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DEPARTMENT OF ENERGY

10 CFR Parts 216 and 217

RIN 1901–AB52

Materials Allocation and Priority Performance Under Contracts or Orders To Maximize Domestic Energy Supplies and Energy Priorities and Allocations System; Administrative Updates to Personnel References

AGENCY: Office of Electricity, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) publishes this final rule to update personnel references within DOE's Office of Electricity and update an email address that is no longer in use. This final rule is needed to conform to the current organizational structure within DOE's Office of Electricity and does not otherwise substantively change the current regulations.

DATES: This rule is effective May 27, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher A. Lawrence, Program and Management Analyst, Transmission Permitting and Technical Assistance, Office of Electricity (OE–20), U.S. Department of Energy, Washington, DC, (202) 586–5260 or *Christopher.lawrence@hq.doe.gov;* Mr. Christopher Drake, Attorney-Adviser, Office of the Assistant General Counsel for Electricity and Fossil Energy (GC–76), U.S. Department of Energy, Washington, DC, (202) 586–2919 or *christopher.drake@hq.doe.*gov; Mrs. Kavita Vaidyanathan, Attorney-Adviser, Office of the Assistant General Counsel for Electricity and Fossil Energy (GC–76), U.S. Department of Energy, Washington, DC, (202) 586–0669 or *kavita.vaidyanathan@hq.doe.gov.*

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IV. Approval of the Office of the Secretary

I. Background and Summary of Final Rule

The regulations at 10 CFR part 216 describe and establish procedures to be used by the Department of Energy (DOE) in considering and making certain findings required by section 101(c)(2)(A) of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. 4511(c)(2)(A)). These regulations were last updated in February of 2008. The regulations at 10 CFR part 217 provide guidance and procedures for use of the priorities and allocations authority in section 101(a) of the DPA (50 U.S.C. 4511(a)) with respect to all forms of energy necessary or appropriate to promote the national defense. These regulations were last updated in June of 2011. Since then, the organizational structure in DOE's Office of Electricity has changed. The administrative updates to personnel references in this final rule are needed to conform to the current organizational structure within DOE's Office of Electricity and update an email address that is no longer in use. Specifically, this final rule revises DOE regulations at 10 CFR part 216 by replacing ''Office of Electricity and Energy Assurance, OE–30'' with ''Office of Electricity''. This final rule also revises DOE regulations at 10 CFR part 217 by changing certain references of ''Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability'' to ''Deputy Assistant Secretary overseeing the Defense Production Act program'',[1] replacing ''Office of Infrastructure Security and Energy Restoration'' with ''Office of Electricity'', and clarifying that the ''Assistant Secretary, Office of Electricity'' is the person within the Office of Electricity who will make determinations regarding appeals.

[1] As of this rulemaking, this official is the Deputy Assistant Secretary, Transmission Permitting and Technical Assistance.

II. Final Rulemaking

In accordance with the Administrative Procedure Act, specifically 5 U.S.C. 553(b), DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is ''impracticable, unnecessary, or contrary to the public interest.''

For the aforementioned administrative updates, DOE finds that providing an opportunity for public comment prior to publication of this rule is not necessary because DOE is carrying out an administrative change that does not substantively alter the existing 10 CFR part 216 or part 217 regulatory framework. For the same reason, DOE is waiving the 30-day delay in effective date.

III. Regulatory Review

A. Review Under Executive Order 12866

This final rule has been determined not to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The Order required the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of the Information Quality Act, or the guidance issued pursuant to that Act, particularly those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this final rule is consistent with the directives set forth in these executive orders. This final rule does not substantively change the existing regulations and is intended only to make personnel references in the regulations at 10 CFR parts 216 and 217 consistent with changes in the organizational structure of DOE's Office of Electricity.

C. Review Under the National Environmental Policy Act of 1969

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *http://energy.gov/gc/office-general-counsel.* As discussed above, DOE has determined that prior notice and opportunity for public comment is unnecessary for this final rule. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for this rule.

E. Review Under the Paperwork Reduction Act of 1995

This final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; available at: *https://www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

UMRA sections 202 and 205 do not apply to this action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this final rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

I. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule or regulation, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 216

Administrative practice and procedure, Business and industry, Energy, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

10 CFR Part 217

Administrative practice and procedure, Business and industry, Energy, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

Signing Authority

This document of the Department of Energy was signed on April 27, 2020, by Bruce J. Walker, Assistant Secretary, Office of Electricity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 27, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 216 and 217 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 216—MATERIALS ALLOCATION AND PRIORITY PERFORMANCE UNDER CONTRACTS OR ORDERS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES

■ 1. The authority citation for part 216 is revised to read as follows:

Authority: Section 104 of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 871; section 101(c) of the Defense Production Act of 1950, 50 U.S.C. 4511(c); E.O. 12919, 59 FR 29525 (June 7, 1994); E.O. 13286, 68 FR 10619 (March 5, 2003); 15 CFR part 700; Defense Priorities and Allocations System Delegation No. 2 (Aug. 6, 2002), as amended at 15 CFR part 700.

§ 216.2 [Amended]

■ 2. Section 216.2(h) is amended by removing the words ''Office of Electricity and Energy Assurance, OE–30'' and adding in their place, the words ''Office of Electricity''.

§ 216.3 [Amended]

■ 3. Section 216.3(a) is amended by removing the words ''Office of Electricity and Energy Assurance, OE–30,'' and adding, in their place, the words ''Office of Electricity,''.

§ 216.8 [Amended]

■ 4. Section 216.8 is amended by removing the words ''Office of Electricity and Energy Assurance, OE–

30,'' and adding in their place, the words ''Office of Electricity,''.

PART 217—ENERGY PRIORITIES AND ALLOCATIONS SYSTEM

■ 5. The authority citation for part 217 is revised to read as follows:

Authority: Defense Production Act of 1950, as amended, 50 U.S.C. 4501–4568; E.O. 12919, as amended, (59 FR 29525 June 7, 1994).

§ 217.40 [Amended]

■ 6. In § 217.40:
■ a. Amend paragraphs (a) and (c) by removing the words ''Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability'' and adding in their place, the words ''Deputy Assistant Secretary of the Department of Energy overseeing the Defense Production Act program''.
■ b. Amend paragraph (a) by removing the words ''Office of Infrastructure Security and Energy Restoration'' and adding, in their place, the words ''Office of Electricity''.

§ 217.72 [Amended]

■ 7. Section 217.72(b) is amended by removing the words ''Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability'' and adding, in their place, the words ''Deputy Assistant Secretary of the Department of Energy overseeing the Defense Production Act program''.

§ 217.80 [Amended]

■ 8. In § 217.80:
■ a. Amend paragraphs (a), (c) and (d) by removing the words ''Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability'' and adding, in their place the words ''Deputy Assistant Secretary of the Department of Energy overseeing the Defense Production Act program''.
■ b. Amend paragraph (d) by removing the words ''Office of Infrastructure Security and Energy Restoration'' and adding in their place, the words ''Assistant Secretary, Office of Electricity''.

