disaster relief fund; and (5) a former international officer, who had also been a director and trustee of a labor organization benefit fund, was convicted of embezzling about $100,000 from the labor organization's apprenticeship and training fund. 71 FR 57716, 57722.

The comments received from labor organizations on previous proposals generally opposed any reporting obligation concerning trusts. By contrast, many labor organization members recommended generally greater scrutiny of labor organization trust funds. For example, in response to the Department's 2008 proposal, commenters included several members of a single international labor organization. They explained that under the labor organization's CBAs, the employer sets aside at least $.20 for each hour worked by a member and that this amount was paid into a benefit fund known as a ''joint committee.'' 71 FR 57716, 57722. The commenters asserted that some of the funds were ''lavished on junkets and parties'' and that the labor organization used the joint committees to reward political supporters of the labor organization's officials. They stated that the labor organization refused to provide information about the funds, including amounts paid to ''union staff.'' From the perspective of one member, the labor organization did not want ''this conflict of interest'' to be exposed. *Id.*

If the Department's rule had been in place, the members of the affected labor organizations, aided by the information disclosed in the labor organizations' Form T–1s, would have been in a much better position to discover any potential improper use of the trust funds and thereby minimize the injury to the trust. Further, the fear of discovery could have deterred the wrongdoers from engaging in any offending conduct in the first place.

The foregoing discussion provides the Department's rationale for the position that the Form T–1 rule will add necessary safeguards intended to deter circumvention or evasion of the LMRDA's reporting requirements. In particular, with the Form T–1 in place, it will be more difficult for labor organizations, employers, and union officers and employees to avoid the disclosure required by the LMRDA. Further, labor organization members will be able to review financial information they may not otherwise have had, empowering them to better oversee their labor organization's officials and finances.

IV. Review of Proposed Rule and Comments Received

A. Overview of Comments

The Department provided for a 60-day comment period ending July 29, 2019. 84 FR 25130. The Department received 35 comments on the Form T–1 proposed rule. Of these comments, all 35 were unique, but only 33 were substantive. The two remaining comments merely requested an extension of the comment period. The Department declined the extension requests by letter dated July 29, 2019.

Comments were received from labor organizations, employer associations, public interest groups, benefit funds and plans, accounting firms, members of Congress, and private individuals.

Of the 33 unique, substantive comments received, 15 expressed overall support for the proposed rule, 16 were generally opposed, and the remaining 2 comments were essentially neutral—focusing on a credit union exemption. The Department also received one late comment. Although not considered, the concerns raised were substantively addressed in the Department's responses to other timely-submitted comments.

Comments offering support for the proposed rule largely focused on the value of the rule in promoting financial transparency and union democracy and in curtailing union corruption. The primary concern expressed by this segment of commenters was that the Department not allow more than a few limited exemptions to the reporting requirement, if any. Some urged the Department not to adopt exemptions such as allowing parent unions to file on behalf of an affiliate when both are interested in the same trust, or even remove the union size threshold that limits the Form T–1 requirement to unions that currently file an annual Form LM–2 report.

Comments opposed to the NPRM largely focused on the additional reporting burden the Form T–1 would create for unions and the confidentiality concerns surrounding much of the itemization required by the Form T–1. The primary concerns advanced by these commenters were that the Department alleviate the redundancy of having each union report on a multi-union trust, include all proposed exemptions, and refrain from treating employer contributions to trust funds as union funds for any purpose. Commenters who opposed the Form T–1 also urged the Department to include exemptions beyond those contemplated in the NPRM, including exemptions for unions contributing a *de minimis* amount to a multi-union trust and for trusts that file the Form 990 with the IRS.

B. Policy Justifications

In the NPRM, the Department cited public disclosure and transparency of union finances as major benefits of and policy justifications for creating the Form T–1. A number of commenters approved of the Form T–1 as a means to increase union transparency. The Department agrees with these commenters that the fundamental reason the Form T–1 is necessary is to effectuate the level of transparency envisioned by Congress in drafting the LMRDA. In fact, those commenters who were generally opposed to this rule maintained only that the transparency benefits were outweighed by the costs involved, rather than claiming that preventing circumvention or evasion to ensure union financial transparency would not be a benefit to union members, the unions as organizations, and the public. One union commenter wrote, as part of expressing support for the proposed exemptions to the Form T–1 reporting obligation under the rule, that the union ''invests significant resources to ensure that we are accountable to our members and that our financial operations are transparent, responsible, and compliant with applicable laws.''

Thus, the comments collectively illustrate there is a general consensus that public reporting of union finances and the transparency it provides is desirable for all parties. The Department promulgates this rule, in part, because the Department agrees with those commenters who stated that the greater financial transparency that this rule provides, and which serves the LMRDA purpose of preventing circumvention or

evasion, outweighs the reporting burden and other costs of this rule.

Finally, the Department notes that, as the union commenter quoted above recognized, the Department has provided exemptions from the reporting requirement wherever doing so does not compromise the benefits of the rule's transparency and reduces reporting redundancy. Two examples are: The Form 5500 exemption, which recognizes that trusts filing that form already provide sufficient public disclosure; and the confidentiality exemption, which recognizes that there are privacy concerns that outweigh the benefit of additional transparency for itemized disbursements in a limited number of circumstances.

Additionally, in the NPRM, the Department cited specific instances of, and the general potential for, corruption on the part of union leadership or individual union officials or employees as a significant rationale for establishing the Form T–1. A number of commenters agreed, highlighting additional instances of union corruption as justifications for the rule. Commenters agreed that a substantial benefit of the financial transparency discussed above is that it will reveal and likely deter misuse of covered funds. Documented instances of union corruption, involving trusts and the opportunities for such while union-controlled funds' financial information remained unreported, make a strong case for this rule.

The Department notes that many commenters relied upon the same example of union corruption as the specific type of corruption which necessitates the Form T–1. Nine separate commenters discussed a training center trust fund corruption scandal involving employees of Fiat Chrysler and top union officials of the United Auto Workers (UAW). In 2018, an investigation of this auto industry corruption in Detroit, Michigan produced multiple criminal convictions in the United States District Court for the Eastern District of Michigan. The joint investigations conducted by OLMS, the Department of Labor's Office of Inspector General, the Federal Bureau of Investigation, and the Internal Revenue Service focused on a conspiracy involving Fiat Chrysler executives bribing labor officials to influence labor negotiations. Their violations included conspiracy to violate the Labor Management Relations Act for paying and delivering over $1.5 million in prohibited payments and things of value to UAW officials, receiving prohibited payments and things of value from others acting in the interest of Fiat Chrysler, failing to report income on individual tax returns, conspiring to defraud the United States by preparing and filing false tax returns for the UAW-Chrysler National Training Center (NTC) that concealed millions of dollars in prohibited payments directed to UAW officials, and deliberately providing misleading and incomplete testimony in the federal grand jury.[12] These comments demonstrate that stakeholders are concerned about the problems caused by a lack of transparency, and that such corruption is not purely theoretical.

C. Employer Contributions/Taft-Hartley Plans

In the NPRM, the Department proposed a test for the degree of union control of a trust as the basis for applying the Form T–1 reporting obligation. This test has a managerial dominance prong and a financial dominance prong. As part of the test, the Department proposed that employer contributions to a trust made pursuant to a CBA with the union count as union contributions for purposes of determining financial dominance. This final rule adopts the test.

The rule's provision that employer contributions made pursuant to a CBA constitute union contributions will likely lead to a number of unions reporting joint union and employer trusts, known as Taft-Hartley trusts, on their Form T–1 reports. These trusts are expressly permitted by section 302 of the Taft-Hartley Act of 1947, 29 U.S.C. 186, and are designed to be managed by a board of trustees on which the union and employer are equally represented. The funding for these trusts typically comes from employer contributions under a negotiated CBA. Generally speaking, these trusts are designed to provide employee benefits, such as pensions. In addition to the requirement that these trusts be managed by a board of equal union and employer representation, these trusts are subject to specific regulatory requirements under the Taft-Hartley Act, and many of these trusts report under ERISA as well.

Several commenters who objected to the Department applying the Form T–1 reporting obligation to Taft-Hartley trusts claimed that the Taft-Hartley Act provides sufficient protection against union or union agent misuse of the funds. These commenters pointed to three particular requirements they believe adequately protect the funds in these trusts such that T–1 reporting is not necessary. First, the trust must be legally separate from the union. Second, such trusts are administered by boards on which union(s) and employer(s) involved in the trusts are equally represented. Third, Taft-Hartley trusts are subjected to an annual independent audit.

As to the trust being a legally and functionally separate entity, the Department does not consider this sufficient either to prevent evasion or circumvention of LMRDA reporting requirements or to eliminate the opportunity for corruption created by such evasion or circumvention. A union or individual bad actor might engage in corrupt activities to misdirect union funds with an entity wholly separate from the union. If union officers or employees have the authority to direct the union's funds, then whether the trust is a separate legal entity will not meaningfully reduce the potential for misuse of such funds. Reporting on such trusts, however, will help prevent the opportunity for such misuse of union funds. Where the funds are overseen by a board that includes union representatives and are meant to benefit union members, the opportunities for such corruption are apparent. A more ''traditional'' union trust, such as a multi-union building trust, is legally distinct from the unions and yet also subject to abuse. ''Trusts'' that are wholly owned, governed, and financed by a single union are considered subsidiaries under the LMRDA and subject to a different reporting obligation that is already part of the Form LM–2.

As to the requirement that the trust's governing board be composed of an equal number of union and employer representatives, the Department does not consider this a sufficient protection against corruption either. While the Department acknowledges that this arrangement could provide a greater deterrent to corruption relative to a board composed wholly of union appointees, this arrangement does not sufficiently operate to prevent circumvention or evasion of the overall LMRDA reporting framework that provides for financial transparency and ensures funds are directed to the benefit of union members and their beneficiaries.

As Justice Louis D. Brandeis once wrote, ''Sunlight is said to be the best of disinfectants.'' [13] The recent convictions of UAW and Fiat Chrysler officials involving funds intended for a Taft-Hartley trust meant to operate a training center for UAW members

[12] *See https://www.dol.gov/olms/regs/compliance/annualreports/highlights_18.pdf.*

[13] Brandeis, Louis D., *Other People's Money, and How the Bankers Use It* (National Home Library Foundation) (1933).

demonstrates that oversight from employer representatives is not enough.

As to the audit requirement, the Department does not consider this requirement alone or even in conjunction with the other two requirements discussed by commenters to provide an adequate justification for exempting Taft-Hartley trusts from the T–1 reporting requirements. The Department does, however, recognize that an independent audit that meets certain financial auditing standards is functionally equivalent to the financial disclosures required on the Form T–1, which is why this rule allows a union to file only the basic informational portions of the Form T–1 if it attaches such an audit. The Department allows this audit exception because it ensures that the key financial information of the trust is publicly disclosed.

Moreover, many Taft-Hartley trusts file Form 5500 reports with the Employee Benefit and Security Administration (EBSA), which exempts such trusts entirely from the Form T–1.

A commenter argued that requiring, for purposes of demonstrating managerial control, that a majority of trustees be appointed by unions would effectively free all Taft-Hartley funds from Form T–1 coverage. Management control or financial dominance is required, but not both. Under today's rule, a labor organization has management control if the labor organization alone, or in combination with other labor organizations, selects or appoints the majority of the members of the trust's governing board. Further, for purposes of today's rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the trust's receipts during the annual reporting period. This commenter proposed extending the reporting requirement to include trusts in which the labor organization selects or appoints only 50 percent of the members of the governing board, in order to maximize the application of the regulation within legal limits. The Department believes that, consistent with *AFL–CIO* v. *Chao,* labor organizations exert control over a trust, either alone or with others collectively, when labor organizations represent a majority of the trust's governing body or labor organizations contribute a majority share of receipts during the reporting period.

Additionally, many commenters discussed the Department's proposal to treat funds contributed by employers pursuant to a CBA as union funds for purposes of the financial dominance test. Some commenters supported this approach and the Department's rationale that such negotiated contributions are meant to be used to the exclusive benefit of union members and might otherwise have been secured by the union as wages or benefits for union members.

The commenters opposed to this approach advanced one or more of the following five arguments: (1) Unions are never actually in possession of these funds as they are paid directly into the trusts by employers; (2) unions cannot unilaterally determine how the funds are used because their use is governed by the agreement with the employer; (3) employer contributions are not legally considered the union's money; (4) the proposed approach could set a precedent for treating employer contributions as union money in other circumstances; and (5) the proposed approach could cause confusion about the union's relationship to the employer-contributed funds.

Initially, the Department notes that commenters did not challenge the Department's authority to apply Form T–1 reporting requirements to Taft-Hartley trusts, because that question was resolved in the affirmative by the court in *AFL–CIO,* 409 F.3d at 387. LMRDA section 208 grants the Secretary authority, under the Title II reporting and disclosure requirements, to issue ''other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' Employer payments to a trust are negotiated by a union. The union can choose to negotiate for numerous and varied items of value, and thus may choose to negotiate for employer concessions that do not benefit the trust. This means that the trust's continued existence depends on the union's decisions at the bargaining table. The influence that this potentially gives the union over the trust could be used to manipulate the trust's spending decisions. If so, the union has circumvented the reporting requirements by effectively making disbursements not disclosed on its Section 201 reporting form.

Further, Section 208 does not limit the ''circumvention or evasion'' of the reporting requirements to merely the Section 201 union disclosure requirements. Rather, such ''circumvention or evasion'' could also involve the Section 203 employer reporting requirements, as well as the related Section 202 union officer and employee conflict-of-interest disclosure requirements. As such, the reporting by unions of Taft-Hartley trusts could reveal whether the employer diverted, unlawfully, funds intended for the trust to a union official. For example, the public will see the amount of receipts of the trust, which could reveal whether it received all intended funds. As a further example, the public will know the entities with which such trusts deal, thereby providing a necessary safeguard against the potential circumvention or evasion by third-party employers (*e.g.,* service providers and vendors to trusts and unions) of the Form LM–10 reporting requirements.

Next, the Department's approach to employer contributions does not state or imply that such funds were at any point held by a union. The Department considers it sufficient, in light of the limited purpose for which employer contributions are treated as union funds, that the union secured those funds for the benefit of its members and their beneficiaries as part of a negotiated CBA.

Further, the Department's concern in every facet of LMRDA financial reporting is the misuse and misappropriation of union finances. The fact that a written agreement limits the legitimate use of certain funds does not in itself prevent their misuse. That a union and its agents are not authorized to use funds for purposes other than those contemplated in the CBA is not an adequate safeguard against financial abuse. This position is supported by the reality of the misuse of employer-contributed funds by the various apprenticeship and training plans mentioned above in Part III, Section B (Policy Justifications), as well as the UAW officials tasked with overseeing a training center for UAW members.

Moreover, as a response to both the third and fourth arguments offered by commenters, the Department notes that the treatment of employer contributions as union funds is expressly limited within the rule itself to the financial dominance test. The Department is not claiming that such funds are or should be considered union funds for any other purpose. Furthermore, the Department takes this approach in this specific case only in the interest of ensuring that there is financial disclosure, as a means to prevent circumvention or evasion of the LMRDA reporting that is necessary for union financial integrity, for all funds that a union secures, by any means, for the benefit of its members and their beneficiaries. As an illustration of why employer funding pursuant to a CBA should not remain as a means to evade LMRDA reporting, consider the following example.

Consider a trust that is 96 percent funded from union payments, 48 percent of which is funded by three different employers' payments made pursuant to a CBA negotiated by the same union (48 percent, or 16 percent per employer contribution). The remaining 4 percent is funded by some other, non-union entity. It is apparent that the union has a level of direct and indirect control over the trust that far exceeds any other entity that contributes to the trust and the trust would, appropriately, file under this rule. Yet, were employer contributions made pursuant to a CBA not considered by the Department, the public may not otherwise receive necessary disclosure.

As to the fifth assertion regarding potential confusion about the union's relationship to the employer-contributed funds, the Department notes that union members and the public should still be able to discern the nature of the employer-contributed funds, even if they are treated as union funds, for purposes of determining the Form T–1 reporting obligation. The rule itself and the Form T–1 instructions are clear that these funds come from the employer subject to a CBA and are treated as union funds solely for purposes of the reporting obligation. A union is also free to indicate that its trust's funds come from employer contributions in the additional information section on the Form T–1 in order to further dispel confusion. Those members of the public and of unions who take the time to review Form T–1 reports are likely familiar with Taft-Hartley trusts and the concept of employer contributions under a CBA.

D. Issues Concerning Multi-Union Trusts

In the NPRM, the Department proposed, in order to reduce the reporting burden, that parent unions may file the Form T–1 on behalf of their subordinate unions that also share an interest in a trust that triggers Form T–1 reporting. The Department sought comment on other possible methods to reduce burden in multi-union trust situations.

In regards to multi-union trusts in which managerial control or financial dominance by each participating labor organization would require a Form T–1 from each, one commenter expressed support for an approach to resolving the duplication of reports. Particularly, the commenter supported an approach allowing a single labor organization to voluntarily assume responsibility for filing the Form T–1 on behalf of all labor organizations associated with that trust. The Department agrees with this approach and it will allow a single union to file both on its behalf and on the behalf of the other unions involved. The union submitting must identify, in the Form T–1 Additional Information section, the name of each union that would otherwise be required to file a Form T–1 report for the multi-union trust. Additionally, on their Form LM–2 reports, the other unions must identify the union that filed the Form T–1 on their behalf.[14] The Department reiterates, however, that in the event the unions cannot agree on who should assume sole responsibility, each involved labor organizations will be obligated to file a Form T–1 for the reporting period.

In situations in which a single union voluntarily assumes responsibility, it may subsequently receive partial compensation from the other participating unions for doing so, pursuant to a pre-arranged agreement. Such options for consolidated filing should reduce burden, and mitigate the need for a *de minimis* exemption for relatively small contributors to a trust. Furthermore, the Department declines a *de minimis* exemption because such an exemption could allow for arrangements in which multiple unions join into a trust in such small proportions that, although they trigger the Form T–1 receipts branch of the dominance test, they each qualify for the *de minimis* exemption. In such a case, there would be no financial reporting despite the fact that unions exert control over the trust. Such a loophole could be exploited.