§ 217.81 [Amended]

■ 9. In § 217.81:
■ a. Amend paragraphs (a), (b)(1) and (b)(2) removing the words ''Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability'' and adding, in their place, the words ''Deputy Assistant Secretary of the Department of Energy overseeing the Defense Production Act program''.
■ b. Amend paragraphs (a), (b)(1), (b)(2), (d), (e), (f), (g) and (h) by removing the words ''Office of Infrastructure Security and Energy Restoration'' and adding in their place, the words ''Assistant Secretary, Office of Electricity''.
■ 10. Section 217.93 is revised to read as follows:

§ 217.93 Communications.

All communications concerning this part, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Deputy Assistant Secretary of the Department of Energy overseeing the Defense Production Act program, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586–1411 (*AskOE@hq.doe.gov*).

[FR Doc. 2020–09247 Filed 5–26–20; 8:45 am]

BILLING CODE 6450–01–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

Amendment of Class E Airspace; Dillon, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace, designated as a surface area, at Dillon Airport, Dillon, MT. This action reduces the radius of the airspace and adds an extension to the northeast of the airport. This action also amends the Class E airspace extending upward from 700 feet above the surface, the action reduces the circular radius around the airport and adds an extension to the southwest of the airport and an extension to the north of the airport. Additionally, this action amends the Class E airspace extending upward from 1,200 feet above the surface. The action significantly reduces the dimensions of the area to properly size it to contain IFR aircraft transitioning to/from the terminal or en route environments. Lastly, this action implements an administrative correction to the Class E airspace designated as a surface area.

DATES: Effective 0901 UTC, September 10, 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 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 amends Class E airspace at Dillon Airport, Dillon, MT, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 13080; March 6, 2020) for Docket No. FAA–2019–0874 to amend Class E airspace at Dillon Airport, Dillon, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

After the NPRM comment period closed, the FAA identified an error in the proposed Class E airspace extending upward from 1,200 feet above the surface. The proposal stated the area should be reduced from a 45-mile radius

to an 8-mile radius of the airport. However, to properly contain IFR aircraft transitioning to/from the terminal or en route environment, this area should be reduced to a 25-mile radius of the airport. The Final Rule includes a correction to the airspace area.

Class E2 and 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 designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, 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

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace, designated as a surface area, at Dillon Airport, Dillon, MT. The action reduces the area from a 6.1-mile radius to a 5.2-mile radius of the airport and adds an extension northeast of the airport. This area is described as follows: That airspace extending upward from the surface within a 5.2-mile radius of the airport, and with 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 Dillon Airport.

Also, this action amends Class E airspace extending upward from 700 feet above the surface. This area is reconfigured a 9.2-mile radius of the airport to a 5.2-mile radius of the airport, with extensions southwest and north of the airport. This area is described as follows: 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 within eight miles west and four miles east of the 005° bearing from the airport, extending from the 5.2-mile radius to 16 miles north of Dillon Airport.

Additionally, this action amends the Class E airspace extending upward from 1,200 feet above the surface from a 45-mile radius to a 25-mile radius of the airport.

Lastly, this action implements an administrative correction to the Class E airspace designated as a surface area. This area is full time and the following two sentences do not accurately represent the time of use and are 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.''

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, 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 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 25-mile radius of Dillon Airport.

Issued in Seattle, Washington, on May 20, 2020.

Shawn M. Kozica

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–11232 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31313; Amdt. No. 3906]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 27, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 2020.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

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 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs.

The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on May 15, 2020.

Robert C. Carty,

Executive Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27 NDB, 97.29, 97.31, 97.33 and 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–Jun–20	PA	Hazleton	Hazleton Rgnl	0/3220	4/9/20	This NOTAM, published in Docket No. 31311, Amdt No. 3904, TL 20–13, (85 FR 27919; May 12, 2020) is hereby rescinded in its entirety.
18–Jun–20	MO	Boonville	Jesse Viertel Memorial	0/6151	5/1/20	RNAV (GPS) RWY 18, Orig–A.
18–Jun–20	KS	Coffeyville	Coffeyville Muni	0/6398	5/1/20	VOR/DME–A, Amdt 7A.
18–Jun–20	SC	Allendale	Allendale County	0/6900	4/29/20	RNAV (GPS) RWY 35, Orig–B.
18–Jun–20	SC	Allendale	Allendale County	0/6901	4/29/20	RNAV (GPS) RWY 17, Orig–A.
18–Jun–20	NM	Las Vegas	Las Vegas Muni	0/6986	5/4/20	VOR RWY 20, Amdt 6A.
18–Jun–20	SD	Sioux Falls	Joe Foss Field	0/6987	5/1/20	ILS OR LOC RWY 3, Amdt 27F.
18–Jun–20	SD	Sioux Falls	Joe Foss Field	0/6988	5/1/20	ILS OR LOC RWY 21, Amdt 10B.
18–Jun–20	SD	Sioux Falls	Joe Foss Field	0/6989	5/1/20	RNAV (GPS) RWY 3, Amdt 1C.
18–Jun–20	SD	Sioux Falls	Joe Foss Field	0/6990	5/1/20	RNAV (GPS) RWY 9, Orig-E.
18–Jun–20	SD	Sioux Falls	Joe Foss Field	0/6991	5/1/20	RNAV (GPS) RWY 27, Orig-E.
18–Jun–20	SD	Sioux Falls	Joe Foss Field	0/6992	5/1/20	VOR/DME OR TACAN RWY 33, Amdt 12E.
18–Jun–20	SD	Sioux Falls	Joe Foss Field	0/6993	5/1/20	VOR OR TACAN RWY 15, Amdt 21E.
18–Jun–20	MI	Saginaw	Saginaw County H W Browne.	0/7069	5/1/20	VOR/DME–A, Amdt 4.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7071	4/30/20	RNAV (GPS) RWY 14, Amdt 2B.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7073	4/30/20	RNAV (GPS) RWY 32, Amdt 1B.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7074	4/30/20	RNAV (GPS) RWY 18, Amdt 2A.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7075	4/30/20	ILS OR LOC RWY 14, Amdt 1A.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7076	4/30/20	ILS OR LOC RWY 32, Amdt 9A.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7077	4/30/20	VOR OR TACAN–A, Amdt 13.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7083	4/30/20	VOR RWY 18, Amdt 3C.
18–Jun–20	AL	Dothan	Dothan Rgnl	0/7084	4/30/20	VOR RWY 14, Amdt 4B.
18–Jun–20	TX	Greenville	Majors	0/7111	5/1/20	VOR/DME RWY 17, Amdt 1.
18–Jun–20	AR	Monticello	Monticello Muni/Ellis Field	0/8381	5/5/20	RNAV (GPS) RWY 3, Amdt 1C.
18–Jun–20	AR	Monticello	Monticello Muni/Ellis Field	0/8382	5/5/20	VOR–A, Amdt 6B.
18–Jun–20	TN	Shelbyville	Bomar Field-Shelbyville Muni.	0/8547	5/5/20	RNAV (GPS) RWY 18, Orig.
18–Jun–20	TN	Shelbyville	Bomar Field-Shelbyville Muni.	0/8548	5/5/20	RNAV (GPS) Y RWY 36, Orig–A.
18–Jun–20	TN	Shelbyville	Bomar Field-Shelbyville Muni.	0/8549	5/5/20	RNAV (GPS) Z RWY 36, Orig.
18–Jun–20	TN	Shelbyville	Bomar Field-Shelbyville Muni.	0/8550	5/5/20	VOR/DME RWY 18, Amdt 5.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–Jun–20	TN	Shelbyville	Bomar Field-Shelbyville Muni.	0/8552	5/5/20	VOR RWY 18, Amdt 5A.
18–Jun–20	TN	Dickson	Dickson Muni	0/8702	5/5/20	RNAV (GPS) RWY 17, Amdt 1B.
18–Jun–20	WV	Berkeley Springs	Potomac Airpark	0/8703	5/5/20	VOR RWY 29, Amdt 6A.
18–Jun–20	MA	Falmouth	Cape Cod Coast Guard Air Station.	0/8941	5/5/20	ILS OR LOC RWY 32, Amdt 1B.
18–Jun–20	PA	Hazleton	Hazleton Rgnl	0/9132	5/7/20	RNAV (GPS) RWY 10, Amdt 3.