One commenter asserted that the Department is in logical error by conceiving that multiple unions, including some with minority stakes, could work in concert to circumvent reporting requirements and embezzle funds, yet provides no reason as to how this type of arrangement is ''vastly out of step with reality.'' One commenter also suggested that such working in concert would be effective only if the participating unions had the same affiliation. Reflecting on the ability of union officials to misdirect trust funds in all of the cases behind the convictions listed in Part III, Section B, the Department does not doubt that officials from different unions could work in concert to embezzle funds and evade reporting. Multiple unions can exercise joint control of a trust to use it as a vehicle for corruption that circumvents or evades reporting.

Finally, having received no support for such an approach, the Department declines to adopt the idea of requiring the labor organization with the largest stake in the covered trust to bear the sole responsibility of filing a Form T–1. The complexity of determining who has the largest ''stake'' would add additional unnecessary costs and complications; it is unclear whether the union with the largest percentage of managerial control or the largest percentage of financial contribution should be considered the stakeholder best suited to filing. Especially in situations where the difference is negligible between the size of the contributions of two unions, the rationale of obligating the largest contributor seems far less compelling.

Last, in regards to unnecessary costs to the trusts in having to provide information to multiple labor organizations instead of a single labor organization in these multi-union trust situations, the Department maintains that such additional costs are negligible. Although one commenter disagreed with the Department's reasoning, the commenter provided no evidence supporting its position. No additional information would need to be acquired in providing the information to one labor organization or multiple. The trust would forward the same files to each union. And, ultimately, the costs, including any hypothetical additional costs in providing electronic files to multiple unions instead of one, would be compensated by the unions at net zero cost to the trust.

E. ERISA Exemption

In the NPRM, the Department proposed to exempt from the Form T–1 all employee benefit trusts that are subject to Title I of ERISA and that file the Form 5500 Annual Return/Report of Employee Benefit Plan or, if applicable, the Form 5500–SF (Annual Return/Report of Small Employee Benefit Plan) (together Form 5500) with EBSA. The exemption applies even if an ERISA-covered plan was not otherwise required to submit an ERISA annual report. Effectively, this means that the exemption applies when a union has a plan covered by ERISA, and is therefore eligible under ERISA to file and files the full annual return/report of employee benefit plan or the Form 5500–SF for eligible small plans, as appropriate. A union would be exempt from filing a Form T–1 if it files an annual report under ERISA unless it files a Form 5500–SF without meeting the eligibility requirements for filing the simplified report, such as being a multi-employer plan, not having the correct plan membership size, or not being invested

[14] The information collection request (ICR) accompanying this rule, pursuant to the Paperwork Reduction Act (PRA), revises the Form LM–2 instructions.

in ''eligible plan assets.'' [15] For example, a multi-employer apprenticeship and training plan must file the full Form 5500, not the SF, in order for the union to qualify for this Form T–1 exemption. The Department received numerous comments in response to this proposal, and, while the Department retains the ERISA exemption in the final rule, the Department has modified the regulatory language and Form T–1 instructions to make clear its scope.

The commenters opposed to this exemption argued that the Form 5500 does not offer comparable disclosure. They also stated that ERISA and the LMRDA serve different purposes.

Those who supported the exemption argued that the Form 5500 exemption should be retained. ERISA exemptions have always been a feature of the Form T–1 filing requirements, and the reasoning has not changed. The Form 5500 offers disclosure and accountability for both employee benefit pension plans and employee benefit welfare plans operated with a trust comparable to what the Form T–1 offers. The commenters argued that, were no Form 5500 exemption granted, the resulting redundancy created by the overlapping reports would be an unjustifiable burden on labor organizations with no justifiable gain in disclosure for members. Moreover, some commenters maintained that the Form 5500 provides even greater transparency than the Form T–1, because the itemization threshold for reporting certain payments to service providers is only $5,000 on Form 5500 as opposed to $10,000 on the Form T–1. The Form 5500 also requires reporting of certain types of indirect compensation, not just direct compensation, paid to or received by a service provider. Finally, Form 5500 filers with plans funded by trusts generally have to file an audit report based on an audit conducted by an independent, qualified public accountant.

A commenter took the position that the Form 5500 does not offer sufficient disclosure and that ERISA works to blunt inquiry for members. Another commenter claimed that there is ''no rationale basis [sic]'' for the Department to believe the Form 5500 will adequately inform members for the purposes of maintaining democratic control of their union or to ensure a proper accounting of union funds. The Department disagrees with these statements. First, the Form 5500 has for decades provided important financial disclosure regarding the entities that file it. Second, the Form 5500 is available to not only participants, beneficiaries, and fiduciaries, but to union members and to the public. Members interested in the operations of the employee benefit trusts to which their union contributes can continue to utilize it for the effective monitoring of those filing entities. While the first commenter also suggested that the Form 5500 is inappropriate because the LMRDA and ERISA serve different purposes, this does not have any bearing on the quality of Form 5500 disclosure or the salience of those disclosures for these purposes. In any event, in the Department's view, the transparency provided by the Form 5500 can serve the purposes of both statutes.

Another commenter argued that the Form 5500 exemption should not be included because the additional burden of preparing the Form T–1 would be minimal. The trust would already have garnered much of the information needed when it was preparing the Form 5500. While it is true that similar information from the same sources would reduce the burden of a second form, even a reduced unnecessary burden is still an unnecessary burden. The exemption avoids any unnecessary burden in relation to the Form T–1.

The Department agrees with the reasoning offered by one union commenter as to why the Form 5500 exemption has long been a feature of Form T–1 initiatives and should be maintained. The exemption reduces the redundancy of information already publicly available, and eliminates burden hours that would be otherwise borne by the union. The exemption is, as another commenter explained, well-founded because Form 5500 reporting already ensures transparency and accountability to members whose trusts file. Lastly, as one accounting firm commenter reasoned, the Form 5500 is arguably superior in certain respects to the Form T–1, primarily the lower threshold for identifying recipients of disbursements which is set at $5,000 as opposed to $10,000.[16]

The ERISA exemption would require a union to take the step of determining whether or not a given trust covered by this rule in which it has an interest files the Form 5500 with EBSA.[17] On this point, one commenter argued that unions would have no more difficulty in finding out whether their trust files a Form 5500 than determining and acquiring all of the necessary information from the trust for the completion of the Form T–1. Again, the Form 5500 is publicly available, including via a simple search on the Department's Form 5500 online Search Tool.[18] Furthermore, when contacted by the union, the trust would know if it files the Form 5500 and could indicate the fact to the union. Thus, the Department remains convinced that the exemption for trusts that file the Form 5500 with EBSA should remain.

In a closely related issue, some commenters expressed concern that the trust's provision of information to the union for purposes of completing the Form T–1 raises ERISA fiduciary duty and prohibited transaction issues. In this regard, ERISA requires that plan assets be used only for the provision of plan benefits or for defraying the reasonable expenses of administering a plan. See 29 U.S.C. 1103(c)(2) and 1104(a)(1)(A). Moreover, ERISA prohibits, subject to exemptions, a plan fiduciary from using plan assets for the benefit of a party in interest, a term that includes a union whose members are covered by the plan. See 29 U.S.C. 1002(14)(D), 1106(a)(1)(D). Additionally, other commenters argued that when a trust enters an agreement with a union to receive reimbursement for costs incurred in providing Form T–1 data to a union, union trustees will have to recuse themselves in order to avoid violating ERISA's self-dealing restrictions in agreeing to the amount and terms of the reimbursement. These same issues were raised by commenters in connection with the 2008 final Form T–1 rule. Specifically, in the preamble to the 2008 rule, the Department noted that ''[i]n addition to the ERISA section 404 concerns, a number of comments also pointed out that ERISA section 406(b), 29 U.S.C. 1106(b), prohibits a fiduciary and a labor organization trustee who is a labor organization official from acting in an ERISA plan transaction, including providing services, involving his or her labor organization.''

The Department does not believe that it is necessary to issue a ''good faith'' exception, as suggested by commenters, from the requirement to report Form T–

[15] *See* Who May File Form 5500–SF, Instructions for Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan, available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500.*

[16] Filers required to file a Schedule C with their Form 5500 must identify various service providers who receive $5,000 or more directly or indirectly for services rendered to the plan or as a result of their position with the plan during the covered year.

[17] Under the ERISA exemption, the ERISA annual return/report filing would technically be for the plan of which the trust is part, and the annual filing would include and cover the trust.

[18] Available online at *https://www.efast.dol.gov/portal/app/disseminate?execution=e1s1.*

1 information in any case in which a trust refuses to provide required information to the union. In issuing today's rule, OLMS consulted with EBSA, the Department agency responsible for the administration and enforcement of the fiduciary rules under Title I of ERISA. As stated in the 2008 Form T–1 Final Rule preamble: ''EBSA has reviewed this rule and specifically advises that it would not consider a plan fiduciary to have violated ERISA's fiduciary duty or prohibited transaction provisions by providing officials of a sponsoring union with [Form T–1 information], provided the plan is reimbursed for any material costs incurred in collecting and providing the information to the labor organization officials.'' 73 FR 57412, 57432 (Oct. 2, 2008). Additionally, the Department went on to state that EBSA explained that a ''sharing of information in this manner is consistent with ERISA's text and purposes, and a contrary construction [of ERISA] is disfavored because it would impede compliance with the LMRDA and the achievement of its purposes. The Department expects that trusts will routinely and voluntarily comply in providing such information to reporting labor organizations.'' *Id.* EBSA confirmed in connection with today's rule that those statements continue to reflect its view.[19]

Further, the exemption for trusts filing the Form 5500 should substantially reduce the number of trusts and unions that will need to follow this procedure in order to be compliant with the requirements of the Form T–1. If an employee benefit plan is exempt from filing a Form 5500 pursuant to EBSA regulations, but nevertheless chooses to file a Form 5500 so that the sponsoring union can avoid filing a Form T–1 for the trust, the union would reimburse the plan for any administrative costs associated with the Form 5500 filing that would not have otherwise been incurred by the plan.[20] If, however, the responsible plan fiduciaries decide not to rely on an exemption and file a Form 5500 for prudent reasons related to plan administration and unrelated to the union's ability to claim an exemption from the Form T–1, the fact that the Form 5500 filing might result in an incidental benefit to the sponsoring union would not require the union to reimburse the plan for all or part of the Form 5500 filing costs.[21]

One commenter reasoned that this rule's promulgation was generally inappropriate because Congress sought to regulate transactions between ERISA trust plans and union officers and employees through extensive reporting and disclosure through ERISA, not the LMRDA. This rule responds to the comment, to the extent appropriate, by including a Form 5500 exemption recognizing the quality and appropriateness of disclosure through that form rather than the Form T–1. However, section 208 of the LMRDA clearly affords the Secretary authority to promulgate regulations governing trusts in which a labor organization is interested.

A commenter argued that, due to several court cases, it is incorrect for the Department to count employer contributions to ERISA plans toward its determination of a union's control over a trust according to this rule's financial or managerial dominance test. More particularly, the commenter suggested that this line of cases establishes a total prohibition against counting ERISA trust funds for any LMRDA reporting or enforcement purposes whatsoever. The commenter inflated the scope of these decisions. The cases the commenter cited are limited to the misuse of ERISA plan funds as the basis for fiduciary violation claims under the LMRDA. Although courts have issued narrow holdings establishing that fiduciary breach under section 501(a) of the LMRDA cannot be shown through a trustee's malfeasance in regards to ERISA plan trust funds,[22] these cases do not support the commenter's conclusion that such cases establish a total prohibition of against applying LMRDA provisions to ERISA funds. Moreover, as discussed at Part III, Section C, the end use of employer funds contributed pursuant to a CBA, as negotiated by the union, is of obvious interest to union members and indicative of the control a union or unions have over the particular trust.

Furthermore, with harsh lessons learned from the UAW/Fiat Chrysler scandal, the ability of a union to collaborate with an employer to attain domination allowing for distribution of trust assets, including employer funds, is not to be underestimated. Some commenters argued that by including employer contributions towards the determination of union dominance, the Department failed to grasp the idea that the employer and its contributions serve as an inherently competitive balance to the union. While this might be the theoretical and traditional ideal, such a clean cut, unqualified role of employer funds has not been realized. Similarly while ERISA can be said to grant exclusive control to trustees alone, it does not alter the fact that a union might in fact control the trust. The Form T–1 and its dominance test have been crafted to deal with the reality that unions can exert control and/or domination of a trust through direct contributions or those employer contributions made at the union's direction, *i.e.,* contributions made pursuant to a CBA.

Lastly, commenters suggested changes that could be made to ERISA or its implementing regulations that would achieve additional disclosure from apprenticeship and training programs. Any suggestions for changes to ERISA regarding apprenticeship and training plans, or any other element of ERISA regulations, are outside the purview of this rulemaking and the purview of OLMS. OLMS has shared those comments with EBSA and encourages interested stakeholders to communicate their suggestions directly to EBSA. Today's rule, though, makes it clear that the ERISA exemption in this final rule for the Form T–1 includes apprenticeship and training plans that do file the Form 5500, even if EBSA by regulation has provided a conditional exemption for such plans from the generally applicable Form 5500 annual reporting requirements.

F. Other Exemptions Raised by Commenters

Exemption for Trusts That Are Required To File IRS Form 990

Multiple union commenters requested an exemption from filing the T–1 for any organization that files a Form 990 with the Internal Revenue Service (IRS). These commenters asserted that the Form 990 requests much of the same, if not more information than the Form T–

[19] Comments on the application of section 302(c) of the Labor Management Relations Act of 1947 (LMRA) are outside both the purview of this rulemaking and the purview of OLMS because the Department of Justice rather than the Department of Labor has jurisdiction regarding that provision.

[20] For example, under ERISA section 107, plans are required to maintain records sufficient to support a Form 5500 report even if they are eligible for a reporting exemption or simplified reporting alternative.

[21] See generally Advisory Opinion 2003–04A (''[T]the Supreme Court has recognized that plan sponsors receive a number of incidental benefits by virtue of offering an employee benefit plan, such as attracting and retaining employees, providing increased compensation without increasing wages, and reducing the likelihood of lawsuits by encouraging employees who would otherwise be laid off to depart voluntarily. It is the view of the Department that the mere receipt of such benefits by plan sponsors does not convert a settlor activity into a fiduciary activity or convert an otherwise permissible plan expense into a settlor expense. See *Hughes Aircraft Company* v. *Jacobson,* 525 U.S. 432 (1999); *Lockheed Corp.* v. *Spink,* 517 U.S. 882 (1996).'').

[22] *See, e.g., Hearn* v. *Mckay,* 603 F.3d 897 (11th Cir. 2010); *Noble* v. *Sombrotto,* 525 F.3d 1230 (D.C. Cir. 2008).

1. Thus, according to these commenters, the Form T–1 is largely unnecessary to prevent the circumvention or evasion of LMRDA reporting requirements because that information is already largely reported on a trust's Form 990, especially with regard to entities that are tax-exempt under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. *See* 26 U.S.C. 501. One commenter requested that the Department provide an exemption for completion of parts of the proposed Form T–1 for organizations that annually file IRS Form 990 or allow those organizations to skip completion of Schedules 1, 2, and 3 of Form T–1 because so much of the information is duplicated with information that is required to be reported on Form 990.

Required IRS disclosures do not exempt labor organizations from their LMRDA reporting requirements. Labor organizations that are required to file an annual Form 990 are still required to file their annual LM–2, LM–3, and LM–4 form. Indeed, the purposes of LMRDA and IRS disclosure differ to a greater degree than does the LMRDA with ERISA, with correspondingly different disclosure requirements. As explained, the LMRDA was enacted, in part, to address fraud and corruption occurring within labor-management relations. The LMRDA's reporting requirements exist to deter such fraud and corruption, as well as promote union democracy. IRS reporting requirements are not tailored in this manner because the IRS provisions were enacted for the purpose of ensuring the IRS can monitor the activity of tax-exempt entities to ensure they remain duly eligible for the substantial benefit of tax-exempt status. Rather, the LMRDA's reporting requirements were tailored to prevent the circumvention or evasion of meaningful financial disclosure for labor organizations and trusts in which a labor organization is interested. While some information may overlap, there are substantial differences between the forms that continue to make the need for the Form T–1 apparent. For example, the Form T–1 requires itemization in all three of its schedules and thus provides a degree of specificity that the Form 990 does not; such particular detail as to certain, large transactions provides a level of transparency that exceeds that provided by similar fields in the Form 990. The Form T–1 is organized for review by union members, who are familiar with similarly-structured union financial disclosure reports such as the Form LM–2. Members will find the reporting structure of the Form T–1 far more accessible than the Form 990. Furthermore, whatever information is overlapped on both forms will simply provide members with a means of cross-referencing financial disclosures of a particular trust.

Moreover, while the Form 990 is detailed, it is less readily available for public inspection than the Form T–1, Form LM–2, or Form 5500 reports. Contrast this to LMRDA disclosure, which allows free, instant access to the entire LM form from the time electronic filing was available (the year 2000 for unions filing the Form LM–2) using the OLMS database.

Exemption for Credit Unions

The Department invited comment on whether it should exempt financial institutions affiliated with labor organizations, such as credit unions, from the final rule. Several commenters supported an exemption for credit unions affiliated with labor organizations in any final rule. According to these commenters, credit unions are highly regulated by the National Credit Union Administration (NCUA) and other financial regulatory agencies. One commenter noted that the reporting thresholds created by the proposal would make it extremely unlikely that any credit union would be covered. Multiple commenters noted that the structure of a credit union, which includes a Board of Directors democratically elected by the credit unions' entire membership, does not warrant the treatment of a credit union as a labor organization's ''trust.'' Credit unions are distinct, independently-managed legal entities according to the commenter. Another commenter noted that credit unions' revenue come largely from the deposits of individual members. Thus, according to the commenter and as echoed by a second commenter, the only time Form T–1 reporting on a credit union would be required is in the ''extremely unlikely'' circumstance where most deposits come from labor organizations rather than from individual depositors.