[FR Doc. 2020–11219 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31312 Amdt. No. 3905]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 27, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 2020.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

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 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on May 15, 2020.

Robert C. Carty,

Executive Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 18 June 2020

Lansing, MI, Capital City, RADAR 1, Amdt 15, CANCELLED

Effective 16 July 2020

Chalkyitsik, AK, Chalkyitsik, RNAV (GPS) RWY 4, Amdt 1
Chalkyitsik, AK, Chalkyitsik, RNAV (GPS) RWY 22, Amdt 1
Chalkyitsik, AK, Chalkyitsik, Takeoff Minimums and Obstacle DP, Amdt 2 Cape Girardeau, MO, Cape Girardeau Rgnl, ILS OR LOC RWY 10, Amdt 12B
Cape Girardeau, MO, Cape Girardeau Rgnl, LOC BC RWY 28, Amdt 8D
Cape Girardeau, MO, Cape Girardeau Rgnl, VOR RWY 2, Amdt 11A, CANCELLED
Hardin, MT, Big Horn County, RNAV (GPS) RWY 26, Orig
Hardin, MT, Big Horn County, Takeoff Minimums and Obstacle DP, Orig
Harlingen, TX, Valley Intl, ILS OR LOC RWY 17R, Orig-D

[FR Doc. 2020–11218 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2014–0991]

RIN 1625–AA01

Anchorage Grounds; Lower Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting a 2017 interim rule involving four anchorage grounds on the Lower Mississippi River below Baton Rouge as a final rule. The interim rule established two anchorage grounds and revised two others which increased the available anchorage grounds necessary to accommodate vessel traffic. After considering comments on that rule we have decided to adopt it as final without change which now completes this rulemaking.

DATES: This rule is effective June 26, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2014–0991 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant Commander Corinne Plummer, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2375, email *Corinne.M.Plummer@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ANPRM Advance noticed of proposed rulemaking
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Coast Guard Sector New Orleans received a request from the Crescent River Pilots Association and the New Orleans Baton Rouge Rivers Pilots Association to establish new anchorages and to amend existing anchorages. In response, on April 3, 2015, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) titled ''Anchorage Grounds: Lower Mississippi River below Baton Rouge, LA, including South and Southwest Passes; New Orleans, LA'' (80 FR 18175). There we stated why we issued the ANPRM, and invited comments on potential regulatory action related to this anchorage grounds rule. During the comment period that ended June 2, 2015, we received three comments on the ANPRM.

After reviewing the received comments on the ANPRM, the Coast Guard moved forward with establishing the anchorages by publishing an interim rule on June 14, 2017 (82 FR 27112). That interim rule solicited new comments as well as established the anchorages on an interim basis to allow for observance of functional suitability over a period of time. During the comment period that ended October 12, 2017, no new comments were received. This final rule is completing this rulemaking by adopting the interim rule as final.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471 that has been delegated from the Secretary of Homeland Security to the Coast Guard. We have determined that the maritime or commercial interests of the United States require such anchorage grounds for safe navigation in the Lower Mississippi River.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on the interim rule published June 14, 2017. Therefore, the Coast Guard intends to move forward and is adopting the interim rule as final without any changes.

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.

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 these anchorages being in effect from June 14, 2017, through an interim rule with no negative comments received since. In addition, these anchorages are on the side of the river and easily navigated around by all marine traffic.

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 received 0 comments from the Small Business Administration on this rulemaking. 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.

This rule does not have a significant impact on a substantial number of small entities. The rule adopts a previously implemented interim rule amending two existing anchorages and creating two new anchorages. These anchorages are in the Federal Channel, a safe distance from shore, off revetment, in safe water, and do conflict with any other permit or impede safe navigation.

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 contact 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this 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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have 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 completes a rulemaking that involves the revision of two anchorage grounds and the establishment of two anchorage grounds. It is categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—ANCHORAGE REGULATIONS

■ For the reasons discussed in the preamble, under authority of 33 U.S.C. 471; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, the interim rule amending 33 CFR part 110 that was published at 82 FR 27112 on June 14, 2017, is adopted as a final rule without change.

Dated: April 27, 2020.

J.P. Nadeau,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2020–09401 Filed 5–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 155

[Docket No. USCG–2018–0493]

RIN 1625–AC50

Person in Charge of Fuel Transfers

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the requirements regulating personnel permitted to serve as a person in charge (PIC) of fuel oil transfers on an inspected vessel by adding the option of using a letter of designation (LOD) in lieu of a Merchant Mariner Credential (MMC) with a Tankerman-PIC endorsement. Obtaining an MMC with a Tankerman-PIC endorsement is now optional for PICs of fuel oil transfers on inspected vessels. This change is not limited to towing vessels, but one effect of this rule is that a PIC currently using the LOD option on an uninspected towing vessel may continue to do so once the vessel receives its Certificate of Inspection.

DATES: This final rule is effective May 27, 2020. CG–MMC Policy Letter 01–17 is cancelled effective May 27, 2020.

ADDRESSES: To view comments on the notice of proposed rulemaking and documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0493 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Cathleen Mauro, Office of Merchant Mariner Credentialing (CG–MMC–1), Coast Guard; telephone 202–372–1449, email *Cathleen.B.Mauro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR Code of Federal Regulations
COI Certificate of Inspection
DHS Department of Homeland Security
FR Federal Register
LOD Letter of designation
MERPAC Merchant Marine Personnel Advisory Committee
MISLE Marine Information for Safety and Law Enforcement
MMC Merchant Mariner Credential
MPH Miles per hour
NMC National Maritime Center
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PIC Person in charge
§ Section
STCW International Convention of Standards of Training Certification and Watchkeeping for Seafarers
TSAC Towing Safety Advisory Committee
TWIC Transportation Worker Identification Card
U.S.C. United States Code
VSO Vessel Security Officer

II. Basis and Purpose, and Regulatory History

As we stated in the notice of proposed rulemaking (NPRM) published on August 14, 2019 (84 FR 40329), the Coast Guard established the option of using a letter of designation (LOD) for uninspected vessels in 1998.[1] The LOD designates the holder as a person in charge (PIC) of the transfer of fuel oil and states that the holder has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC.[2] When establishing the LOD option, we stated that the formal instruction required by this option should ensure that personnel acting as PICs of fuel oil transfers have the ability to safely and adequately carry out their duties and responsibilities while minimizing the risks of pollution from fuel oil spills.[3]

Thousands of towing vessels are currently transitioning from being uninspected vessels to becoming inspected vessels.[4] While this rule is not limited to towing vessels, it will allow a PIC currently using the LOD option on one of those uninspected towing vessels to continue to use that option to perform the same fuel oil transfers once the vessel becomes an inspected vessel. This transition happens when the vessel is issued a certificate of inspection (COI).

This rule only addresses transfers of fuel oil. The PIC requirements in 33 CFR 155.710(a), (b) and (f) for vessels transferring cargo remain unchanged.

Executive Orders 12866 (Regulatory Planning and Review) and 13777 (Enforcing the Regulatory Reform Agenda) direct us to eliminate unnecessary regulatory burdens.[5] We believe that the LOD option provides a level of safety and protection for fuel oil transfers equivalent to the Tankerman-PIC option, while eliminating the burden of obtaining and maintaining a Merchant Mariner Credential (MMC). By adding this LOD alternative, individuals on inspected vessels now have an option that was previously only available to individuals on uninspected vessels.

As discussed in the NPRM,[6] the Coast Guard tasked the Merchant Marine Personnel Advisory Committee (MERPAC) and the Towing Safety Advisory Committee (TSAC) to review existing PIC requirements for vessel fuel transfers and to make recommendations for amendments. The Coast Guard reviewed the recommendations from both TSAC and MERPAC and agreed with MERPAC's broader recommendation that all inspected vessels should have the option of using an LOD to satisfy the requirement for designating the PIC of fuel transfers. This final rule is consistent with MERPAC's recommendation and provides the relief sought for towing vessels in the TSAC recommendation.

In March 2017, the Coast Guard issued CG–MMC Policy Letter No. 01–17 titled, ''Guidelines for Issuing Endorsements for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels.'' [7] As we stated in the NPRM,[8] this policy eased some of the requirements for obtaining an MMC

[1] See Qualifications for Tankerman and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases final rule (63 FR 35822, July 1, 1998).

[2] 33 CFR 155.715.

[3] 63 FR 35822, 35825, July 1, 1998.

[4] See 46 CFR 136.202, and discussion in this document's Regulatory Analysis regarding the number of towing vessels making this transition.

[5] See Section 1(b)(11) and Section 1, respectively.

[6] 84 FR 40329, 40332, August 14, 2019.

[7] U.S. Coast Guard, *Guidelines for Issuing Endorsements for Tankermen PIC Restricted to Fuel Transfers on Towing Vessels* (Mar. 10, 2017), *https://www.dco.uscg.mil/Portals/9/NMC/pdfs/announcements/2017/cg-mmc_policy_letter_01-17_final_3_9_17-date.pdf.*

[8] 84 FR 40329, 40332, August 14, 2019.

with a Tankerman PIC endorsement, but it did not completely relieve the burden of obtaining the credential or maintaining the endorsement through the renewal process every 5 years and it only addresses inspected towing vessels—not other inspected vessels.

Authority under Subtitle II and Chapter 700 of Title 46 United States Code, specifically 46 U.S.C. 3306 and 70034, has been delegated to the Coast Guard and allows us to establish and amend regulations for a person in charge (PIC) of fuel oil transfers. This rule is authorized by Subtitle II provisions to regulate lightering (46 U.S.C. 3715) and personnel qualifications for all inspected vessels, including nontank vessels (46 U.S.C. 3703), and by 46 U.S.C. chapter 700 provisions regarding waterfront safety, including protection of navigable waters and the resources therein (46 U.S.C. 70011).

We are making this rule effective upon publication because it relieves a restriction and 5 U.S.C. 553(d)(1) does not require us to wait 30 days before we make such rules effective. This rule relieves a restriction by allowing an LOD to be used to designate a PIC on an inspected vessel. Also, we find good cause under 5 U.S.C. 553(d)(3) for making this rule effective upon publication because it would be contrary to the public interest not to do so. Currently, under provisions in 46 CFR 136.202, thousands of uninspected towing vessels are becoming inspected towing vessels. Making this rule effective May 27, 2020 will enable more persons with an LOD currently serving as a PIC on an uninspected towing vessel to continue to do so without obtaining an MMC endorsement once that same vessel becomes an inspected vessel.

III. Discussion of Comments

The Coast Guard received 10 written submissions during the 62-day comment period that ended October 15, 2019.

A common theme for those who supported the proposed rule, was that the vessel-specific training for an LOD is more practicable and appropriate for fuel oil transfers compared to the broader, cargo-transfer focused training for a Tankerman-PIC endorsement. Those who opposed the proposed rule generally viewed it as a change that would lower safety and environmental standards.

The Coast Guard summarizes and addresses the comments below.

A. Decades-Long Use of LODs Which Focus on Fuel Oil Transfers

1. LODs have been used safely for more than 2 decades: One commenter stated that the LOD option has been safely used on uninspected vessels for more than 2 decades and is a highly regulated process that ensures mariners serving as a PIC of fuel oil transfers are properly trained. The commenter noted that when vessel operators issue an LOD, they certify that the holder has received sufficient formal training and instruction to safely and adequately carry out the duties and responsibilities of transferring fuel oil as required by regulation. The commenter pointed out that ''33 CFR 156.120 details 28 individual elements in the fuel transfer process that a PIC must understand and conduct, and that 33 CFR 156.150 requires documentation of each fuel transfer, including a signed declaration from the PIC certifying that each of those requirements was completed.'' They assessed the LOD option as providing an equivalent level of safety and environmental stewardship when compared to MMCs with a Restricted Tankerman-PIC endorsement.