Another commenter opposed an exemption for credit unions, asserting that labor union-controlled banking and financial institutions create an opportunity to covertly influence actors in the labor-management field and that non-disclosure serves no LMRDA purpose.

Another commenter expressed concern that the reporting called for by the Form T–1 proposal would directly conflict with the Federal Credit Union Act, 12 U.S.C. 1751, as well as other laws and regulations governing credit unions. The comment cited the Department's example in its 2002 Form T–1 proposal, in which a labor organization contributed 97 percent of the funds on deposit at a credit union and provided large loans to union officers exclusively. The commenter noted that ''the loans described in the Department's example are characterized by the NCUA as 'loans to insiders' and, as such, are subject to special review by NCUA examiners.'' The commenter also more pointedly observed that information about credit union loans, as personally identifiable financial information, is exempt from public disclosure under the Gramm Leach Bliley Act. This commenter also wrote that applicable privacy regulations forbid a credit union from providing loan information to a union without first giving the borrower an opportunity to prevent such disclosure.

Another commenter was concerned that by creating the impression that private financial dealings with credit unions might be subject to public disclosure, the Form T–1 proposal would discourage the use of credit unions, running contrary to the federal policy of fostering the formation of credit unions. Based on these comments, the Department considered the extensive reporting requirements and regulations to which credit unions and other financial institutions are subject. The Department has decided to exempt from filing the Form T–1 organizations that are subject to the Federal Credit Union Act, 12 U.S.C. 1751.

Exemption for Fraternal Benefit Societies

One commenter requested an exemption for Fraternal Benefit Societies, which generally issue life insurance products to members of the sponsoring organizations. The commenter maintained that such trusts merit an exemption due to their similarity to PACs and commercial financial institutions. According to the commenter, fraternal benefit societies operate under a rigorous regulatory framework of state insurance laws administered in most states by an Insurance Commissioner. This regulatory framework requires fraternal benefit societies to file, on a quarterly and annual basis, a true statement of its financial condition, transactions, and affairs with the relevant State Insurance Commissioner in a form approved by the National Association of Insurance Commissioners (NAIC). Fraternal benefit societies also must produce any supplemental information required by the relevant state's Commissioner, as well as a valuation of its certificates in force for the prior year, as certified by

a qualified actuary. The commenter claimed that such reports produced and submitted by the fraternal benefit society are available to the public. Fraternal benefit societies are also subject to state insurance requirements for any state in which they sell insurance products.

The Department was not persuaded that this type of trust necessitated an exemption by the information the commenter provided, which did not detail the information required in existing financial disclosures. The Department is also concerned about variations in state requirements for these entities, even if each state's regime does meet a minimum set out by NAIC. Further, the Department has not been able to substantiate that such annual disclosures are wholly or widely available to the public as the commenter suggests. As to similarities to entities for which the Department has granted exemptions, fraternal benefit societies differ from PACs in this context because union-affiliated PACs are more restricted and more heavily regulated than PACs in general (*e.g.,* union PACs may only solicit contributions from members), whereas fraternal benefit societies are regulated in the same manner as other life insurance providers. Moreover, while union trusts that function as commercial banks or credit unions are also regulated in the same manner as any other such entity, it is significant that the services of fraternal benefit societies are much more related to traditional union activities than are commercial banking and credit union services. As stated previously, requirements for filing from another government agency does not, per se, exempt an organization from its LMRDA reporting requirements.

G. Objections to Proposed Exemptions

Opposition to the Audit Option for Trusts

Multiple commenters opposed the proposed audit option that allows trusts to submit an audit in addition to page one of the T–1 form, instead of the entire form. Under the audit option, a labor organization need only complete the first page of the Form T–1 (Items 1–15 and the signatures of the organizations' officers) and submit a copy of the audit of the trust that meets the requirements as detailed in the Form T–1 Instructions (generally modeled on provisions in 29 U.S.C. 1023 and 29 CFR 2520.103–1, relating to annual reports and financial statements required to be filed under ERISA). These requirements are that the audit must:

- Be performed by an independent qualified public accountant.
- Be performed by an accountant who examines the financial statements and other books and records of the trust, as the accountant deems necessary, and certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA).
- Include notes to the financial statements that disclose, for the relevant fiscal year:
- Losses, shortages, or other discrepancies in the trust's finances;
- The acquisition or disposition of assets, other than by purchase or sale;
- Liabilities and loans liquidated, reduced, or written off without the disbursement of cash;
- Loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and
- Loans made to trust officers and employees that were liquidated, reduced, or written off.
- Be accompanied by schedules that disclose:
- A statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; and
- a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

These commenters asserted that the proposed option to file an audit would allow trusts to submit less information than is required on the complete T–1 Form, thus decreasing transparency and undermining the purpose of this rule. One commenter insisted that the audit must disclose the same information as the Form T–1 or the audit will disclose less information than required on a Form T–1 and undermine the regulation's goal of promoting transparency. The Department believes the requirement that a labor organization deciding to file an audit must complete and file the first page of the Form T–1 with a copy of the audit is an acceptable approach that reduces the overall reporting burden on the labor organization and the section 3(l) trust, while providing sufficient disclosure. The Department notes that the Form LM–2 already provides an audit option for subsidiaries, and subsidiaries in the usual course are closer to the labor organization than a section 3(l) trust. See Form LM–2 Instructions, Part X (Labor Organizations with Subsidiary Organizations).

One commenter suggested the Department require the Form T–1 signature page be included with the audit submission in order to allow the LMRDA-related criminal provisions to be effectuated. This was already a feature of the proposed rule and is included in this final rule.

One commenter expressed concern that the audit required for the audit exemption is more stringent than the Form T–1 in certain respects, namely with regard to losses and shortages. The commenter points to the reporting exception from Item 16, that indicates losses and shortages do not include ''delinquent contributions from employers, delinquent accounts receivable, losses from investment decision, or overpayments of benefits.'' The commenter explains that these three categories are not included next to the criterion for the audit that all ''Losses, shortages, or other discrepancies in the trust's finances'' are documented. The Department wishes to clarify that the exception in Item 16 for ''delinquent contributions from employers, delinquent accounts receivable, losses from investment decision, or overpayments of benefits'' does apply, and that the audit required by the audit exemption is no more stringent as to the documentation of losses and shortages than the Form T–1.

Other commenters supported the audit option but requested clarification on whether the exemption from itemized reporting on Schedule 1 for ''receipts derived from pension, health, or other benefit contributions that are provided pursuant to a collective bargaining agreement'' will also apply to the audit disclosure option. To clarify, this exemption applies to the audit option, as well.

One commenter stated that the Department should do one of the following: Retain the overall audit exemption but drop the requirement for itemization of transactions of $10,000 or more because it is unrelated to any business purpose of the trusts and would not be ordinarily tracked in that way; or, allow the audit to omit specific itemization for trust receipts of collectively bargained employer contributions or for benefit payments to participants. The Department declines to modify the audit exemption in either manner, because it is critical that the audit provide comparable disclosure to the full Form T–1.

Multiple commenters suggested that because of the complexity of producing audited financial statements for multiemployer trusts, they would rarely, if ever, be available within 90 days following the close of a trust's fiscal year. One such commenter argued that the T–1 should be due no sooner than a full year after the end of a trust's fiscal year. Another commenter requested that OLMS permit a labor organization to take advantage of the limited exemption by filing the trust's most recently available audited financial statements. In the alternative, this same commenter requested that the labor organization be permitted to file for an automatic extension enabling it to submit the audited financial statements of the trust no later than the date the trust is required to produce those statements, and in no event later than 10½ months following the end of the labor organization's fiscal year.

The Department concurs with these comments, in part. Under the final rule, as proposed, labor organizations will file a Form T–1 and Form LM–2 together. The filing will be due 90 days after the labor organization's fiscal year ends. The Form T–1 will be based on the latest available information for the trust. The Department recognizes, however, that the trust needs an adequate amount of time to gather the Form T–1 data and provide it to the union and the union needs an adequate amount of time to prepare and submit the Form T–1. In certain cases, time would not be adequate. For example, if the trust and the labor union follow the same fiscal year, the Form T–1 would be due within 90 days of the close of the trust's fiscal year. This would give the trust and the union only 90 days to collect the trust's Form T–1 data, transfer the data from the trust to the union, and complete and file the Form T–1. It would give the trust 90 days to conclude an audit, if that course was taken. Based on the comments, this likely would not be a sufficient amount of time.

The Department will avoid this scenario. A labor union must still file the Form T–1 within 90 days of the close of its fiscal year. But it will be required to report on the trust's fiscal year that ends 90 days or more before the union's fiscal year ends. In other words, if a union and trust both have a calendar fiscal year ending December 31, 2021, the union would file its Form T–1 by March 31, 2023. The Form T–1 would cover the trust's fiscal year ending December 31, 2021. That would be the trust's most recent fiscal year that ended 90 days or more before the union's fiscal year's end. In another example, the union has a March 31, 2022 fiscal year ending date. The trust's fiscal year ends December 31, 2021. The Form T–1 would be filed June 29, 2022 (90 days after the close of the union's fiscal year) and would cover the trusts fiscal year ending December 31, 2021. That would be the trust's most recent fiscal year that ended 90 days or more before the union's fiscal year's end. Under this rule, the trust and the union would always have at least 180 days to prepare the Form T–1. This additional time will also aid in the preparation of a qualifying audit.

The Department's intention in permitting a labor organization to file the Form T–1 within 90 days after the labor organization's fiscal year ending date, rather than requiring it to be filed within 90 days after the trust's fiscal year ending date, is to ease the burden for both the trust and the labor organization. The Department anticipates that a trust will be able to more readily provide necessary information to the reporting labor organization at the conclusion of the trust's fiscal year and that a labor organization will have correspondingly less difficulty in obtaining information at that time. This change will alleviate the need for any later deadline or any form of automatic extension. The Department includes in the instructions that are published as part of the final rule examples of the rule's application to trusts and labor organizations that have the same or different fiscal years.

Finally, a commenter suggested that the Department should accept an audit, prepared pursuant to the Taft-Hartley Act, pursuant to the Form T–1 audit exemption. The Department declines this suggestion, since the audit option described here is specifically tailored for the requirements of the LMRDA and the trusts' connection with labor unions, such as whether the trusts made loans to labor union officers.

Opposition to Exemption for Smaller Labor Organizations and Subordinate Organizations

Several commenters opposed the proposed rule's exemption of unions with total annual receipts less than $250,000. These commenters stated that members of smaller labor organizations deserve as much protection and transparency as members of larger labor organizations. In the 2003, 2006, and 2008 rules, the Department explained that it had been persuaded that the relative size of a union, as measured by its overall finances, will affect its ability to comply with the proposed Form T–1 reporting requirements. 68 FR 58412–13. For this reason, the Department set as a Form T–1 reporting threshold a union's receipt of at least $250,000 during the one-year reporting period, the same filing threshold that applies for the Form LM–2. 68 FR 58413. For the same reason, the final Form T–1 rule applies only to unions that have $250,000 or more in annual receipts. This threshold is based on annual receipts because they are the monetary component that is most reflective of the union's overall finances and are the most effective proxy for ''size'' in the sense of number of members and effect on commerce. Moreover, using receipts is also consistent with the existing delineation between unions that file the Form LM–2 and unions that file the Form LM–3 or 4, which makes it a more familiar and straight-forward method for labor organizations to determine their size.

The Department has carefully considered and balanced the burden on labor organizations versus the benefits of increased transparency gained through such reporting and determined that T–1 reporting was most beneficial for larger labor organizations and their trusts. The Department is particularly hesitant to expand coverage to filers with less than $250,000 in annual receipts, as this rule is already predicted to have a significant impact on a substantial number of small entities, even when applied only to Form LM–2 filers. Were compliance to be expanded to all Form LM–3 and LM–4 filers, every one of these small filers would be impacted, and, in some cases, the cost of compliance could exceed the entire amount of annual receipts the labor organization receives annually. Therefore, expanding coverage to the smallest labor organizations is untenable and the Department declines to eliminate the filing threshold.

Many of the comments on the 2002 proposal expressed the view that the Form T–1 would impose a substantial burden on small labor organizations, because they are usually staffed with part-time volunteers, with little computer or accounting experience and limited resources to hire professional services. In the 2003, 2006, and 2008 rules, the Department explained that it had been persuaded by the comments that the relative size of a labor organization, as measured by its overall finances, would affect its ability to comply with the proposed Form T–1 reporting requirements. For this reason in the 2003, 2006, and 2008 final rules, the Department did not require any labor organization with annual receipts of less than $250,000 to file a Form T–1 report. For the same reasons, the Department again adopts a Form T–1

filing threshold of $250,000 in annual receipts for the labor organization.

One commenter opposed creating an exemption for a subordinate union when both a parent and its subordinate meet the financial or managerial domination test. This commenter suggested that the trust prepare a Form T–1, make blank signature copies for each affiliated labor organization, and have each sign and submit the Form T–1 with their LM filing. The Department declines this suggestion. The Department has determined that this requirement would create a burden on the trust and the affiliate unions without increasing transparency in any demonstrable manner.

Criticism of Written Agreement Requirement for Itemization Exceptions

Two commenters argued that the Benefits Payment Itemization Exemption in the Form T–1 Instructions is insufficient because as written it fails to exempt a number of benefits payments. The instructions read that a ''labor organization is not required to itemize benefit payments on Schedule 2 from the trust to a plan participant or beneficiary, *if the detailed basis on which such payments are to be made is specified in a written agreement*'' (emphasis added). The commenters argue that the last clause is too limiting, because many benefits payments are not in the original governing written document and are later added on through additional notes on a plan summary or a schedule of benefits that are not expressly incorporated into the governing document. One of the two commenters also makes the same claim about this ''written agreement'' language with respect to the Department permitting a confidentiality exception to itemization requirements for employer contributions that could reveal business operations. In each scenario, the commenters suggest that the simplest solution is to eliminate the final clause and simply indicate that all benefit payments and all employer contributions meet the exceptions. The Department believes that the edit is unnecessary and that removing the clause would provide undue opportunities for trusts and labor organizations to hide illicit transactions under the guise of ''benefit payments'' or ''employer contributions'' without having any proof. Having a written agreement of some sort is important in order to ensure there is documentation providing the terms of a legitimate agreement for the movement of funds. The Department, however, clarifies that the term ''written agreement'' is more expansive than how the commenters have interpreted it. The term is not limited to the original governing document or to documents that are expressly incorporated into it. If the union or trust entered into an associated agreement in writing that provides a detailed basis for such benefit payments to a plan participant or beneficiary or employer contributions to the trust, the exemption is met.

H. Burden on Unions and Confidentiality Issues

The proposed Form T–1 used the same basic template as the Form LM–2. Both forms require the labor organization to provide specified aggregated and disaggregated information relating to the financial operations of the labor organization and the trust. Typically, the Form T–1 will require that a labor organization disclose information related to a covered trust's transactions, such as: Disposition of property by other than market sale, liquidation of debts, and loans or credit extended on favorable terms to officers and employees of the trust. Further, the Form T–1 will require that a labor organization identify major receipts and disbursements by the trust during the reporting period.

Several union commenters opposed the level of disclosure required by the Form T–1 report because of confidentiality concerns. These commenters asserted that the necessary information for the Form T–1, such as the total assets, total liabilities, total receipts, and total disbursements, is confidential information that belongs exclusively to the trust. These commenters further asserted that the trust is legally obligated to protect the information from public reporting.

One commenter opposed the proposed rule because it would require public disclosure of confidential information regarding employer work hours. The commenter reasoned that employers who work with its association would be obliged to disclose information about contributions they make to the funds. Because employers often sign agreements specifying how much they contribute per employee work hour, this would then permit readers to estimate the number of hours an employer's employees worked during the reporting period. This would undermine the contributing employers' businesses by making this type of information available to competitors.

One commenter opposed the required disclosure of apprentice trust funds. According to this commenter, requiring union representatives to disclose all contributions received in excess of $10,000 and all disbursements made in excess of $10,000 would require disclosure by the apprentice fund of its employees, their salaries, instructor salaries, apprentice coordinator salaries, payments to vendors, suppliers, equipment manufacturers, training materials, publications, website designers, and many other features which are confidential and proprietary. This would also give apprenticeship programs not covered by this rule the benefit of reviewing confidential and propriety information and an undeserved advantage, according to the commenter.

Another commenter opposed the NPRM's proposed protections for union members' personal information and for sensitive information related to a labor organization's negotiating or bargaining strategies. This commenter asserted that these exemptions undermined the LMRDA's purpose of informing employees about who is trying to influence and persuade them to join or not join a union and that publicity would constrain fraudulent activity. This commenter stated that allowing labor organizations to conceal their actions while requiring employers to report and disclose their ''sensitive information,'' creates an imbalance the LMRDA statutorily prohibits. The commenter proposed that, if adopted, the protections from disclosure discussed in the proposed rule should apply to all current LM forms and not just those filed by union officers. The commenter did not identify what sensitive information employers currently report or would be exempt from reporting under the commenter's proposal. The Department notes that employers, generally, have no obligation to file any LM report unless the employer ''has made an expenditure, payment, loan, agreement, or arrangement'' to or with a third party. 29 U.S.C. 433(d). An employer need not report the employer's own, regular efforts, sensitive or otherwise, to influence or persuade their employees concerning union membership. Moreover, this approach to the Form T–1 is consistent with the existing exemptions for such information on the Form LM–2. Furthermore, LMRDA Title II protects all filers from disclosing material protected by the attorney-client privilege. See LMRDA Section 204, 29 U.S.C. 434.

The Department carefully balanced increased transparency against revealing confidential private information or information that may place an organization at a competitive disadvantage. The final rule maintains consistency with the LMRDA's other disclosure requirements for the LM–2,

as well as protecting confidential trust information. The Form T–1 will be subject to the same confidentiality provisions contained in the Form LM–2 regulations, 29 CFR 403.8. The only difference between the provisions relating to the Form LM–2 and final rule for the Form T–1 is that each addresses the distinct itemization thresholds for the two reports ($5,000 for Form LM–2 and $10,000 for Form T–1).