Response: We concur that LOD requirements are detailed, and that the operator or agent of the vessel must certify that the holder has received sufficient formal instruction to safely and adequately carry out these detailed requirements. While this formal instruction is received from the operator or agent of the vessel(s) identified in the LOD, the detailed requirements in 33 CFR 156.120 and 156.150 are standardized for any PIC engaged in fuel oil transfers.

2. LODs allow for vessel-specific training focused on fuel oil transfers: One commenter noted that the LOD option creates important regulatory relief, allows for increased flexibility, and broadens the scope of available mariners to serve as a PIC for fuel oil transfers on inspected vessels. The commenter stated that it allows for a focus on vessel-specific training regarding fuel oil transfers, which can vary widely across the diverse nationwide marine fleet, and views this specialization in training as a positive addition, going above and beyond the requirements of a more general endorsement. Another commenter noted that a feature of the LOD is that it keeps scrutiny of training and oversight at the vessel level and that the commenter's company issues vessel specific LODs.

Response: The Coast Guard concurs that the LOD option tends to focus training on fuel oil transfers for a specific vessel or a fleet of vessels that the LOD holder will be authorized to serve on as a PIC. The requirements in § 155.715 specify that formal instruction is provided by the operator or agent of the vessel or vessels identified in the LOD.

B. Safety and Environmental Concerns and Restricted-Endorsement Policy Letter

1. Some warn that restricted endorsement may increase risk level while some want endorsement continued: One commenter noted the cost burden [9] to unlicensed deckhands of obtaining an endorsement for a Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels created by Policy Letter 01–17, but warned that this restricted endorsement may increase risk levels. This commenter wrote that Policy Letter 01–17 waives training requirements (for approved firefighting and tankship course), while allowing uncredentialed deckhands with LODs [10] to become credentialed mariners who may demand higher pay rates. The commenter observed that once a person uses a vessel-specific LOD to qualify for an MMC with an endorsement for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels, as allowed by Policy Letter 01–17, they are free to work as a PIC on other towing vessels even if that vessel is quite different from the vessel for which they held an LOD.

Another commenter requested that we retain the option for mariners to obtain and renew endorsements as Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels. They viewed this option as providing equivalent levels of safety and environmental stewardship as the LOD option and stated that keeping the restricted endorsement option would allow maximum flexibility for mariners and their employers. They also noted that mariners who have obtained an MMC with the restricted Tankerman-PIC endorsement may wish to maintain that credential for professional development reasons.

Response: With respect to concerns about Policy Letter 01–17, this rule

[9] The evaluation ($95) and issuance ($45) fees are described in 46 CFR 10.219, in the Table 1 to § 10.219(a) row for MMC with rating endorsement: Original endorsement for qualified rating.

[10] The commenter is correct that the policy letter does not require applicants to have previously held mariner credentials. Applicants must be at least 18 years old and hold a valid Transportation Worker Identification Card (TWIC) or have enrolled for one. An alternative to holding an LOD, would be to ''provide evidence of participation, under the supervision of someone designated as PIC of a fuel transfer, in at least five fuel transfers on Towing Vessels during the preceding 5 years.''

provides more complete relief from the existing § 155.710(e) requirement than Policy Letter 01–17 does, and it does so without waiving any training requirements for obtaining an MMC PIC endorsement. With this rule's addition of an LOD option, there are now two avenues to qualify as a PIC for the transfer of fuel oil: (1) Hold a valid MMC with either an officer or Tankerman-PIC endorsement; or (2) use the new option for inspected vessels of designating a PIC with an LOD as described in 33 CFR 155.715. Therefore, we are cancelling Policy Letter 01–17 effective May 27, 2020. The Coast Guard supports mariners pursuing professional development but, for the reason stated above, we are cancelling Policy Letter 01–17 upon publication of this rule.

2. Perceived decline in both safety and protection of the environment: One commenter opposed the proposed rule and stated that he sees too many accidents and spills from untrained crews that go unreported. The commenter stated that as a crew member he has seen a serious decline in safety and an increase in small accidents in the last few years, including 14-hour-work days in violation of STCW [11] watch hours. The commenter said that companies offer low wages and are not willing to pay a meaningful wage to trained and competent workers. The commenter did not directly attribute the reduced level of safety to LODs.

Another commenter wrote that easing PIC requirements was ''caving to pressure from industry'' and unfair to those who have already completed approved training to obtain a Tankerman-PIC endorsement. The commenter stated there is no substitute for loading-and-discharging training service requirements and recommended a PIC-Fueling endorsement for those who bunker and transfer aboard smaller, previously uninspected vessels. Additionally, the commenter stated that there has been a rise in accidents in the inland industry in the last few years. In suggesting a caving-to-industry trend, the commenter referenced recently issued gap-closure [12] training requirements and indicated they disadvantaged U.S. mariners compared to foreign mariners. The commenter referenced the Deepwater Horizon accident as an example of why cutting costs to industry by lowering standards that provided safety to mariners and protection for the environment is dangerous.

Response: The requirements for an MMC endorsement and a LOD have remained unchanged for many years, so the requisite training has not changed. We see no correlation, therefore, between the commenters' reference to either an increase in accidents in recent years or a reduced level of safety, and the requirements regulating personnel permitted to serve as a PIC of fuel oil transfers on an inspected vessel. To the extent the commenter may be concerned about the endorsement for a Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels introduced in 2017, effective May 27, 2020 we are cancelling the CG–MMC Policy Letter 01–17 enabling that restricted endorsement.

Personnel designated as PICs through the use of an LOD are required to receive formal instruction from the operator or agent of the vessel, sufficient to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC.[13] These duties include understanding discharge (spill) reporting procedures.[14] Any individual who witnesses a spill or other reportable marine casualty should report that casualty to the Coast Guard. Enforcement of casualty reporting and applicable STCW requirements will continue independent of this regulatory initiative. The influence of market forces on how much is paid to those with a Tankerman-PIC endorsement or that have received sufficient formal instruction to obtain an LOD is beyond the scope of this rulemaking.

As for the second commenter, this rule, which is supported by recommendations of the MERPAC and the TSAC, does not change the requirements for having a designated PIC as described in 33 CFR 155.700, the process for obtaining a Tankerman-PIC endorsement in 46 CFR part 13, subpart B, or the requirements for an LOD in 33 CFR 155.715. To qualify for a Tankerman-PIC endorsement, applicants must present evidence of supervised participation in at least five cargo loadings and five cargo discharges. While experience with cargo transfers is not required for an LOD, formal instruction is required. The holder of an LOD is required to receive sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC described in 33 CFR 156.120 (requirements for transfer) and 156.150 (Declaration of inspection).

The recommendation for a PIC-Fueling endorsement for those who bunker and transfer aboard smaller, previously uninspected vessels warrants future consideration, but that recommendation is beyond the scope of this rulemaking.