In the proposed rule as well as this final rule the Department also provides labor organizations the same reporting options available under the Form LM–2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as ''salts'' (persons having sought and attained employment at a company in order to organize its workers), or its prospective negotiation strategy. Reporting labor organizations may withhold such information provided they do so in the manner prescribed by the instructions. Thus, this information may be reported without itemization; however, as discussed below, this information must be available for inspection by labor organization members with ''just cause.''

Under the final rule, a labor organization that elects to file only aggregated information about a particular receipt or disbursement, whether to protect an individual's privacy or to avoid the disclosure of sensitive negotiating or organizing activities, must so indicate on the Form T–1. A labor organization member has the statutory right ''to examine any books, records, and accounts necessary to verify'' the labor organization's financial report if the member can establish ''just cause'' for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8. Information reported only in aggregated form remains subject to a labor organization's member's statutory right to access such financial information. Such aggregation will constitute a per se demonstration of ''just cause,'' and thus the information must be available to a member for inspection. By invoking the option to withhold such information, the labor organization is required to undertake reasonable, good faith actions to obtain the requested information from the trust and facilitate its review by the requesting member. Payments that are aggregated because of risk to an individual's health or safety or where federal or state laws forbid the disclosure of the information are not subject to the per se disclosure rule.

Commenters also made various suggestions as to ways in which the burden of the form could be reduced. First, the burden of itemization on Schedules 1 and 2 could be reduced by raising the threshold for the individual itemization of receipts and disbursements higher than $10,000. The Department declines the suggestion. While raising the threshold would reduce the burden of itemization, it also would unacceptably reduce the amount of disclosure available to union members. Furthermore, the Department has already accounted for this concern by increasing the threshold to $10,000; on the Form LM–2 for labor organizations, the threshold for major receipts and disbursements for itemization on Schedules 14–19 is $5,000. Since the threshold of $10,000 already doubles the traditional threshold for itemization, the Department declines to alter it further.[23] Additionally, the Department is declining the request of another commenter who advocated for the lower $5,000 threshold on the Form T–1. The Department has decided against a lower threshold in favor of a $10,000 threshold in recognition of the underlying concerns about burden advanced by the commenters asking for a higher threshold.

Another suggestion made was that DOL should reduce the burden by requiring only the top five receipts or disbursements to be itemized. The commenter offered no explanation as to why such a method or number of receipts/disbursements is well suited for financial transparency and burden reduction. The Department declines this idea due to the arbitrary limit suggested and for the obvious deficiencies in transparency this could create. For example, a trust with a dozen $50,000 disbursements as its top disbursements could handpick which five of its disbursements it wanted to have to itemize and name, and which to hide in non-itemized disbursements. To continue the example, it could have another dozen disbursements of $49,999, each for questionable purposes, that would go without itemization or the naming of recipients.

The Department also declines the idea offered by another commenter to extend the deadline for the Form T–1 beyond 90 days after the end of the union's fiscal year in an attempt to reduce the burden. While giving more time to trusts and unions to gather the necessary information would reduce the burden, the Department believes that 90 days at the end of the union's fiscal year creates a familiar, predictable timeline for both union members and the Department to expect union disclosure. Any recommendation to extend the deadline would cause problems greater than the burden reduction benefit in separating the Form T–1 deadline from the Form LM–2 deadline. Without a shared deadline, it will be more difficult for the Department to confirm that all obligated unions are complying with Form T–1 filing requirements, including identifying whether they or another union on their behalf will file the Form T–1 for each and every covered trust in which they are interested. Similarly, it will be more difficult for unions that have another union filing on their behalf, whether as a parent or a volunteer, to monitor compliance with that arrangement, which they must report on their Form LM–2 in lieu of a Form T–1. The Department sees no sufficient reason to depart from the statutory deadline for Form LM–2 reporting in requiring the Form T–1 from some of the same unions. Further, the policy that the union will report on trust fiscal years ending 90 days prior to the close of the labor unions' fiscal years will provide additional time, ensuring that there will always be a minimum of 180 days from the close of the trust's fiscal year to the submission of the Form T–1.

Lastly, while the Department has not changed its regulatory impact analysis methodology in response to public comments, the Department has updated its wage figures to the most recent, available, and complete data set from 2018. All figures are measured in 2018 dollars except where noted.

I. Legal Support for Rule

The NPRM explains that this rule is based on the Secretary's authority to require union financial reporting under Title II of the LMRDA, proposing that the Secretary has such legal authority as delegated by Congress. 29 U.S.C. 438. The LMRDA provides the Secretary with the specific authority to regulate ''trusts in which a labor organization is interested'' in order to prevent

[23] A commenter proposed that the threshold for the itemization of major disbursements and major receipts on the form T–1 should be set at $5,000, not $10,000. The commenter, however, did not provide reasoning as to why the decreased threshold is necessary in this context to prevent circumvention or evasion and thereby provide adequate union financial transparency, justifying the additional burden. Without support in the rulemaking record why $10,000 is insufficient but $5,000 sufficient to prevent circumvention or evasion, the Department declines to make this change.

circumvention or evasion of reporting requirements. *Id.*

One commenter asserted that the Form T–1 reporting obligation would exceed the Secretary's statutory authority on the basis that trusts make expenditures ''beyond traditional union expenditures'' that are accordingly beyond the authority granted to the Secretary under the LMRDA.

The Department acknowledges that the Secretary's authority is limited and that the case *AFL–CIO* v. *Chao,* 409 F.3d 377 (D.C. Cir. 2005) made clear that the Secretary cannot require ''general trust reporting'' in the sense of requiring reporting on all trusts in which unions have any stake. Yet, as explained in the Department's response to comments that raised concerns related to the treatment of employer contributions to a trust, or Taft-Hartley trusts, the Department has ensured this rule remains within the bounds of the Secretary's authority by making the managerial or financial dominance test a prerequisite for coverage under this rule. As the court stated in *AFL–CIO* v. *Chao,* ''[t]here is no serious dispute over whether Congress delegated authority to the Secretary to promulgate rules to enforce section 208 . . . . Under section 208, the Secretary may require reporting of union-related trusts where a two part nexus is met: A union must have an interest in the trust as defined in 29 U.S.C. 402(l), and the required reporting must be 'necessary' only for the purpose of 'prevent[ing] the circumvention or evasion of [union] reporting requirements' under LMRDA Title II.'' 409 F.3d 377, 386–87 (D.C. Cir. 2005) (internal citations omitted). The control test in this current rule, along with the union receipts threshold and other features, ensures that Form T–1 reporting covers trusts where the danger of circumvention and evasion is most serious, the control unions have over the trusts is higher, and there is currently an absence of significant financial disclosure.

The LMRDA explicitly grants the Secretary the power to require reporting for ''trusts in which a labor organization is interested.'' 29 U.S.C. 402(l). The LMRDA definition of ''trusts in which a labor organization is interested'' specifies that such trusts are those ''a *primary* purpose of which is to provide benefits for the members of such labor organization or their beneficiaries'' (emphasis added). *Id.* Thus, the LMRDA already contemplates that trusts will have purposes and expenditures in addition to those that serve the ''traditional'' union and union member interests.

The Department has taken due consideration of this comment, as well as other comments that argued the Department has the authority to require more trust reporting than was proposed. Ultimately, the Department adopts the managerial and financial dominance test as its basis for determining which trusts primarily serve union interests and purposes. Further, such a threshold test focuses reporting on those trusts that are most susceptible to corrupt misappropriation of union funds in the absence of adequate financial disclosures.

J. Multi-Union Control of Trusts

The NPRM explained that this rule is grounded in the Secretary's authority to require union financial reporting under the LMRDA, proposing that the Department take the position that the Secretary has such legal authority as delegated by Congress. This includes the specific authority to regulate ''trusts in which a labor organization is interested'' to prevent circumvention or evasion of reporting requirements. 29 U.S.C. 438. The NPRM further proposed that under the managerial and dominance tests, where multiple unions are involved in the same trust, the Department will count the total number of trustees appointed and total amount of funds contributed by all interested unions together in determining whether the interested unions must each file a Form T–1.

Some commenters questioned the Department's proposal to apply the control test collectively to multiple unions interested in the same trust. The policy justifications for this proposal are discussed at Part III, Section B of this rule. One commenter, however, specifically pointed to the language of LMRDA, which discusses ''trust'' in which ''a'' labor organization is interested, as presenting a legal barrier to the Department's approach. Given the statutory wording, this commenter asserted that the control test can only be applied serially to each individual union interested in a given trust.

The commenter's argument ignores the Dictionary Act: ''In determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to several persons, parties, or things . . . .'' 1 U.S.C. 1; *see, e.g., FDIC* v. *RBS Sec. Inc.,* 798 F.3d 244, 258 (5th Cir. 2015). The context here does not suggest that Congress meant the Department to only regulate trusts in which one labor organization has an interest, but not trusts in which several labor organizations have an interest, or that the Department can only regulate trusts with certain relationships to a particular labor organization while ignoring others. Union members in both instances have the same interest in transparency, and nothing else in the statutory context suggests the overly technical reading of the statute propounded by the commenter. *See N. Ill. Serv. Co.* v. *Perez,* 820 F.3d 868, 870 (7th Cir. 2016) (''Statutes and regulations are long enough as they are without forcing drafters to include both the singular and the plural every time.'').

Further, the commenter's reading reaches a conclusion contrary to the language and purposes of the LMRDA. The statutory language concerning ''a trust in which a labor organization is interested'' in section 208 and the statutory definition of that terminology at section 3(l) do not expressly limit the number of unions that might be interested in a single trust. Rather, they relate to the relationship between a given union and given trust, with no regard for exclusivity. Accordingly, the statute is properly read as requiring that *at least* one union must be interested in a given trust for it to be a 3(l) trust. Once a trust meets the definition of a 3(l) trust in this manner, the section 208 language provides the Secretary with authority to require reporting from that trust for the purpose of preventing circumvention or evasion of LMRDA requirements. Given this statutory language and purpose, the Department must use its discretion, within the parameters set forth by the D.C. Circuit in *AFL–CIO* v. *Chao,* to establish reporting requirements that are tailored to effectuating the LMRDA through trust reporting rules that cover all trusts where union dominance allows for circumvention or evasion of the LMRDA, while not amounting to general trust reporting. This purpose warrants a control test that aggregates the level of control of multiple unions interested in the same trust because unions could work together to circumvent or evade their respective LMRDA reporting obligations.

The D.C. Circuit described this aspect of the LMRDA as ''a two part nexus'' for determining the extent of the Secretary's authority to require trust reporting. *AFL–CIO* v. *Chao,* 409 F.3d at 387. The first part of the nexus is that the Department must establish that a trust is a trust in which ''a'' labor organization is interested. But, as the court noted, the Secretary's authority to find coverage under the statutory definition is quite broad. *Id.* (''statutory definition of 'trusts in which a union has an interest,' 29 U.S.C. 402(l), is sufficiently broad to encompass trusts that are neither financed nor controlled by unions'').

The breadth of coverage under section 402(l) makes it reasonable to treat a trust that is funded by multiple labor organizations the same as a trust funded by a labor organization. This is further demonstrated by the fact that, in such cases, those unions likely already report the trust as a trust in which they are interested on their annual Form LM–2 reports.

The second part of the nexus is the control test, which is not used to determine whether a trust is a trust in which a labor organization is interested, but to determine whether the trust must be reported on a Form T–1 in order to prevent circumvention or evasion of the reporting requirements. Applying this to multiple unions collectively thereby acts on the Court's determination in *AFL–CIO* v. *Chao,* where the D.C. Circuit concluded that the Secretary had shown that trust reporting was necessary to prevent evasion or circumvention where ''trusts [are] established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of the trust,'' as well as where there is some form of ''dominant union control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues.'' 409 F.3d at 389, 390. Accordingly, the Department's position is reasonable and in furtherance of the purposes of the LMRDA.

The same commenter asserting that the control test should be applied serially also stated that the Department presumptively conflated the existence of aggregate contributions by multiple unions into a trust as establishing concerted effort to control a trust. The Department's response is that the rule properly addresses union dominance over trusts because once multiple unions are in a position to collectively control the trust, there exists a clear opportunity for circumvention or evasion. The Department is not obligated to prove case-by-case that circumvention has occurred for each and every multi-union trust. The Department's authority to *prevent* circumvention or evasion of LMRDA reporting requirements encompasses preemptively closing off opportunities for one or more unions to exploit their financial or managerial dominance over a trust. While the Department can point to, and has, instances of union financial corruption with respect to trusts, this rule aims to prevent any future evasive and corrupt uses of union trusts, of any variety, as much as to address past instances. Thus, the clear opportunity for unions to act in concert is sufficient.

V. Regulatory Procedures

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (PRA).[24]

A. Summary

The LMRDA entitles union members to important information about union funds that are directed to other entities, for the members' benefit, when the Secretary finds that such reporting would be necessary to prevent the circumvention or evasion of the reporting requirements. *See* 29 U.S.C. 438. Examples include joint funds administered by a union and an employer pursuant to a CBA, educational or training institutions, and redevelopment or investment groups. The Form T–1 is necessary to close the information gap that exists for these trusts and thereby prevent certain trusts from being used to evade the LMRDA Title II reporting requirements, which are designed to provide union members with information about financial transactions involving a significant amount of money relative to the union's overall financial operations and other reportable transactions. Trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a union's financial condition and operations, including a full accounting to union members whose work obtained the payments to the trust. It is also necessary to prevent circumvention or evasion of the reporting requirements imposed on officers and employees of unions and on employers.

Union members thus will be able to obtain a more accurate and complete picture of their union's financial condition and operations without imposing an unwarranted burden on respondents. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a union member or a compliance audit by an OLMS investigator.

This rule is based upon improvements from previous efforts to institute the Form T–1, and this PRA analysis has been adjusted according to the Department's more accurate understanding of the Form LM–2 filers that will actually be subject to this revised Form T–1.

The Department estimates that a maximum of 2,070 Form T–1 reports will be submitted annually by 810 labor organizations as a result of this rule. The Department derives this estimate from a review of 2018 LM–2 reports from labor organizations that identified having a trust. The Department recognizes that this number of Form T–1 filers is an overestimation due to the Department's policy determination that only the parent union (*i.e.,* the national/international or intermediate union) should file the Form T–1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test.

Each of these 810 labor organizations will file at least one Form T–1 annually. Given that the Department estimates a maximum of 2,070 Form T–1 reports will be submitted annually, the 810 labor organizations will file ~2.56 reports on average.

Based on the calculations of the 2008 Form T–1 Final Rule, 73 FR 57436–57445, the Department estimates that, on average, labor organizations will expend 86.21 hours on recordkeeping the first year and 69.70 hours on recordkeeping each subsequent year for each Form T–1 filed. Additionally, on average, labor organizations will expend 35.17 hours on reporting the first year and 14.42 hours on reporting each subsequent year for each Form T–1 filed. Therefore, Form T–1 filers will spend 121.38 hours (86.21 + 35.17 = 121.38) on each T–1 report in the first year, and 84.12 hours (69.70 + 14.42 =

[24] *See* 5 CFR 1320.9. The rule implements an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' *See* 5 CFR 1320.9; 44 U.S.C. 3506(c).

84.12) on each Form T–1 report in subsequent years.

On any given report in the first year, the Form T–1 filers would spend approximately 121.38 hours per report (*see* Form T–1 Instructions), which results in a total of 251,256.6 additional burden hours (121.38 × 2,070 = 251,256.6 hours). In subsequent years, T–1 filers would spend approximately 84.12 hours per report (*see* Form T–1 Instructions), which would result in 174,128.4 additional burden hours (84.12 × 2,070 = 174,128.4), a 30.70 percent decrease from the first year.

The Department estimates that the total burden averaged over the first three years to comply with the Form T–1 to be 199,837.8 hours per year.

B. Response to Comments Received

Some commenters claimed that the reporting burden is too high, but offered no reasoning as to how they reached this conclusion. Similarly, many commenters argued that ultimately members are disserved by the expenditure of union funds for the purpose of disclosure, but offered no argument as to why securing disclosure is not of sufficient benefit. While the rule has a burden, the Department believes securing much-needed and long-awaited transparency for union members is well worth the burden in order to prevent embezzlement and maintain a corruption free labor-management relationship.

There were also numerous comments concerned with the burden of the rule taking away from the funds or time these trusts provide for training and benefits to union members. For example, one commenter expressed concern at the expense trusts would sustain from coding credit card transactions of officers. While there is recordkeeping burden shared by the union and the trust, this burden analysis includes estimates of time for both parties, and the union will entirely compensate the trust for its time. As such, these concerns are misplaced. The costs associated with this rule are ultimately not borne by the trusts, but by the unions who dominate them. Thus, it is the recordkeeping and reporting burden of the union that is the subject of the burden analyses in this final rule.

There were multiple comments relating to the accuracy of the burden. One commenter stated that the burden is incorrect because the union would have to hire outside consultants to gather trust information. The Department believes this commenter misunderstands the rule. The trust will gather all information necessary and then provide that information to the union, which will compensate the trust. Due to the financial expertise the administration of such funds require, trusts will overwhelmingly already have the expertise to analyze and provide their own information; any outside assistance should be needed infrequently and to a minimal extent because trusts overwhelmingly already possess the financial expertise necessary to administer and analyze their own financial records and transaction data. Thus, the cost would be negligible and, again, whatever part of the recordkeeping burden the trust would bear is ultimately compensated by the union. The same commenter also indicated that it seems likely that special software will be needed to process the trust information. This is incorrect. The information needed for the Form T–1 is largely similar to the Form LM–2. Every union that will ultimately submit a Form T–1 is submitting an LM–2 as well. Thus, the union will already have access to the necessary software. Lastly, a commenter indicated that the Department had only calculated the burden for each Form T–1, not for the total number of Form T–1s that a union would have to file, which could be multiple. This is incorrect. The NPRM provided both the individual cost of a Form T–1 ($7,226.97, as adjusted in the final rule) and the total average union figure ($18,513, as adjusted in the final rule, including the one-time regulation familiarization cost of $11.90, as adjusted in the final rule). The total figure is the cost for a single Form T–1 multiplied by the average number of Form T–1s for unions that have at least one trust in which a union is interested (2.56 Form T–1s). This figure is an overestimation. It does not take into account the audit exemption, for example, which will lower the average number of Form T–1s even further. It also does not account for duplicative filings; many of these unions are part of trusts for which a parent organization, or another union involved in the arrangement, will file the Form T–1, thus freeing those other unions from also filing for that year. Furthermore, the LM–2 filers with the most trusts, many of which will meet the Form 5500 exemption and others which may meet the audit exemption, are the largest LM–2 filing unions, namely district councils, national/international parent bodies, and very large locals. Thus, the scenario one commenter contemplates of labor organizations mired in hundreds of burden hours with no benefit to their respective members is likewise incorrect. The Department has carefully selected its exemptions, reviewed its Form LM–2 filer data, and ensured that the average experience of labor organizations, and the expense they will endure, do not constitute a substantial burden.