C. Miscellaneous

1. Make changes proposed by NPRM effective faster by issuing a policy letter: One commenter, who referenced a method for training new deckhands so they can qualify for their vessel-specific LOD, recommended that we implement the LOD option via a policy letter pending the effective date of this rule.

Response: We appreciate the concern and another commenter's concern about making the LOD option available as soon as possible, and we are making this rule effective upon publication. After we publish a rule, normally there is a 30-day waiting period before we can make it effective, but under 5 U.S.C. 553(d)(1) this waiting period does not apply to rules that relieve a restriction. Starting May 27, 2020, this rule will begin relieving a restriction by allowing an LOD to be used to designate a PIC on an inspected vessel.

2. Let Tankerman-Engineer endorsement serve to satisfy § 155.710(e) requirements: One commenter noted that the commenter's employer requires all officers, even engineers with no involvement in cargo transfers (on a tankship), to maintain a Tankerman-PIC endorsement. Even though 33 CFR 155.710(e) permits engineering officers to serve as PICs, the commenter suggests that we specifically add the Tankerman-Engineer endorsement as an option in addition to the Tankerman-PIC endorsement to satisfy the requirement in § 155.710(e). Observing that not all vessels subject to PIC requirements are oil tankers—making it difficult or impossible to satisfy tankship or self-propelled-tank-vessel-loading-and-discharging service requirements to obtain a Tankerman-PIC endorsement—the commenter wants the Coast Guard to ensure that the classroom requirements for the Tankerman-Engineer endorsement focus on fuel and bunker transfers. Finally, the commenter stated that if a PIC on a

[11] STCW stands for the International Convention of Standards of Training Certification and Watchkeeping for Seafarers.

[12] Gap-closing training refers to requirements in 46 CFR 11.305 to 11.321 and 11.325 to 11.335, included in a 2013 final rule entitled ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 [STCW Convention], and Changes to National Endorsements'' (78 FR 77795, 77805, December 24, 2013). These training requirements were implemented to ensure mariners with existing STCW endorsements met the requirements of the 2010 amendments to the STCW Convention. Mariners had to complete this training before January 1, 2017, to maintain the validity of their STCW endorsements.

[13] 33 CFR 155.715.

[14] 33 CFR 156.120(w)(10).

ship is required to have a Tankerman endorsement (PIC or Engineer) to maintain responsibility for the transfer, the person working aboard the transferring barge should also be endorsed and educated to the same level of care.

Response: The suggestion to modify the training requirements for the Tankerman-Engineer endorsement to focus on fuel and bunker transfers—and to add the Tankerman-Engineer as a means to satisfy § 155.710(e)—warrants future consideration but is beyond the scope of this rulemaking. The LOD option that this rule makes available, however, enables those who are not able to satisfy Tankerman-PIC endorsement service requirements to obtain formal instructions on fuel oil transfers so they may serve as a PIC on the vessel(s) identified in the LOD.

Regarding transfers from bunker barges, they are considered cargo transfers and the PIC on a tank barge required to be inspected under 46 U.S.C. 3703, would need to meet requirements in 33 CFR 155.710(b). Those requirements include the option of having a Tankerman-PIC (Barge) endorsement in order to serve as the PIC of a cargo transfer. The requirements for a Tankerman-PIC (Barge) endorsement include experience on tank vessels.

3. Request to extend use of LODs to drilling fluids and other offshore-supply-vessel cargos: Two commenters requested that the Coast Guard extend the use of the LOD for fuel transfers to transfers of drilling fluids and other cargos for Offshore Supply Vessels (OSVs). They stated that offshore oil and gas industry is serviced by a fleet of OSVs that not only routinely load and offload excess fuel, but also supply drilling fluids. They viewed the cargo systems of OSVs as no more complicated or dangerous than its fuel oil systems and stated that harmful nature of drilling fluids did not measure up to the harmful nature of fuel oil.

Response: Extending the use of an LOD to non-fuel-oil transfers is beyond the scope of this rulemaking. The NPRM was clear regarding the scope of this rulemaking. We are amending 33 CFR 155.710(e), which only applies to fuel oil transfers. Drilling fluids are categorized as cargo, and therefore, would not qualify as a fuel oil transfer. Moreover, drilling fluids [15] may contain oil and under 46 CFR 125.110(e) we treat such fluids the same as oil cargo.

D. No Changes to Regulatory Text

We did not make any changes from the proposed rule based on the comments we received on the NPRM. The regulatory text of the final rule is the same as what we proposed in the NPRM.

IV. Discussion of the Rule

This final rule amends 33 CFR 155.710(e), which sets forth the provisions for the qualifications of the PIC of any fuel oil transfer requiring a Declaration of Inspection. This rule does not change the existing requirements for the PIC on uninspected vessels, and the requirements for vessels transferring cargo also remains unchanged. This rule provides inspected vessels two options for meeting requirements to serve as the PIC of a fuel oil transfer. Vessel operators may comply with the current inspected vessel requirement of having a PIC with a valid MMC with either an officer or Tankerman-PIC endorsement or use the new option for inspected vessels of designating a PIC with an LOD as described in 33 CFR 155.715.

A. Amendments to § 155.710(e)

This rule revises the text of 33 CFR 155.710(e)(1) so that requirements for inspected and uninspected vessels are combined in that paragraph. Paragraph (e)(1)(i) presents the MMC endorsement options and paragraph (e)(1)(ii) presents the LOD option. This rule also redesignates the remaining paragraphs in that section and amends a reference in the redesignated paragraph regarding tank barges to reflect our removal of paragraph (e)(2).

With respect to MMCs, this rule removes obsolete terminology such as merchant mariner ''licenses'' and ''Merchant Mariner Documents.'' The Coast Guard ceased issuing those types of documents in 2009 when we transitioned to the streamlined MMC. Also, the rule clarifies the first sentence of § 155.710(e) by changing ''shall verify'' to ''must verify.''

B. Amendments to § 155.715

In § 155.715, this rule changes the reference to § 155.710(e)(2) so that it refers to § 155.710(e)(1) instead. This change reflects our amendments to § 155.710(e). Also, to remove a long-standing conflict of referring to the same letter as both ''letter of instruction'' and ''letter of designation,'' this rule amends the reference to a letter of instruction by simply referring to it as ''the letter referenced in § 155.710(e)(1).''

This letter has become known by the title we gave it in the § 155.715 heading, ''letter of designation.'' Section 155.715 requires the letter to designate the holder as a PIC of the transfer of fuel oil and to state that the holder has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC described in 33 CFR 156.120 and 156.150. Changing our reference to it as ''the letter referenced in § 155.710(e)(1)'' does not change any of those requirements, but it does make it clear that ''letter of designation'' is the correct way to refer to the letter referenced in § 155.710(e) that must satisfy the requirements of § 155.715.