Some commenters argued that the burden on trusts extends beyond financial and to the time and effort taken away from helping beneficiaries and participants. Initially, the Department has quantified those aspects of reporting and recordkeeping associated with the Form T–1, and none of the commenters provided concrete alternative estimates. Further, as explained, the Department has refuted the critiques of such estimates. Moreover, even to the extent that the Form T–1 would prevent the trust from serving beneficiaries, the amount of time required is minimal, and, in any event, the Department considers the transparency benefits to outweigh the costs. Indeed, if the Form T–1 helps prevent or deter the potential loss of millions of dollars of plan funds like in the UAW-Fiat Chrysler training center scandal, then this would clearly justify marginal burdens.

Finally, as noted by multiple members of Congress, the Department has narrowly tailored the Form T–1, reducing the burden to a mere $7,226.97 (as adjusted for the final rule) a year and requiring only the largest labor organizations with significant stakes in trusts to carry such a burden. These unions have a correspondingly large membership that will finally gain transparency into the trusts providing them with vitally important training and benefits. Thus, the Department concludes that, as another commenter stated, the burden is fair for the labor organizations that deemed it necessary to divert funds to trusts either for legitimate purposes or as potential vehicles for evasion of LM reporting.

The NPRM discussed the recordkeeping and reporting burden that unions will bear in complying with this rule. The NPRM also provided a monetary estimate of this burden as legally required by the RFA and PRA. The Department's position in this Final Rule and in the NPRM is that there will be a burden on unions created by the rule but that it will be outweighed and thereby justified by the benefits of the rule.

Some commenters expressed concern that some labor organizations would incur significant costs in complying with the reporting requirements of the Form T–1. These commenters speculated that a given labor organization might need to pay for

training, develop new recordkeeping processes, purchase new software, or even hire expert consultants in order to complete the Form T–1.

The Department recognizes the possibility of increased costs for some unions that would be obligated to file under this rule. In fact, in the RFA section of this final rule the Department has built these costs into its estimation of the rule's total burden. The Department has accordingly designed the rule such that these costs will be small and will be outweighed by the substantial benefits of Form T–1 reporting. For example, the Department has restricted the reporting obligation to unions with more than $250,000 in annual receipts (*i.e.,* only those unions that file the LM–2 based on size). This measure ensures that only unions that already have significant resources and sufficient financial sophistication will file the Form T–1. The Department has sufficient experience with the Form LM–2 and the unions that file it to know they are equipped to provide essentially the same types of information with the same level of detail for the trusts in which they are interested.

C. Hours To Complete and File Form T–1

The Department modeled its current analysis on the analysis in the 2008 Form T–1 final rule. The Department estimates burden hours for the nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours associated with this rule. *See* 73 FR 57436–57445.

The Department estimates that, on average, labor organizations will expend 1.83 reporting hours each year completing page one of the Form T–1. To complete the first page of the Form T–1, the labor organization will have to train new staff on the reporting software; enter trust information; answer questions 9, 14, and 15; provide addition information (if necessary); and sign the report. The labor organization's information should be automatically filled by the reporting software when the Form T–1 is downloaded. The remaining information provided on the first page of the Form T–1 is very similar to the information provided on the first page of the Form LM–3 (10 items that identify the labor organization and one yes/no question addressing whether or not the organization's records are kept at its mailing address). Experience with the Form LM–3 has indicated that LM–3 filers expend approximately 15 minutes each year training new staff on how to fill out the first page of the Form LM–3.

Additionally, LM–3 filers spend approximately 5 minutes on each item and question on the Form LM–3. Therefore, the Department has determined that Form T–1 filers will spend 50 minutes filling out the trust information and answering the 3 yes/no questions. If additional information is required, the Department has determined that the labor organization should be able to fill out the mailing address for the records of the trust and labor organization in 10 minutes. Finally, the labor organization president and treasurer will be able to sign the Form T–1 in 20 minutes once they have reviewed the report. The president and treasurer will already have the signature software setup for the LM–2. In most cases, it will be a matter of pressing a button to apply the signature.

There is no unique recordkeeping burden associated with the first page of the Form T–1. Under the LMRDA, and pursuant to the Form LM–2 Instructions, Part XI (Completing Form LM–2), Item 10 (Trusts or Funds, the labor organization should already keep records on itself and trusts in which it is interested to complete the Form LM–2, including the trust's name, address, purpose, and EIN.[25] Further, neither the trust nor the labor organization will have to make any changes to its accounting systems to report the information required on page 1 of the Form T–1.

The Department estimates that, on average, labor organizations will expend 1.33 reporting hours each year completing page two of the Form T–1. The labor organization will have to train new staff, answer five questions, enter the total assets and liabilities, and enter additional information as necessary. Like the first page of the Form T–1, the second page of the Form T–1 is relatively straight forward. The Department has determined that labor organizations can train staff to complete the second page of the Form T–1 in 15 minutes. The majority of the reporting burden is attributable to questions 16 through 20. Although rare, the types of losses and transactions captured by questions 16 through 20 are of significant importance to both labor organizations and trusts. Each of these losses or transactions is tracked closely by the trust to ensure that the trust is properly managed and free from preferential insider transactions. Therefore, the trust should be able easily to identify and provide details on any loss or transaction that falls within questions 16 through 20. The Department estimates that the trust should be able to provide the labor organization with answers to questions 16 through 20 in 25 minutes, 5 minutes per question. Further, the Department estimates that the labor organization will spend approximately 30 minutes entering the details of the transaction or loss in item 25. Finally, the Department estimates that it will take 10 minutes to find and enter the total assets and liabilities in items 21 and 22.

There is no recordkeeping burden associated with the second page of the Form T–1. The answers to questions 16 through 20 are tracked by the trust along with receipts and disbursements. Therefore, the recordkeeping burden associated with questions 16 through 20 has been included in the recordkeeping burden for the receipts and disbursements schedules. There is no recordkeeping burden associated with items 21 through 24. Information provided in items 21, total assets, and 22, total liabilities, are kept in the normal course of the trust's recordkeeping. Items 23, total receipts, and 24, total disbursements, will be automatically calculated and entered by the reporting software.

Trusts are already tracking most receipts, disbursements, and payments to officers and employees in the regular course of business, but it is unlikely they are tracking the information in the detail or structure required by Form T–1 reporting. Therefore, covered 3(l) trusts will have to change their accounting systems to track the necessary information in a format that can be provided to the interested labor organization to complete the Form T–1. In 2003, Form LM–2 filers had to change their accounting systems to capture information very similar to the information reported on the Form T–1. Experience with the Form LM–2 indicates that, on average, T–1 respondents will expend 9.75 (of nonrecurring burden) hours developing, testing, and reviewing revisions to the account software; preparing the download methodology; and training personnel on each of the schedules.

[25] The proposed rule contained a typographical error. On the Form T–1, as reproduced the **Federal Register**, Item 11 asks for the ''Tax Status of the Trust.'' 84 FR 25150. In contrast, the Instructions provide, ''Enter the Employer Identification Number assigned to the trust by the Internal Revenue Service.'' *Id.* at 25,162. A commenter asserted difficulty in calculating the burden when it is unclear which piece of data is being sought. The Department calculated the burden on the assumption that the filer would be entering the trust's Employer Identification Number. The error did not prevent meaningful comment on Item 11, or its commensurate burden, because both alternatives were made public, permitting comment on the burden of either alternative.

The Form 5500 exemption significantly reduces the variability of 3(l) trusts covered by the Form T–1. A careful analysis of the remaining trusts, used in the analysis above, indicates that most of the Form T–1s will be filed for building trusts, strike funds, labor-management cooperation committees, and apprenticeship and training funds. Unlike pension and health plans, these trusts, on average, will have few disbursements, receipts, officers, and employees. For example, strike funds are likely to have no disbursements unless the labor organization is striking. Further, many of these trusts, including building trusts, are closely associated with the labor organization and function in a similar fashion. Therefore, similar to the 2008 rule, the Department uses the Form LM–2 experience to estimate the number of disbursements, receipts, officers, and employees listed on the Form T–1.

In terms of recordkeeping, the Department estimates that, on average, Form T–1 filers will expend 5.43 hours a year on recordkeeping to document the information necessary to complete the Form T–1 receipts schedule. Additionally, for the Form T–1 disbursement schedule, the Department estimates that, on average, filers will expend 54.13 hours a year on recordkeeping. Further, the Department estimates Form T–1 filers will expend 10.07 hours on recordkeeping to compile the information necessary to complete the officers and employees schedule.

Finally, the Department estimated that Form T–1 filers will spend 3.75 hours on each schedule inputting the data. Inputting the information into the Form T–1 is very similar to inputting data into the Form LM–2. Experience with the Form LM–2 in previous rulemakings indicates that a labor organization will spend 15 minutes a year training new staff; 60 minutes preparing the download; 90 minutes preparing and testing the data file; and 60 minutes editing, validating and importing the data.

Therefore, the Department estimates that, on average, labor organizations will expend 86.21 hours on recordkeeping the first year and 69.70 hours on recordkeeping each subsequent year on each Form T–1 filed. Additionally, on average, labor organizations will expend 35.17 hours on reporting the first year and 14.42 hours on reporting each subsequent year on each Form T–1 filed. Therefore, Form T–1 filers will spend 121.38 hours (86.21 + 35.17 = 121.38) on each T–1 report in the first year, and 84.12 hours (69.70 + 14.42 = 84.12) on each T–1 report in subsequent years.

D. Estimated Number of Form T–1 Reports

The following charts were used to calculate the various figures necessary to do the above calculations.

The first chart (Table 1) generated the total number of Form T–1s by averaging the known number of Form T–1s that would be generated in the top 10 percent and bottom 10 percent of Form LM–2 filers with at least one (1) trust.

The second chart (Table 2) generated the actual number of Form T–1 filers by averaging out the number of Form T–1 filers that exist in the top 10 percent and bottom 10 percent of Form LM–2 filers with at least one (1) trust.

The final chart (Table 3) generated the average number of Form T–1s that would be filed per Form T–1 filer in each decile and overall.

TABLE 1—TOTAL NUMBER OF FORM T–1S BY DECILE

Decile of LM–2s with at least 1 3(l) trust	Formula *	Variable	Number of T–1s
10 (Top 10%)	Y	Y	330
9	(W + Y)/2		299.25
8	(Z + Y)/2	W	268.5
7	(W + Z)/2		237.75
6	(X + Y)/2	Z	207
5	(X + Y)/2	Z	207
4	(T + Z)/2		176.25
3	(Z + X)/2	T	145.5
2	(T + X)/2		114.75
1 (Bottom 10%)	X	X	84
Total			2070

*These formulae represent the process by which the Department calculated the average number of T–1 reports likely to be produced in each decile. X and Y were not calculations; these variables were figures determined from extensive, time-consuming reviews of all LM–2 filers with trusts in the bottom and top deciles by annual revenue size, respectively. Decile 5 and 6, being the middle deciles, were represented by a simple arithmetic mean, averaging X and Y together to find Z, the average number of T–1 reports in those deciles.

Given the divide in the number of T–1 reports between the top decile consisting of the largest LM–2 filers and the bottom consisting of the smallest, namely that the top decile has over twice as many T–1 reports likely to be filed as the bottom decile, the Department assumes that using the simple arithmetic mean Z to represent the number of T–1 reports by decile would misrepresent the number of reports in those deciles. Z would be an overestimation of reports in the lower deciles and an underestimation in the top deciles. Instead, in order to represent the gradual decline in T–1 reports that is expected in each decile, and thus represent the number of T–1 reports generated in each decile more accurately, the Department calculated the average of Z & Y and then the average of Z & X in order to calculate W and T, respectively, where W is the number of T–1 reports expected for the middle decile in the top deciles (Decile 8) and T is the middle decile in the bottom deciles (Decile 3).

With W and T, the remaining deciles were determined. The number of T–1 reports for Decile 9 was calculated by averaging Y (the number of T–1 reports in Decile 10) and W (the number of T–1 reports in Decile 8). Decile 7 by averaging W (the number of T–1 reports in Decile 8) and Z (the number of T–1 reports in Decile 6). Decile 4 by averaging Z (the number of T–1 reports in Decile 5) and T (the number of T–1 reports in Decile 3). Decile 2 by averaging T (the number of T–1 reports in Decile 3) and X (the number of T–1 reports in Decile 1).

TABLE 2—NUMBER OF UNIONS FILING AT LEAST 1 FORM T–1

Decile of LM–2s with at least 1 3(l) trust	Formula *	Variable	Number of unions filing at least 1 T–1
10 (Top 10%)	Y	Y	100
9	(W + Y)/2		95.25
8	(Z + Y)/2	W	90.5
7	(W + Z)/2		85.75
6	(X + Y)/2	Z	81
5	(X + Y)/2	Z	81
4	(T + Z)/2		76.25
3	(Z + X)/2	T	71.5
2	(T + X)/2		66.75
1 (Bottom 10%)	X	X	62
Total			810

* These formulae represent the process by which the Department calculated the average number of labor organizations filing at least 1 (one) T–1 report in each decile. X and Y were not calculations; these variables were figures determined from extensive, time-consuming reviews of all LM–2 filers with trusts in the bottom and top deciles by annual revenue size, respectively. Decile 5 and 6, being the middle deciles, were represented by a simple arithmetic mean, averaging X and Y together to find Z, the average number of unions filing at least 1 (one) T–1 report in those deciles.

Given the divide in the number of labor organizations filing at least 1 (one) T–1 report between the top decile consisting of the largest LM–2 filers and the bottom consisting of the smallest, namely that the top decile has nearly twice as many labor organizations likely to file a T–1 report as the bottom decile, the Department assumes that using the simple arithmetic mean Z to represent the number of labor organizations likely to file a T–1 report in the remaining deciles would significantly misrepresent the number of such organizations likely in those deciles. Z would be an overestimation of labor organizations in the lower deciles and an underestimation in the top deciles. Instead, in order to represent the gradual decline in labor organizations filing at least 1 (one) T–1 report that is expected in each decile, and thus represent the number of labor organizations filing the T–1 report in each decile more accurately, the Department calculated the average of Z & Y and then the average of Z & X in order to calculate W and T, respectively, where W is the number of labor organizations filing the T–1 report expected for the middle decile in the top deciles (Decile 8) and T is the number of such labor organizations for the middle decile in the bottom deciles (Decile 3).

With W and T, the remaining deciles were determined. The number of labor organizations filing at least 1 (one) T–1 report for Decile 9 was calculated by averaging Y (the number of such labor organizations in Decile 10) and W (the number of such labor organizations in Decile 8). Decile 7 by averaging W (the number of such labor organizations in Decile 8) and Z (the number of such labor organizations in Decile 6). Decile 4 by averaging Z (the number of such labor organizations in Decile 5) and T (the number of such labor organizations in Decile 3). Decile 2 by averaging T (the number of such labor organizations in Decile 3) and X (the number of such labor organizations in Decile 1).

TABLE 3—NUMBER OF FORM T–1 REPORTS PER UNION FILING AT LEAST 1 FORM T–1

Decile of LM–2s with at least 1 3(l) trust	Formula *	Number of T–1s	Number of unions filing at least 1 T–1	Average number of T–1s per union **
10 (Top 10%)	X/Y = Z	330	100	3.3
9	X/Y = Z	299.25	95.25	3.14
8	X/Y = Z	268.5	90.5	2.97
7	X/Y = Z	237.75	85.75	2.77
6	X/Y = Z	207	81	2.56
5	X/Y = Z	207	81	2.56
4	X/Y = Z	176.25	76.25	2.31
3	X/Y = Z	145.5	71.5	2.03
2	X/Y = Z	114.75	66.75	1.72
1 (Bottom 10%)	X/Y = Z	84	62	1.35
Total		2070	810	*** 2.56

* = Where ''X'' represents the Number of Form T–1s, ''Y'' represents the Number of Unions Filing at Least 1 Form T–1, and Z represents the Average number of Form T–1s per Union.
** = Rounded to the Nearest 100th.
*** = This represents the overall average number of reports Form T–1 filers must file.

As this Form T–1 rule requires an information collection, the Department is submitting, contemporaneous with the publication of this rule, an information collection request (ICR) to revise the Paperwork Reduction Act clearance to address the clearance term. The ICR includes a new form, the Form T–1, which the Department has drafted and that LM–2 filing labor organizations must complete and submit, consistent with this rule. The ICR also contains

corresponding changes to the Form LM–2 Instructions, Part XI (Completing Form LM–2), Item 10 (Trusts or Funds). A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, 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=201903-1245-001* (this link will be updated following publication of this rule) or from the Department by contacting Andrew Davisat 202–693–0123 (this is not a toll-free number)/email: *OLMS-Public@dol.gov.*

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1245–0003.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Responses: 33,571.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 4,754,242.

Estimated Total Annual Other Burden Cost: $0.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Review)

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and OMB review.[26] Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. OMB has determined that this rule is significant under section 3(f) of E.O. 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as not a 'major rule', as defined by 5 U.S.C. 804(2).