C. This Rule Only Addresses Fuel Oil Transfers, Not LNG Fuel Transfers

This rule does not apply to liquefied natural gas (LNG) fuel transfers. Both §§ 155.710(e) and 155.715 apply solely to the transfer of ''fuel oil.'' *Fuel oil* means any oil used to fuel the propulsion and auxiliary machinery of the ship carrying the fuel.[16]

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. The regulatory text of this rule is unchanged, and the analysis for it is not substantively changed from what we proposed in the NPRM. We updated three figures used in the analysis to reflect changes realized after we published the NPRM. We update the number of towing vessel inspections completed to reflect inspections conducted from July through October 2019. We updated the total population of towing vessels to reflect knowledge gained from recent inspections. We also revised the assumed turnover rate of 30 percent following additional analysis of data we obtained from the National Maritime Center.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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,

[15] As defined in 40 CFR 435.11(l), drilling fluid is the circulating fluid used in the rotary drilling of wells.

[16] As provided in § 155.110, this 33 CFR 151.05 definition of ''fuel oil'' applies to §§ 155.710 and 155.715.

and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. DHS considers this rule to be an Executive Order 13771 deregulatory action. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017). Details on the estimated cost savings of this rule can be found in the rule's regulatory analysis (RA) that follows.

We received no public comments on the estimated unit costs of the proposed rule, so we retained these estimates for this analysis; however, because our estimated population changed due to a revised turnover rate, the total estimated cost savings changed from the NPRM. We received additional data to update estimates in our assessment of the proposed rule. Updating estimates with new data does not alter the methodology demonstrated in the preliminary regulatory analysis; therefore, we adopt the methodology of the preliminary analysis for the proposed rule as final.

This final rule is necessary to provide a less burdensome method of designating who may serve as the PIC of a fuel oil transfer on an inspected vessel by extending the LOD option to inspected vessels. The individuals expected to take advantage of this deregulatory action are the same individuals currently qualified as a PIC with an LOD on an uninspected towing vessel once the vessel receives its Certificate of Inspection. We estimate the total cost savings of the final rule over a 10-year period of analysis to be about $266,767,725, discounted at 7 percent. We estimate the annualized cost savings to be about $37,981,722, discounted at 7 percent.

TABLE 1—SUMMARY OF IMPACTS OF THE FINAL RULE

Category	Summary
Applicability	Extend the LOD option described in 33 CFR 155.710(e)(2) to inspected vessels for fuel oil transfers. This will allow PIC designation to be fulfilled by an LOD rather than an MMC with an officer or Tankerman-PIC endorsement.
Affected Population	The 11,540 individuals on 5,770 vessels that transfer fuel oil and that have a capacity to carry at least 250 barrels or that receive fuel oil from a vessel with a capacity to carry at least 250 barrels.
Cost Savings (2018 $ Discounted at 7%)	10-year period of analysis: $266,767,725. Annualized: $37,981,722.
Cost Savings (2016 $ Discounted at 7% and discounted back to 2016).	Perpetual period of analysis: $26,323,316.

Affected Population

(1) Vessel Population.

Section 155.700 of 33 CFR requires each operator or agent of a vessel with a capacity of 250 barrels or more that engages in the transfer of fuel oil on the navigable waters or contiguous zone of the United States to designate the PIC of each transfer of fuel oil to or from the vessel. The affected population for this deregulatory action is a subset of all inspected vessels subject to the PIC requirements in 33 CFR 155.710(e)(1). The recent change from uninspected to inspected status makes subchapter M vessels uniquely impacted by the MMC requirement. The Coast Guard is not aware of other inspected vessel populations that would likely make use of this rule.

The total population is subject to change while inspections are ongoing. In the time since the analysis described in the NPRM, another 194 COIs were issued to towing vessels.[17] Table 2 shows the effect of the increased number of COIs. Through information gathered during ongoing inspections, TVNCOE revised the total population of inspected towing vessels expected to qualify under subchapter M by the end of the inspection period, adding 30 vessels and increasing the expected total from 5,740 to 5,770 vessels.[18]

TABLE 2—PROJECTION OF SUBCHAPTER M VESSELS OBTAINING A COI

Year	New COIs	Total subchapter M inspected vessels
2018	253	253
2019	1,177	1,430
2020	2,031	3,461
2021	1,236	4,697
2022	1,073	5,770

(2) Individual Population.

We assume each vessel from the affected population to have at least two individuals able to serve as a PIC to ensure that at least one of them is available for duty at any point in a 24-hour period.[19] From the population of 5,770 vessels, each carrying two PICs, we obtain an affected population of individuals equal to 11,540. The population of 5,770 becomes constant in Year 3 of the analysis period or in 2022 and thereafter, once all affected vessels are inspected.

In the proposed rule, we assumed an individual turnover rate of 30 percent from an approved collection of information.[20] In the interim, we were able to obtain more recent data that indicates a current turnover rate of 32.55 percent. For this analysis, we used data from the National Maritime Center (NMC) for individuals obtaining MMCs with issue dates from April 2009 to March 2020 and expiration dates from August 2009 to March 2025 [21] to update

[17] Monthly numbers of inspections completed from July 2018 through October 2019 provided on October 21, 2019 by the National Towing Vessel Coordinator of the Office of Commercial Vessel Compliance.

[18] The Towing Vessel National Center of Expertise (TVNCOE) estimated the increase of 30 vessels after discovering and correcting pervasive errors in which vessels are classified as Subchapter M vessels in the Marine Information for Safety and Law Enforcement (MISLE) database.

[19] Information collection request (ICR), ''Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping'' OMB control number 1625–0072.

[20] See page 84 FR 40335 of NPRM and page 4 of supporting statement for ICR 1625–0072.

[21] As per 46 CFR 10.205. An MMC is valid for a period of 5 years. The issue date of a renewal can be postdated by up to 8 months from the time of application to allow for maximum time on the renewed MMC. A future issue date (for example, March 2020) indicates that a mariner renewed an

Continued

the turnover rate. In the data from NMC, every MMC issued and every mariner has a unique identifying number such that sorting by mariner reference number shows all the MMCs for that mariner.

After cleaning the data for duplicates and printing errors (where the NMC issued a second credential with a new ID number within the same validity period), we applied a formula that marks each MMC as either renewed, not renewed, or ineligible to renew. We marked any MMC with an expiration date after July 18, 2019 (when the data was downloaded) as ineligible to renew. Otherwise, we assumed an MMC is renewed if the issue date is within 2,190 days of the previous MMC's issue date.[22] The period of 2,190 days is equivalent to 6 years (6 years × 365 days in a standard calendar year), which represents the validity period of 5 years plus a year-long grace period wherein a mariner cannot use the expiring MMC but could renew that MMC without having to retake the required formal training from the beginning. For example, an MMC issued in April 2009 would be eligible for renewal in March 2014. If there is no new MMC issued by March 2015, we assume that the mariner left the marine industry or otherwise no longer requires an MMC (turned over) in 2015. We then tabulate how many MMCs in each calendar year were eligible to renew, how many of those eligible were renewed, and how many of those eligible were not renewed to produce a turnover percentage as shown below in Table 3.