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

A. Costs of the Form T–1 for Labor Organizations

The Form T–1 will be filed by Form LM–2 filing labor organizations with trusts that meet the dominance test, if those labor organizations are not otherwise exempted from filing. Using data from LM–2 filings, the Department estimates that there are at least 810 total affected labor organizations (*i.e.,* LM–2 filers with trusts for which they must submit at least 1 Form T–1). The average form LM–2 filer will spend approximately 121.38 hours on average in the first year, and 84.12 hours each subsequent year to fill out the report.[27] The average hourly wage for Form T–1 filers, as with Form LM–2 filers, includes: $37.89 for an accountant, $20.25 for a bookkeeper or clerk, $25.15 for a Form LM–2 filing union secretary-treasurer or treasurer, and $29.21 for the Form LM–2 filing president, respectively.[28] The weighted average hourly wage is $36.53.[29] To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been multiplied by 1.63, so the fully loaded hourly wage is $59.54 ($36.53 × 1.63 = $59.54).[30]

During the first year, the cost for each T–1 filer to complete a Form T–1 is estimated to be $7,226.97 ($59.54 × 121.38 hours = $7,226.97). This number, however, should be multiplied by the average number of reports that each Form T–1 filer will be responsible for (2.56), for a total of $18,501. In subsequent years, the cost for each Form T–1 filer would be $12,822 (2.56 × 84.12 × 59.54 = $12,822).

Regulatory familiarization costs represent direct costs to Form LM–2 labor organizations associated with reviewing the new regulation to see if it applies to them. The Department calculated this cost by multiplying the estimated time to review the rule by the hourly compensation of the president of the Form LM–2 filing labor organization. Using the same fringe benefit and overhead costs rationale as above, the fully loaded hourly wage for the president is $47.61 ($29.21 × 1.63 = $47.61). The Department estimates that the president of each labor organization will spend 15 minutes to review the rule. Therefore, this rule should have a one-time regulation familiarization cost of $11.90 per filer (0.25 hours × $47.61 = $11.90) included as well. Doing so brings the first year costs per filer to $18,513 ($18,501 + $11.90 = $18,513).

Thus, the total annual cost in the first year for all 810 Form T–1 filers is estimated to be $14,995,530 (810 × $18,513 = $14,995,530), and the total annual cost in subsequent years is estimated to be $10,385,820 (810 × $12,822 = $10,385,820).

The one-time familiarization cost for all remaining 1,199 Form LM–2 filing labor organizations with trusts (2,009 LM–2 filers with trusts minus the 810 T–1 filers that are already accounted for = 1,199), for whom this rule does not apply, is estimated to be $14,271 ($47.61 × 1,199 LM–2 filers with trusts × .25 hours = $14,271) in the first year.

B. Summary of Costs

The total expected first-year costs would be $15,009,801 ($14,995,530 + $14,271 = $15,009,801). In subsequent years, the total cost would be $10,385,820. The 10-year annualized cost is expected to be $10,285,704 at a

[26] See 58 FR 51735 (September 30, 1993).

[27] For more details, see the Paperwork Reduction Act section above.

[28] Wage rates are derived from 2018 data; more specifically, the president and treasurer wage rates are determined from FY 19 Form LM–2 report filings, while the accountant and bookkeeper wage rates come from 2018 Bureau of Labor Statistics (BLS) data available at: *https://www.bls.gov/oes/2018/may/oes_nat.htm.*

[29] The weighted average calculates the wage rate per hour weighted according to the percentage of time that the Form T–1's completion will demand of each official/employee: 90 percent of the Form T–1 burden hours will be completed by an accountant, 5 percent by the bookkeeper, 4 percent by the union's treasurer/secretary-treasurer, and 1 percent by the union president.

[30] The use of 1.63 accounts for 17 percent for overhead and 46 percent for fringe. In the case of the 46 percent for fringe, see the following link to BLS data showing that wages and salaries represent 68.6 percent (.686) of compensation (*https://www.bls.gov/news.release/ecec.t02.htm*). Dividing total compensation by the 68.6 percent represented by wages and salaries is equivalent to a 1.46 multiplier. Adding a 17 percent multiplier (.17) for overhead equals 1.63.

3 percent discount rate and $9,608,788 at a 7 percent discount rate. As required under E.O. 13771, the annualized perpetual cost in 2016 dollars at a 7 percent discount rate is expected to be $7,826,522.

C. Benefits

As explained more fully in the preamble to this final rule, the Department has promulgated this rule in order to prevent the circumvention or evasion of the LMRDA reporting requirements, which Congress created as part of its efforts to ''eliminate or prevent improper practices'' in labor organizations, protect the rights and interests of workers, and prevent union corruption. 29 U.S.C. 401(b), (c). Specifically, to curb embezzlement and other improper financial activities of labor organizations, Congress required labor organizations to file detailed annual financial reports with the Secretary of Labor, which must also be made available to labor organization members. 29 U.S.C. 431(b). The reporting provisions of the LMRDA were devised to safeguard democratic procedures within labor organizations and protect the basic democratic rights of union members. By mandating that labor organizations disclose their financial operations to employees they represent, Congress intended to promote labor organization self- government, which would be advanced by labor organization members receiving sufficient information to permit them to take effective action in regulating internal union affairs. This final rule would ensure that those reporting obligations are not evaded and thus expand the benefits of labor organization financial transparency to the members of all Form LM–2 filing labor organizations that utilize trusts to expend funds for the members' benefit.

Recent cases of corruption and the continued potential for corruption within those trusts only confirms the Department's determination that additional financial reporting is necessary to avoid the type of circumvention and evasion that Congress authorized him to prevent. As recognized in the LMRDA, private sector labor organization members and the public have an interest in how labor organizations spend their member dues or employer funds through a CBA for their benefit. This interest is no less great when the money is expended by a trust rather than the labor organization directly. Extending LMRDA reporting requirements to bring additional transparency to the activities of section 3(l) trusts serves the public interest in disclosure and financial integrity.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* 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 business, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354. To achieve that objective, the RFA requires agencies promulgating final rules to prepare a certification and a statement of the factual basis supporting the certification, when drafting regulations that will not have a significant economic impact on a substantial number of small entities. The RFA requires the consideration of the impact of a regulation on 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 proposed or final rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id.* However, if an agency determines that a proposed or final 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. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

According to the Small Business Administration, organizations under NAICS 813930 are considered small entities if they have average annual receipts of less than $8 million.[31] For this analysis, based on previous standards utilized in other regulatory analyses, the threshold for significance is 3% of annual receipts, while a substantial number of small entities would be 20 percent.

The Department conducted an initial regulatory flexibility analysis at the NPRM stage to aid stakeholders in understanding the small entity impacts of this rule and to obtain additional information on the small entity impacts. The Department invited interested persons to submit comments on the number of small entities affected by the proposed rule's requirements, the compliance cost estimates, and whether alternatives existed that would reduce the burden on small entities.

All numbers used in the analysis were based on 2018 data taken from the Office of Labor-Management Standards e.LORS data base, which contains records of all labor organizations that have filed LMRDA reports with the Department and Bureau of Labor Statistics wage data.

(1) Reasons for and Objectives of the Form T–1 Rulemaking

As explained more fully in the preamble to today's rule, the Department is considering this rule as a means to prevent circumvention or evasion of the reporting requirements established by Congress in the LMRDA to ''eliminate or prevent improper practices'' in labor organizations, protect the rights and interests of workers, and prevent labor organization corruption. 29 U.S.C. 401(b), (c), 431(b). These reporting provisions of the LMRDA were intended to safeguard democratic procedures within labor organizations and protect the basic democratic rights of union members. Recent cases of corruption have highlighted the potential for circumvention and evasion of these requirements through the use of section 3(l) trusts. The Form T–1 will prevent such evasion and thereby enable labor organization members to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; and strengthen the effective and efficient enforcement of the Act by the Department.

The Form T–1 is specifically designed to close a reporting gap where labor organization finances related to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department. The Form T–1 would follow labor organization funds that remain in closely connected trusts, but which would otherwise go unreported. As a result of non-disclosure of these funds, members have long been denied important information about labor organization funds that were being directed to other entities, ostensibly for the members' benefit, such as joint funds administered by a labor organization and an employer pursuant to a CBA, educational or training institutions, and redevelopment or investment groups. *See* 67 FR 79285. The Form T–1 is necessary to close this gap and prevent certain trusts from being used to evade the Title II reporting requirements. It will provide labor organization members with information about financial transactions involving a

[31] *See https://www.sba.gov/document/support—table-size-standards.*

significant amount of money relative to the labor organization's overall financial operations and other reportable transactions. 68 FR 58415. For example, the Form T–1 will also identify the trust's significant vendors and service providers. A labor organization member who is aware that a labor organization official has a financial relationship with one or more of these businesses will then be able to determine whether the business and the labor organization official have made required reports concerning that relationship. This rule thus serves the fundamental purpose of the LMRDA disclosure requirements to prevent financial malfeasance on the part of those handling labor organization money. 67 FR 79282–83.

Congress enacted the LMRDA after an extensive investigation of ''the labor and management fields . . . [found] that there ha[d] been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct . . . .'' 29 U.S.C. 401(b). Congress intended the Act to ''eliminate or prevent improper practices'' in labor organizations, to protect the rights and interests of employees, and to prevent union corruption. 29 U.S.C. 401(b), (c).

As part of the statutory scheme designed to accomplish these goals, the Act required labor organizations to file annual financial reports with the Secretary of Labor. 29 U.S.C. 431(b). Congress sought full and public disclosure of a labor organization's financial condition and operations in order to curb embezzlement and other improper financial activities by union officers and employees. *See* S. Rep. No. 86–187 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 398–99.

The legal authority for this rule is section 208 of the LMRDA, 29 U.S.C. 438. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under title II of the Act, including rules prescribing reports concerning trusts in which a labor organization is interested, and such other reasonable rules and regulations as he may find necessary to prevent the circumvention or evasion of the reporting requirements. Section 3(l) of the Act, 29 U.S.C. 402(l), defines a ''trust in which a labor organization is interested.''

(2) Comments From the Public Regarding the RFA

There were no comments submitted by the public about the RFA. However, as indicated in the PRA section above, the Department received comments on burden, generally, and responded to those comments.

(3) Comments From the Chief Counsel for Advocacy of the Small Business Administration

There were no comments submitted from the Chief Counsel for Advocacy of the Small Business Administration.

(4) Estimates Regarding the Number of Small Entities to Which the Rule Will Apply

For this analysis, a small union is defined as one in which annual receipts are less than $8 million dollars. This final rule impacts 2,009 labor organizations at least $250,000 in size by annual receipts, with at least one trust, resulting in approximately 2,070 Form T–1 reports. Of these organizations, 1,667 have annual receipts less than $8 million. The data cited for the following calculations came from a query of the Department's database containing all submitted 2018 Form LM–2 union financial disclosure reports. The query asked for all Form LM–2 filers with at least one trust. It returned a list of each such filer along with various discrete informational fields, including each Form LM–2 filer's annual receipts information, which was used to identify all of the Form LM–2 filers with less than $8 million in annual receipts that inform this RFA analysis.

(5) The Projected Reporting and Recordkeeping Costs and Requirements

This rule requires that labor organizations subject to the LMRDA, the CSRA, or the FSA, as well as labor organizations representing employees of the U.S. Postal Service, with total annual receipts of $250,000 or more, must file Form T–1 each year for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the following conditions exist:

The labor organization alone, or in combination with other labor organizations, either:

- Appoints or selects a majority of the members of the trust's governing board; or
- contributes greater than 50% of the trust's receipts during the one-year reporting period.

The average hourly wage of the parties filing both the Form LM–2 and Form T–1 include: $37.89 for an accountant, $20.25 for a bookkeeper or clerk, $25.15 for a secretary-treasurer or treasurer, and $29.21 for the president, respectively.[32] The weighted average hourly wage for Form LM–2 filers is $36.53.[33] To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been doubled, so the fully loaded hourly wage is $59.54 ($36.53 × 1.63 = $59.54).[34]

As discussed in the regulatory impact analysis above, the average cost per respondent to complete the Form T–1 is $18,513 in the first year, and is $12,822 in each subsequent year. As mentioned earlier, for this analysis, a small union is defined as one in which annual receipts are less than $8 million dollars.

A threshold of 3 percent of revenues has been used in prior rulemakings for the definition of significant economic impact. *See, e.g.,* 79 FR 60634 (October 7, 2014, Establishing a Minimum Wage for Contractors) and 81 FR 39108 (June 15, 2016, Discrimination on the Basis of Sex). This threshold is also consistent with thresholds used by other agencies. *See, e.g.,* 79 FR 27106 (May 12, 2014, Department of Health and Human Services rule stating that, under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than three percent annually are not economically significant). The Department believes that its use of a 3 percent of revenues significance criterion is appropriate.

The Department believes that its use of a 20 percent of affected small business entities substantiality criterion is appropriate given prior rulemakings.

There are only 315 LM–2 filers with at least one trust whose annual receipts were small enough that the Form T–1 costs would amount to more than a 3 percent impact. The largest of the 315 had annual receipts of $614,813 for a 3.01 percent impact. The smallest of the filers had $253,475 in annual receipts for an 7.30 percent impact.

Under this rule 315 unions would have costs representing more than 3 percent of their annual receipts (at most 7.30 percent). The rule thus impacts 18.90 percent of small business entities in the first year. In all subsequent years, the percentage of small entities significantly impacted is 8.94 percent (149 out of 1,667 small entities).

[32] See Regulatory Impact Analysis above.

[33] See Regulatory Impact Analysis above.

[34] See Regulatory Impact Analysis above.

SIGNIFICANT IMPACT ON SMALL UNIONS IN THE FIRST YEAR

[$8 Million size standard]

Size (by receipts)	# of small unions affected	Avg. annual receipts	Avg. T–1 rule burden per union	Burden as % of annual receipts	% of small unions affected	# of small unions subject to significant impact *	% of small unions subject to significant impact **
$5M–$8M	164	$6,266,111	$18,513	0.30	9.84	0	
$2.5M–$4.99M	377	3,542,277	18,513	0.52	22.62	0	
$1M–$2.49M	543	1,642,769	18,513	1.13	32.57	0	
$500K–$999,999	368	740,459	18,513	2.50	22.08	100	
$250K–$499,999	215	380,192	18,513	4.87	12.90	215	
Total	1,667				100	315	18.90

* The Revenue test for significant impact on small unions is set at 3% for this rule.
** The standard for substantial number is set at 20% of small unions overall for this rule.

SIGNIFICANT IMPACT ON SMALL UNIONS IN SUBSEQUENT YEARS

[$8 Million size standard]

Size (by receipts)	# of small unions affected	Avg. annual receipts	Avg. T–1 rule burden per union	Burden as % of annual receipts	% of small unions affected	# of small unions subject to significant impact *	% of small unions subject to significant impact **
$5M–$8M	164	$6,266,111	$12,822	0.20	9.84	0	
$2.5M–$4.99M	377	3,542,277	12,822	0.36	22.62	0	
$1M–$2.49M	543	1,642,770	12,822	0.78	32.57	0	
$500K–$999,999	368	740,460	12,822	1.73	22.08	0	
$250K–$499,999	215	380,192	12,822	3.37	12.90	149	
Total	1,667				100	149	8.94

* The Revenue test for significant impact on small unions is set at 3% for this rule.
** The standard for substantial number is set at 20% of small unions overall for this rule.

(6) Considerations of Significant Alternatives to the Rule

The Department's NPRM proposed and invited comments on three regulatory alternatives: (1) No regulatory action, (2) a similar proposal, but with a modified test for when a Form T–1 is required for a given 3(l) trust, and (3) a similar proposal, but modifying the Form T–1 in order to reduce its scope. In shaping this final rule, the Department did not find any public comments that warranted taking any of the three alternative paths from the NPRM. See the response to comments in Part IV (Review of Proposed Rule and Comments Received) and Part V (Regulatory Procedures), Section A (Paperwork Reduction Act).

The Department did, however, make three changes between the NPRM and this final rule, each of which reduced the burden on T–1 filers in general and therefore on small entities. As stated in the preamble, the changes that the Department did make in order to reduce the burden of this final rule, without losing efficacy in preventing circumvention or evasion of LMRDA financial reporting, include: (1) Creating an exemption for credit unions, which mitigates the impact on small entities because it reduces the number of trusts for which a Form T–1 will be required; (2) granting permission for a given union to voluntarily file on behalf of other unions interested in the same trust, which mitigates the impact on small entities and reduces the number of unions that will file and especially reduces redundant filing; and (3) changing the trust's fiscal year on which the union must report, such that a there will be a minimum of 180 days between the end of the trust's fiscal year and the filing deadline of a T–1 covering that fiscal year. These significant changes will help with the impact on small entities and are the reason why the Department has determined that other alternatives or further modifications to this rule—including the three proposed in the NPRM and the various commenter proposals for exemptions that were discussed and declined in Part III—are not warranted.

If the Department were not to take this regulatory action, it would avoid any new burden on labor organizations and thus ensure no new significant economic impact on small entities, but it would at the same time prevent realization of the many benefits of the Form T–1 detailed in this rule. Regulatory inaction would leave open the current avenue for circumvention or evasion of reporting requirements through moving funds into union-controlled trusts and would eliminate the associated benefits to union financial transparency. The Department did not pursue this alternative because the prevention of circumvention or evasion of union financial reporting is a responsibility of the Department pursuant to the LMRDA.

Modifying the financial or managerial domination test would serve to reduce the burden on small labor organizations because fewer trusts would be covered under that alternative to the rule. However, the Department has concluded this would not ensure that the trusts that are no longer covered do not serve as possible tools for circumventing or evading financial reporting. Accordingly, the Department declined to change the domination test.

Simplifying and reducing the scope of the Form T–1 could potentially alleviate the burden on small entities by reducing the burden hours of completing each Form T–1, but the Department would be doing so at the cost of losing important information on every single Form T–1 filed. The Department did not pursue

this alternative because the schedules and itemization requirements are already greatly reduced compared to the Form LM–2 that the covered labor organizations complete and because further modification could impede the prevention of circumvention or evasion of LMRDA reporting requirements.

Thus, this rule provides for no differing compliance requirements or reporting requirements for small entities. Under the rule, the reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a Form T–1 under the LMRDA. However, it is important to remember that these ''small entities'' consist of the largest category of labor organizations with all of these unions filing the Form LM–2 with OLMS annually.

Similarly, while all of these small entities will be filing the same form, the burden of completing that form is totally dependent on the complexity of the entity's operation. The smaller the union, the fewer trusts it will dominate and thus it will ultimately file fewer Form T–1s.

(7) Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities

This final rule was drafted to clearly state the compliance and reporting requirements for all small entities subject to this Form T–1 rule.

OLMS will update the e.LORS system to allow labor organizations to file the Form T–1 as they file the Form LM–2.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the reporting software. A help desk is staffed during normal business hours and can be reached by telephone.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of any given filer having to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 403

Labor Organization, Trusts, Reporting and Recordkeeping Requirements.

Accordingly, for the reasons provided above, the Department amends part 403 of title 29, chapter IV of the Code of Federal Regulations as set forth below:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 2. Amend § 403.2 by adding paragraph (d) to read as follows:

§ 403.2 Annual financial report.

* * * * *

(d)(1) Every labor organization with annual receipts of $250,000 or more shall file a report on Form T–1 for each trust that meets the following conditions:

(i) The trust is of the type defined by section 3(l) of the LMRDA, *i.e.,* the trust was created or established by the labor organization or the labor organization appoints or selects a member of the trust's governing board; and the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(1)); and the labor organization, alone or with other labor organizations, either:

(A) Appoints or selects a majority of the members of the trust's governing board; or

(B) Makes contributions to the trust that exceed 50 percent of the trust's receipts during the trust's fiscal year; and

(ii) None of the exemptions discussed in paragraph (d)(3) of this section apply.

(iii) For purposes of paragraph (d)(1)(i)(B) of this section, contributions by an employer pursuant to a collective bargaining agreement with a labor organization shall be considered contributions by the labor organization.

(2) A separate report shall be filed on Form T–1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization. Only the parent labor organization (*i.e.,* the national/international or intermediate labor organization) must file the Form T–1 report for covered trusts in which both the parent labor organization and its affiliates satisfy the financial or managerial domination test set forth in paragraph (d)(1)(i) of this section. The affiliates must continue to identify the trust in their Form LM–2 Labor Organization Annual Report, and include a statement that the parent labor organization will file a Form T–1 report for the trust.

(3) No Form T–1 should be filed for any trust (or a plan of which the trust is part) that:

(i) Meets the statutory definition of a labor organization and already files a Form LM–2, Form LM–3, Form LM–4, or simplified LM report;

(ii) The LMRDA exempts from reporting;

(iii) Meets the definition of a subsidiary organization pursuant to Part X of the instructions for the Form LM–2 Labor Organization Annual Report;

(iv) Established as a Political Action Committee (PAC) if timely, complete and publicly available reports on the PAC are filed with a Federal or state agency;

(v) Established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service (IRS);

(vi) Constitutes a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA);

(vii) Constitutes any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 184;

(viii) Is an employee benefit plan within the meaning of 29 U.S.C. 1002(3) that is subject to Title I of the Employee Retirement Income Security Act pursuant to 29 U.S.C. 1003, and that files an annual report in accordance with 29 U.S.C. 1021 and 1024, and applicable rules and requirements, for a plan year ending during the reporting period of the labor organization; or

(ix) Constitutes a credit union subject to the Federal Credit Union Act, 12 U.S.C. 1751.

(4) A labor organization may complete only Items 1 through 15 and Items 26 through 27 (Signatures) of Form T–1 if an annual audit prepared according to standards set forth in the Form T–1 instructions was performed and a copy of that audit is filed with the Form T–1.

(5) If such labor organization is in trusteeship on the date for filing the annual financial report, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter.

■ 3. Amend § 403.5 by adding paragraph (d) to read as follows:

§ 403.5 . Terminal financial report.

* * * * *

(d) If a labor organization filed or was required to file a report on a trust pursuant to Sec. 403.2(d) and that trust loses its identity during its subsequent fiscal year through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T–1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

■ 4. Amend § 403.8 by revising paragraph (b)(3) to read as follows:

§ 403.8 Dissemination and verification of reports.

* * * * *

(b) * * *

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual, or that would consist of individually identifiable health information the trust is required to protect under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation.

* * * * *

Signed in Washington, DC.

Arthur F. Rosenfeld,

Director, Office of Labor-Management Standards.

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, contains Form T–1 and instructions.

BILLING CODE 4510–86–P

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

FORM T-1 TRUST ANNUAL REPORT

Form Approved
Office of Management and Budget
No. 1245-0003
Expires: 08-31-2021

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.
READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only	1. FILE NUMBERS UNION a) TRUST b)	2. PERIOD COVERED MO DAY YEAR From Through	3. (a) AMENDED - If this is an amended report, check here: ☐ (b) HARDSHIP - If filing under the hardship procedures, check here: ☐ (c) TERMINAL - If this is a terminal report, check here: ☐

4. NAME OF UNION		10. NAME OF TRUST	
5. DESIGNATION (Local, Lodge, etc.)	6. DESIGNATION NUMBER	11. EMPLOYER IDENTIFICATION NUMBER	
7. UNIT NAME OF UNION (if any)		12. PURPOSE OF TRUST	
8. MAILING ADDRESS OF UNION (use capital letters)		13. MAILING ADDRESS OF TRUST (use capital letters)	
First Name	Last Name	First Name	Last Name
P.O. Box - Building and Room Number (if any)		P.O. Box - Building and Room Number (if any)	
Number and Street		Number and Street	
City		City	
State	Zip Code + 4	State	Zip Code + 4

9. Are the union's records kept at its mailing address? (If "No," provide address in Item 25.)
Yes ☐ No ☐

14. Are the trust's records kept at its mailing address? (If "No," provide address in Item 25.)
Yes ☐ No ☐

15. Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1?
Yes ☐ No ☐

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section V on penalties in the instructions.)

26. SIGNED: _____ PRESIDENT
Date _____ Telephone _____

27. SIGNED: _____ TREASURER
Date _____ Telephone _____

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

Complete Items 16 Through 25

16. During the reporting period did the trust discover any loss or shortage of funds or other property? (Answer "Yes" even if there has been repayment or recovery.) ☐ YES ☐ NO

17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale? ☐ YES ☐ NO

18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest? ☐ YES ☐ NO

19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates? ☐ YES ☐ NO

20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest? ☐ YES ☐ NO

If the answer to any of the above is "Yes," provide details in Item 25 (Additional Information) as explained in the instructions for each item.

21. Enter the total assets of the trust at the end of the reporting period.

22. Enter the total liabilities (debts) of the trust at the end of the reporting period.

23. Enter the total receipts of the trust during the reporting period.

24. Enter the total disbursements of the trust during the reporting period.

Please be sure to:

* Enter your labor organization's 6-digit file number and the trust's 7-digit file number in Item 1.
* Have your labor organization's president and treasurer sign the Form T-1 in Items 26 and 27.
* Complete Schedules 1 through 3

25. (Text entered will appear on last page of form. To enter comments, press the General Additional Information" button.)

SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

(List all entities from whom the trust received a total of $10,000 or more during the reporting period.)

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Receipts Listed Above		
	(G) Total of All Receipts from Continuation Pages with this Payer		
	(H) Total of All Itemized Receipts with this Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Receipts with this Payer		
	(J) **Total of All Receipts with this Payer** (Sum of (H) and (I))		

SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS

(List all entities that received $10,000 or more in total disbursements from the trust during the reporting period.)

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Disbursements Listed Above		
	(G) Total of All Disbursements from Continuation Pages with this Payee		
	(H) Total of All Itemized Disbursements to this Payee (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Disbursements to this Payee		
	(J) **Total of All Disbursements to this Payee** (Sum of (H) and (I))		

SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

Full Name / Title	(A) LAST, FIRST, MIDDLE INITIAL / Treasurer, Trustee, Attorney, etc.	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	TOTAL (F)
1. Full Name						
Title						
2. Full Name						
Title						
3. Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9. Full Name						
Title						
10. Total from Continuation pages (if any)						
11. Total of Lines 1 through 10						

25. ADDITIONAL INFORMATION

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of $250,000 or more (labor organization), must file Form T-1 each year for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the following conditions exist:

The trust is a trust defined by section 3(l) of the LMRDA, that is, the trust is a trust or other fund or organization (1) that was created or established by a labor organization or a labor organization appoints or selects a member to the trust's governing board, and (2) the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(l)); and the labor organization alone, or in combination with other labor organizations, either

- appoints or selects a majority of the members of the trust's governing board; or
- contributes greater than 50% of the trust's receipts during the one-year reporting period.

Any employer contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions.

The parent labor organization (i.e., the national/international or intermediate labor organization) may file the Form T-1 report for covered trusts in which both the parent labor organization and its affiliates meet the above financial domination or managerial control test. The affiliates must continue to identify the trust in their Form LM-2 Labor Organization Annual Report, and include a statement that the parent labor organization will file a Form T-1 report for the trust.

No Form T-1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the LMRDA. No report need be filed for a subsidiary organization, as defined in

Part X of the instructions for the Form LM-2 Labor Organization Annual Report. No report need be filed for a trust established as a Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC are filed with a Federal or state agency, or for a trust established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service. No Form T-1 need be filed for any trust that is an employee benefit plan within the meaning of 29 U.S.C. 1002(3) that is subject to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), pursuant to 29 U.S.C. 1003, and that filed an annual report with the Employee Benefits Security Administration (EBSA) in accordance with 29 U.S.C. 1021 and 1024, and applicable rules and requirements, for a plan year ending during the reporting period of the labor organization. No report need be filed for federal employee health benefit plans subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), nor for any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843. No Form T-1 need be filed for any trust that constitutes a credit union subject to the Federal Credit Union Act, 12 U.S.C. 1751.

When more than one Form LM-2 filing labor organization jointly dominates a trust, that is, the organizations jointly appoint or select a majority of the members of the trust's governing board or jointly contribute greater than 50% of the trust's receipts during the one-year reporting period, only one organization must file a Form T-1. A single organization may voluntarily assume responsibility for the filing of the Form T-1. For the exemption to hold, 1) the volunteer, filing labor organization must list in Item 25 all of labor organizations for which it is filing the Form T-1, and 2) the non-filing labor organizations must note in Item 69 (Additional Information) of their Form LM-2 that another labor organization is filing the Form T-1 on its behalf, along with the name of that labor organization and the name of the trust.

An abbreviated report may be filed for any covered trust or trust fund for which an independent audit has been conducted, in accordance with the standards (as adopted from 29 CFR 2520.103-1) as discussed in the next paragraph.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if an annual audit is prepared according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent, qualified public accountant, who, after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off.

The audit must be accompanied by schedules that disclose: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the

trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor (Department). The labor organization must file a separate Form T-1 for each trust that meets the above requirements.

The LMRDA, CSRA, and FSA cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Questions about whether a labor organization is required to file should be referred to the nearest OLMS field office listed at the end of these instructions.

II. When to File

The Form T-1 requirements apply to a labor organization whose fiscal year *and* the fiscal year of its section 3(l) trust begin on or after July 1, 2020. Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T-1 shall cover the trust's most recently completed fiscal year ending on or before 90 days before the union's fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions. Examples of filing dates for the Form T-1 follow:

Where the trust and labor organization have the same fiscal years

- The trust and labor organization have fiscal years ending on December 31. The Form T-1 for the fiscal year ending December 31, 2021 must be filed not later than March 31, 2023.
- The trust and the labor organization each has a fiscal year that ends on June 30. The labor organization's first Form T-1 will be for the trust's fiscal year ending June 30, 2022 and must be filed not later than September 28, 2023.

Where the trust and labor organization have different fiscal years

- The trust's fiscal year ends on June 30. The labor organization's fiscal year ends on September 30. Its first Form T-1 for this trust will be for the trust's fiscal year ending June 30, 2022 and must be filed not later than December 29, 2022.
- The trust's fiscal year ends on June 30. The labor organization's fiscal year ends on December 31. Its first Form T-1 for this trust will be for the trust's fiscal year ending June 30, 2022 and must be filed not later than March 31, 2023.

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days after the date that the labor organization's interest in the trust ceased. *See* Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

III. How to File

Form T-1 must be submitted electronically to the Department via the OLMS Electronic Forms System (EFS) available on the OLMS website at: http://www.dol.gov/olms. Form T-1 filers will be able to file reports in paper format

only if they assert a temporary hardship exemption.

If you have difficulty navigating EFS, or have questions about its functions and features, call the OLMS Help Desk at: (866) 401-1109. For questions concerning the reporting requirements, please send an e-mail to OLMS-Public@dol.gov or call (202) 693-0123.

HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of OLMS by email at OLMS-Public@dol.gov or by phone at 202-693-0123.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

IV. Public Disclosure

The LMRDA requires that the Department make reports filed by labor organizations available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.unionreports.gov. Reports may also be examined and copies purchased through the OLMS Public Disclosure Room (telephone: 202-693-0125) at the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

V. Officer Responsibilities and Penalties

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

The reporting labor organization and the officers required to sign Form T-1 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440), provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

VI. Recordkeeping

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

VII. Labor Organizations in Trusteeship

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. In order for the trustees to sign, click on the "Add Signature Block" button on page 1 to open a signature page near the end of the form.

VIII. Completing Form T-1

INTRODUCTION

Most pages have a "Save & Calculate" button to total and transfer data to fields in various parts of the form. You may click on one or more of these buttons as you fill out the form at any time.

You may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.
Items 1, 2, and 4 - 7 are "pre-filled" items. These fields were filled in by EFS based on information you entered when you initially accessed the system. You cannot edit these fields.

Be sure to click on the "Validate Form" button after you have completed the form but before you sign it. This action will generate an "Errors Page" listing any errors that must be corrected before you sign the form.

ITEMS 1 THROUGH 20

Answer Items 1 through 20 as instructed. Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. FILE NUMBER — EFS will enter the labor organization's 6-digit file number here and at the top of each page of Form T-1. This is the number you entered when you downloaded Form T-1. If the number is incorrect, you must download another copy of the form using the correct number. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS website at http://www.unionreports.gov, or by contacting the nearest OLMS field office.

The software will enter the trust's 7-digit (T### ###) file number in Item 1(b) and at the top of each page of Form T-1. This is the number you entered when you downloaded Form T-1. If the number is incorrect, you must download another copy of the form using the correct number. For the initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0123.

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at http://www.olms.dol.gov.

2. PERIOD COVERED — EFS will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you accessed Form T-1 via EFS. If the dates are incorrect, you must access another form using the correct dates.

If the labor organization changed its fiscal year, the ending date in Item 2 should be the labor organization's new fiscal year ending date and the labor organization should indicate in Item 25 (Additional Information) that the report is for a period of less than 12 months because its fiscal year has changed. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the labor organization's annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Select Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section III. Select Item 3(c) if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

4. NAME OF UNION — EFS accesses this information from the OLMS database and will enter the name of the national or international labor organization that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has not reported such an affiliation, EFS will enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

This item cannot be edited by the filer. If the labor organization needs to change this information, contact OLMS at (202) 693-0123.

5. DESIGNATION — EFS will enter the specific designation that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. This field cannot be edited by the filer.

6. DESIGNATION NUMBER — EFS will enter the number or other identifier, if any, by which the labor organization is known. This field cannot be edited by the filer.

7. UNIT NAME — EFS will enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local." This field cannot be edited by the filer.

8. MAILING ADDRESS OF UNION — EFS accesses the union's mailing address on record in the OLMS database and enters it in Item 8. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included. These fields can be edited.

9. PLACE WHERE UNION RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address of Union), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the labor organization's records are kept.

10. NAME OF TRUST — The software will enter the name of the trust. This is the trust name you entered when you downloaded Form T-1. If the name is incorrect, you must download another form using the correct name.

This item cannot be edited. If the labor organization needs to change this information, contact the OLMS Division of Reports, Disclosure, and Audits by telephone at 202-693-0123 or by e-mail at OLMS-Public@dol.gov. Indicate that the subject of the inquiry is the Form T-1 pre-filled identifying information.

11. TRUST EMPLOYER IDENTIFICATION NUMBER (EIN) — Enter the Employer Identification Number assigned to the trust by the Internal Revenue Service.

12. PURPOSE — Enter the purpose of the trust. For example, if the trust is an apprenticeship and training plan that provides training to labor organization members, the purpose may be "training."

13. MAILING ADDRESS OF TRUST — The software will enter the current address where mail is most likely to reach the trust as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent, and any building and room number should be included. These fields are pre-filled from the OLMS database, but can be edited by the filer.

14. PLACE WHERE TRUST RECORDS ARE KEPT — If the records required to be kept to verify this report are kept at the address reported in Item 13 (Mailing Address of Trust), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the trust's records are kept. The labor organization need not keep separate copies of these records at its own location, as long as members have the same access to such records from the trust as they would be entitled to have from the labor organization.

Note: The president and treasurer of the labor organization are responsible for maintaining the records used to prepare the report.

15. AUDIT EXEMPTION — Answer "Yes" to Item 15 if the labor organization will be submitting an independent, certified audit completed within the preceding 12 months in place of the remainder of Form T-1. If an audit report meeting the standards described in Section I (Who Must File) is submitted with a Form T-1 that has been completed for Items 1 through 15 then it is not necessary to complete Items 16 through 25, and Schedules 1 through 3. However, Items 26-27 (Signatures) must be completed.

16. LOSSES OR SHORTAGES — Answer "Yes" to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. A "loss or shortage of funds or other property" within the meaning of Item 16 does not include delinquent contributions from employers, delinquent accounts receivable, losses from investment decisions, or overpayments of benefits. Describe the loss or shortage in detail in Item 25 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

17. ACQUISITION OR DISPOSITION OF ASSETS — If Item 17 is answered "Yes," describe in Item 25 (Additional Information) the manner in which the trust acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the trust. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 25 the cost or other basis at which any acquired assets were entered on the trust's books or the cost or other basis at which any assets disposed of were carried on the trust's books.

A filer may group similar acquired or disposed assets together, in a larger category, as well as grouping multiple assets acquired from or disposed of to the same source. For example, if a trust acquired various types of office equipment as a donation, these assets may be grouped together for purposes of the description in Item 25.

For assets that were traded in, enter in Item 25 the cost, book value, and trade-in allowance.

18. LIQUIDATION OF LIABILITIES — If Item 18 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with the liquidation, reduction, or writing off of the trust's liabilities without the disbursement of cash.

19. LOANS AT FAVORABLE TERMS — If Item 19 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with each such loan, including the name of the labor organization officer or employee, the amount of the loan, the amount that was still owed at the end of the reporting period, the purpose of the loan, terms for repayment, any security for the loan, and a description of how the terms of the loan were more favorable than those available to others.

20. WRITING OFF OF LOANS — If Item 20 is answered "Yes," describe in Item 25 (Additional Information) all details in connection with each such loan, including the amount of the loan and the reasons for the writing off, liquidation, or reduction.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

Enter a single "0" if there is nothing to report.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

ASSETS AND LIABILITIES

21. ASSETS — Enter the total value of all the trust's assets at the end of the reporting period including, for example, cash on hand and in banks, property, loans owed to the trust, investments, office furniture, automobiles, and anything else owned by the trust. Enter "0" if the trust had no assets at the end of the reporting period.

22. LIABILITIES — Enter the total amount of all the trust's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, the total amount of mortgages owed, payroll withholdings not transmitted by the end of the reporting period, and other debts of the trust. Enter "0" if the trust had no liabilities at the end of the reporting period.

RECEIPTS AND DISBURSEMENTS

Receipts are money actually received by the trust and disbursements are money actually paid by the trust. The purpose of Items 23 and 24 is to report the flow of cash in and out of the trust during the reporting period. Transfers between separate bank accounts or between special funds of the trust do not represent the flow of cash in and out of the trust and should not be reported as receipts and disbursements.

Since Items 23 and 24 report cash flowing in and out of the trust, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or a disbursement.

Do not include in Item 23 or 24 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. "Promptly reinvested" means reinvesting (or "rolling over") the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment.

Receipts and disbursements by an agent on behalf of the trust are considered receipts and disbursements of the trust and must be reported in the same detail as other receipts and disbursements.

23. RECEIPTS — Enter the total amount of all receipts of the trust during the reporting period including cash, interest, dividends, realized short and long term capital gains, rent, royalties, and other receipts of any kind. Enter "0" if the trust had no receipts during the reporting period.

24. DISBURSEMENTS — Enter the total amount of all disbursements made by the trust during the reporting period including, for example, net payments to officers and employees of the trust, payments for administrative expenses, loans made by the trust, taxes paid, and disbursements for the transmittal of withheld taxes and other payroll

deductions. Enter "0" if the trust made no disbursements during the reporting period.

SCHEDULES 1 THROUGH 3

SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS

Schedules 1 and 2 provide detailed information on the financial operations of the trust.

All "major" receipts during the reporting period must be separately identified in Schedule 1. A "major" receipt includes: 1) any individual receipt of $10,000 or more; or 2) total receipts from any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

All "major" disbursements during the reporting period must be separately identified in Schedule 2. A "major" disbursement includes: 1) any individual disbursement of $10,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

Exemptions

Labor organizations are not required to separately identify any individual or entity on Schedule 1 from which the trust receives receipts of $10,000 or more, individually or in the aggregate, during the reporting period, if the receipts are derived from pension, health, or other benefit contributions that are provided pursuant to a collective bargaining agreement covering such contributions. Additionally, the labor organization is not required to itemize benefit payments on Schedule 2 from the trust to a plan participant or beneficiary, if the detailed basis on which such payments are to be made is specified in a written agreement.

Filers should not include on Schedules 1 and 2 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period "Promptly reinvested" means reinvesting (or "rolling over") the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment.

Note: Disbursements to officers and employees of the trust who received more than $10,000 from the trust during the reporting period should be reported in Schedule 3, and need not also be reported in Schedule 2.

Example 1: The trust has an ongoing contract with a law firm that provides a wide range of legal services to which a single payment of $10,000 is made each month. Each payment would be listed in Schedule 2.

Example 2: The trust received a settlement of $14,000 in a small claims lawsuit. The receipt would be individually identified in Schedule 1.

Example 3: The trust made three payments of $4,000 each to an office supplies vendor for office supplies during the reporting period. The $12,000 in disbursements to the vendor would be reported in Schedule 2 in line l of an Initial Itemization Page for that vendor.

Procedures for Completing Schedules 1 and 2

Complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of $10,000 or

more or (2) total receipts/disbursements that aggregate to $10,000 or more during the reporting period. For each major receipt/disbursement, provide the full name and business address of the entity or individual, type of business or job classification of the entity or individual, purpose of the receipt/disbursement, date, and amount of the receipt/disbursement. Receipts/disbursements must be listed in chronological order.

An Initial Itemization Page must be completed for each payer/payee described above. Additional Itemization Page(s) for additional payers/payees can be generated and added to the end of Form T-1 by pressing the "Add More Receipts" or "Add More Disbursements" button located at the top of the first Initial Itemization Page. If the number of receipts/disbursements exceeds the number of space provided on the Initial Itemization Page a Continuation Itemization Page(s) can be generated and added to the end of the Form T-1 by pressing the "More Receipts for this Payee" or "More Disbursements for this Payer" button located below Column (A). The software will automatically enter the name, address, and type or classification of the payee/payer on the Continuation Itemization Page(s).

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not have access to the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, bookkeeper, receptionist, shop steward, legal counsel, union member, etc.

Enter in Column (C) the purpose of the receipt/disbursement, which means a brief statement or description of the reason the receipt/disbursement was made.

Enter in Column (D) the date that the receipt/disbursement was made. The format for the date must be mm/dd/yyyy. The date of receipt/disbursement for reporting purposes is the date the trust actually received or disbursed the money, rather than the date that the right to receive, or the obligation to disburse, was incurred.

Enter in Column (E) the amount of the receipt/disbursement.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any Continuation Itemization Pages for this payee/payer.

The software will enter in Line (H) the total of all itemized transactions with this payee/payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all other transactions with this payer/payee (that is, all individual transactions of less than $10,000 each).

The software will enter in Line (J) the total of all transactions with the payee/payer for this schedule (the sum of Lines (H) and (I))

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedule that is available to the labor organization.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the trust does not have access to any other documents that would contain the information, the labor organization should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the labor organization should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the trust who receive more than $10,000 in the aggregate in the reporting year from the trust. Employees receiving more than $10,000 must be reported on Schedule 3;

- Information that would expose the reporting labor organization's prospective organizing strategy. The labor organization must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances, information about past organizing drives should not be treated as confidential;

- Information that would provide a tactical advantage to parties with whom the reporting labor organization or an affiliated labor organization is engaged or will be engaged in contract negotiations. The labor organization must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances. information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the labor organization or trust is otherwise prohibited by law from disclosing; and,

- Information in those situations where disclosure would endanger the health or safety of an individual.

In Item 25 (Additional Information), the labor organization must identify each

schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

A labor organization member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8. Any exclusion of itemized receipts or disbursements from Schedules 1 or 2 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any labor organization member (and the Department), upon request, has the right to review the undisclosed information in the labor organization's possession at the time of the request that otherwise would have appeared in the applicable schedule if the information is withheld in order to protect confidentiality interests. The labor organization also must make a good faith effort to obtain additional information from the trust.

Information that is withheld from full disclosure is not subject to the *per se* disclosure rule if its disclosure would consist of individually identifiable health information the trust is required to protect under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation, violate state or federal law, violate a non-disclosure provision of a settlement agreement, or endanger the health or safety of an individual.

NOTE: *Under no circumstances should a filer disclose the identity of the recipient of HIPAA-related payments. Likewise, a filer should not disclose the identity of the recipient of any payment where doing so would violate federal or state law, would violate a non-disclosure provision of a settlement agreement, or would endanger the health or safety of an individual. Filers should not include social security or bank account numbers in completing the form.*

SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

List the names and titles of all officers of the trust, whether or not any salary or disbursements were made to them or on their behalf by the trust. Report all direct and indirect disbursements to all officers of the trust and to all employees of the trust who received more than $10,000 in gross salaries, allowances, and other direct and indirect disbursements from the trust during the reporting period. Benefit payments made to an officer or employee of the trust as a plan participant or beneficiary should not be reported as a payment to a particular individual if the detailed basis on which such payments are to be made is specified in a written agreement. Any such payments, instead, should be included in the total disbursements in Item 24. If no direct or indirect disbursements were made to any officer of the trust enter 0 in Columns (B) through (F) opposite the officer's name.

For purposes of completing the Form T-1,

- An "officer of the trust" means any person designated as an officer in the trust's governing documents, any person authorized to perform the executive functions of the trust, and any member of its executive board or similar governing body.

- An "employee of the trust" means any individual employed by the trust.

These definitions will require a fact-

specific inquiry by filers to determine whether trustees, the trust administrator, and other individuals performing service to the trust under its control or the trust administrator's control are officers or employees of the trust.

Continuation pages can be generated if needed by clicking on the "Add More Disbursements To Officers Of Trust" button located at the top of Schedule 3.

NOTE: *A "direct disbursement" to an officer or employee is a payment made by the trust to the officer or employee in the form of cash, property, goods, services, or other things of value.*

An "indirect disbursement" to an officer or employee is a payment made by the trust to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer or employee. "On behalf of the officer or employee" means received by a party other than the officer or employee of the trust for the personal interest or benefit of the officer or employee. Such payments include payments made by the trust for charges on an account of the trust for credit extended to or purchases by, or on behalf of, the officer or employee.

Column (A): Enter in Column (A) the last name, first name, and middle initial of each person who was either (1) an officer of the trust at any time during the reporting period or (2) an employee of the trust who received $10,000 or more in total disbursements from the trust during the reporting period. Also enter the title or the position held by each officer or employee listed. If an officer or employee held more than one position during the reporting period, in Item 25 (Additional Information) list each position and the dates during which the person held the position.

Column (B): Enter the gross salary of the officer or employee (before tax withholdings and other payroll deductions). Include disbursements by the trust for "lost time" or time devoted to trust activities.

Column (C): Enter the total allowances made by direct and indirect disbursements to the officer or employee on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

Column (D): Enter all direct and indirect disbursements to the officer or employee that were necessary for conducting official business of the trust, except salaries or allowances which must be reported in Columns (B) and (C), respectively.

Examples of disbursements to be reported in Column (D) include: all expenses that were reimbursed directly to an officer or employee, meal allowances and mileage allowances, expenses for officers' or employees' meals and entertainment, and various goods and services furnished to officers or employees but charged to the trust. Such disbursements should be included in Column (D) only if they were necessary for conducting official business; otherwise, report them in Column (E). Include in Column (D) travel advances that meet the following conditions:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel

expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

Do not report the following disbursements in Schedule 3, but they should be reported in Schedule 2 if they meet the definition of a major disbursement:

- Payments to individuals, other than officers and employees of the trust, who perform work or service for the trust;
- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;
- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;
- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or employees on official business;
- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and
- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (E): Enter all other direct and indirect disbursements to the officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust. Benefits payments to the trust officers and employees are not of the type required to be reported in Schedule 3 if the detailed basis on which such payments are to be made is specified in a written specific trust agreement.

Include in Column (E) all disbursements for transportation by public carrier between the officer or employee's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the trust's assets (automobiles, etc.) furnished to the officer or employee essentially for the officer or employee's personal use rather than for use in conducting official business.

Column (F): The software will add Columns (B) through (E) of each line and enter the totals in Column (F).

The software will enter on Line 10 the totals from any continuation pages for Schedule 3.

The software will enter on Line 11 the totals of Lines 1 through 10 for Columns (B) through (F).

SPECIAL RULES FOR AUTOMOBILES

Include in Column (E) of Schedule 3 that portion of the operating and

maintenance costs of any automobile owned or leased by the trust to the extent that the use was for the personal benefit of the officer or employee to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (E) must be reported in Column (D).

Alternatively, rather than allocating these operating and maintenance costs between Columns (D) and (E), if 50% or more of the officer or employee's use of the vehicle was for official business, the trust may enter in Column (D) all disbursements relative to that vehicle with an explanation in Item 25 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% of the time for the personal benefit of an officer or employee must also be reported in Item 25.

ADDITIONAL INFORMATION AND SIGNATURES

25. ADDITIONAL INFORMATION — Use Item 25 to provide additional information as indicated on Form T-1 and in these instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

26-27. SIGNATURES — Before entering the date and signing the form, enter the telephone number at which the signatories conduct official business.
The completed Form T-1 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 25 (Additional Information) why the president or treasurer did not sign the report.
Before signing the form, enter the telephone number at which the signatories conduct official business and the date. Click the Validate button at the top of the form to ensure that the report passes validation.

To sign the form, click the signature spaces provided. Fill in the requested information in the screen that pops up.

IX. TRUSTS THAT HAVE CEASED TO EXIST

If a trust has gone out of existence as a trust in which a labor organization is interested, the president and treasurer of the labor organization must file a terminal financial report for the period from the beginning of the trust's fiscal year to the date of termination. A terminal financial report must be filed if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust. Similarly, if a trust in which a labor organization previously was interested continues to exist, but the labor organization's interest terminates, the labor organization must file a terminal financial report for that trust.

The terminal financial report must be filed electronically with OLMS, via EFS,

within 30 days after the date of termination.
To complete a terminal report on Form T-1, follow the instructions in Section VIII and, in addition:

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word "Through."

- Select Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.

- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, labor organization officer and employee reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available at: **http://www.olms.dol.gov**

March 2020

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FEDERAL REGISTER

Vol. 85 Friday,

No. 45 March 6, 2020

Part VII

The President

Memorandum of March 3, 2020—Delegation of Authority to Re-establish the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

Federal Register
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Friday, March 6, 2020

Presidential Documents

Title 3—

The President

Memorandum of March 3, 2020

Delegation of Authority to Re-establish the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

Memorandum for the Secretary of Health and Human Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Delegation of Re-establishment Authority*. The Secretary of Health and Human Services is delegated the authority under section 9(a)(1) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), to re-establish the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Council). In exercising this authority, the Secretary may direct the Council to perform duties consistent with those assigned to the Council in section 505(b) of Public Law 116–22, and may, at the Secretary's discretion, specify the membership of the Council, consistent with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

Sec. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

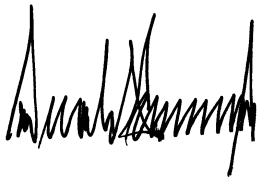
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, March 3, 2020

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Billing code 4150–42–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 45 March 6, 2020

Part VIII

The President

Notice of March 5, 2020—Continuation of the National Emergency With Respect to Venezuela

Federal Register
Vol. 85, No. 45
Friday, March 6, 2020

Presidential Documents

Title 3—

The President

Notice of March 5, 2020

Continuation of the National Emergency With Respect to Venezuela

On March 8, 2015, the President issued Executive Order 13692, declaring a national emergency with respect to the situation in Venezuela based on the Government of Venezuela's erosion of human rights guarantees; persecution of political opponents; curtailment of press freedoms; use of violence and human rights violations and abuses in response to antigovernment protests; and arbitrary arrest and detention of antigovernment protestors, as well as the exacerbating presence of significant government corruption.

On August 24, 2017, I issued Executive Order 13808 to take additional steps, with respect to the national emergency declared in Executive Order 13692, to address serious abuses of human rights and fundamental freedoms; the deepening humanitarian crisis in Venezuela; the establishment of an illegitimate Constituent Assembly, which usurped the power of the democratically elected National Assembly and other branches of the Government of Venezuela; rampant public corruption; and ongoing repression and persecution of, and violence toward, the political opposition.

On March 19, 2018, I issued Executive Order 13827 to take additional steps, with respect to the national emergency declared in Executive Order 13692, to address actions taken by the Maduro regime to attempt to circumvent United States sanctions by issuing a digital currency in a process that Venezuela's democratically-elected National Assembly denounced as unlawful.

On May 21, 2018, I issued Executive Order 13835 to take additional steps, with respect to the national emergency declared in Executive Order 13692, to address actions of the Maduro regime, including endemic economic mismanagement and public corruption at the expense of the Venezuelan people and their prosperity, and repression of the political opposition; attempts to undermine democratic order by holding snap elections that were neither free nor fair; and the deepening humanitarian and public health crisis in Venezuela.

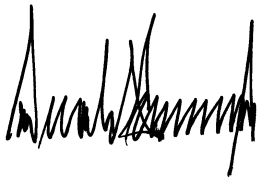
On November 1, 2018, I issued Executive Order 13850 to take additional steps, with respect to the national emergency declared in Executive Order 13692, to address actions by the Maduro regime and associated persons to plunder Venezuela's wealth for their own corrupt purposes; degrade Venezuela's infrastructure and natural environment through economic mismanagement and confiscatory mining and industrial practices; and catalyze a regional migration crisis by neglecting the basic needs of the Venezuelan people.

On January 25, 2019, I issued Executive Order 13857 to take additional steps, with respect to the national emergency declared in Executive Order 13692, to address actions by persons affiliated with the illegitimate Maduro regime, including human rights violations and abuses in response to anti-Maduro protests; arbitrary arrest and detention of anti-Maduro protestors; curtailment of press freedom; harassment of political opponents; and continued attempts to undermine the Interim President of Venezuela and undermine the National Assembly, the only legitimate branch of government duly elected by the Venezuelan people, and to prevent the Interim President and the National Assembly from exercising legitimate authority in Venezuela.

On August 5, 2019, I issued Executive Order 13884 that imposed a full economic block on the Government of Venezuela, with respect to the national emergency declared in Executive Order 13692, for its continued human rights abuses, including the arbitrary or unlawful arrest and detention of Venezuelan citizens, interference with freedom of expression, including for members of the media, and ongoing attempts to undermine the Interim President of Venezuela and Venezuelan National Assembly's exercise of legitimate authority in Venezuela.

The circumstances described in Executive Order 13692, and subsequent Executive Orders issued with respect to Venezuela, have not improved, and these circumstances in Venezuela continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13692.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 5, 2020.

[FR Doc. 2020–04822
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