TABLE 3—ESTIMATION OF TURNOVER RATE

Year	MMCs eligible to renew A	MMCs renewed B	MMCs not renewed C	Rate of turnover = ((C/A) × 100)
2016	1,111	754	357	32.13%
2017	1,069	721	348	32.55%
2018	998	669	329	32.97%
Average	.....	.....	.....	32.55%

We use a three-year average of turnover rates from the last three full calendar years to mirror the methodology used in the periodic renewal of a collection of information. As in the NPRM, the resulting rate of 32.55 percent turnover assumes that any mariner lost to turnover in a given year is replaced by a mariner with an original MMC in order to maintain a stable population of mariners able to serve the total population of vessels. Apart from this updated turnover rate, we retained the methodology for calculating renewals from the NPRM. All calculations using the turnover rate use the unrounded figure for accuracy, any replications using a rounded turnover rate will slightly differ from the calculations shown with the unrounded turnover rate.

In table 4 below, we calculated renewals by multiplying the total number of original MMCs in a given starting year by the probability that an individual would still be employed as a PIC after five years. Where [(1 − 0.3255)^(5 − 1) = (0.6745^4)] is the approximate probability of remaining, (0.6745) given a turnover rate of 0.3255, compounded for each year after the first year of having the MMC in the 5 years before renewal. We show the application of the calculation below in Table 4. For Year 4, this is equivalent to 105 = [506 × (0.6745^4)]. For Year 5, this is equivalent to 521 = [2,519 × (0.6745^4)]. For Year 6, this is equivalent to 1,033 = [4,993 × (0. 0.6745^4)]. For Year 7, this is equivalent to 978= [4,725 × (0.6745^4)]. For Year 8, this is equivalent to 1,077 = [5,204 × (0.6745^4)]. For Year 9 and all subsequent years, renewals become 777 = [3,756 × (0.6745^4)].

TABLE 4—SUMMARY OF AFFECTED POPULATION

Calendar year	Effective year	Total affected vessels	MMCs needed	New COIs	Original MMCs from new COIs	Original MMCs from Turnover	Total original MMCs	Renewals
2018	.....	253	506	253	506	0	506	0
2019	.....	1,430	2,860	1,177	2,354	165	2,519	0
2020	Year 1	3,461	6,922	2,031	4,062	931	4,993	0
2021	Year 2	4,697	9,394	1,236	2,472	2,253	4,725	0
2022	Year 3	5,770	11,540	1,073	2,146	3,058	5,204	0
2023	Year 4	5,770	11,540	0	0	3,756	3,756	105
2024	Year 5	5,770	11,540	0	0	3,756	3,756	521
2025	Year 6	5,770	11,540	0	0	3,756	3,756	1,033
2026	Year 7	5,770	11,540	0	0	3,756	3,756	978
2027	Year 8	5,770	11,540	0	0	3,756	3,756	1,077
2028	Year 9	5,770	11,540	0	0	3,756	3,756	777
2029	Year 10	5,770	11,540	0	0	3,756	3,756	777

Note: We rounded the numbers in the table for readability, but we did not round the turnover rate in our calculations. Additionally, the values in each column are not additive.

MMC before it expired so the date was set for a period not exceeding 8 months closest to the expiration of the current MMC to maximize the validity period.

[22] {If(prior issue date <= [issues date + (365 × 6)],''Renewed'', ''Not''),''Not''}

While we do not count cost savings for original MMCs obtained before 2020, we counted cost savings for avoided renewals of those MMCs since the renewal would occur after the effective year of the final rule, 2020.

Cost Savings to Industry

Cost savings from this rule come from the avoided cost of obtaining an MMC for individuals that are able to use an LOD to qualify as a PIC rather than obtaining an MMC. All of the components of the average cost are unchanged and include tuition for Basic Fire Fighting and Dangerous Liquids, application fees, security screening fee, travel, and the opportunity cost of the time to attend training for an applicant. The renewal cost of $220 is also unchanged from the NPRM and includes application fees and security screening fee. As a result, the total average cost for an individual to obtain an original MMC is $8,958, which is the same estimate we used in the NPRM. Below is the analysis for estimating this total cost as it appeared in the NPRM.

As of May 2019, the average cost of a Basic Fire Fighting course is $731.31 and ranges in length from 2 to 5 days depending on whether it is offered as a separate module or as part of the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers Basic Training. We assume an average course length of 27 hours, which would require 4 days of training. Similarly, the average cost of a Dangerous Liquids course is $985.62 with almost all offerings being 5 days in duration with an average of 38 hours of training. The length of the training in days assumes an 8-hour day, and that any part of an additional day would be considered a full day's opportunity cost in order to account for travel (that is, a mariner would not be able to leave training at noon and return to work). Because very few of the training facilities offer both courses—and none of the training facilities offer the courses concurrently—mariners would need to schedule each training course separately. See table 5 below for the summary of course costs.

TABLE 5—AVERAGE COURSE COSTS

Course	Tuition	Length (days)	Length (days rounded)	Length (hours)
Basic Fire Fighting	$731.31	3.27	4	27
Dangerous Liquids	985.62	4.80	5	38
Summary	1,716.93	8.07	9	65

In addition, 46 CFR 10.219 prescribes the fees for obtaining an MMC with a Tankerman-PIC endorsement. This includes an evaluation fee of $95 and an issuance fee of $45. Every 5 years there is a cost to renew the credential with the endorsement, which includes a $50 evaluation fee and a $45 issuance fee.[23] For the original issuance and renewal, there is a security screening expense of $125.25.[24]

The Coast Guard assumes varying modes of travel for mariners getting to and from approved training based on the distribution of travel modes derived in the Vessel Security Officer (VSO) Interim Rule.[25] The percentages below in table 6 reflect the same percentages from the VSO rule.[26] In further analysis, we use the average cost per mariner weighted by the distribution of travel type.[27] We estimate the total travel cost of the mariners to be about $103,374,546, undiscounted. We estimate the average travel cost for a mariner to be about $8,958, undiscounted.

TABLE 6—DISTRIBUTION OF TRAINING COSTS BY MODE OF TRANSPORTATION

Mode of transport	Distribution (%)	Affected mariner population	Cost (2018 USD)
Commute	26.50	3,058	$27,214,180
Drive/Lodge	16.70	1,927	$15,672,417
Fly/Lodge	56.80	6,555	$60,487,949
Total	100	11,540	$103,374,546
Average Cost per Mariner	.....	.....	$8,958

Note: Totals may not sum due to independent rounding.

In table 7, we show the unit costs that comprise the total costs to individuals in table 9. Each method of travel has a different cost, while the costs of training courses and MMC applications are the same for all travel types. The total cost per mariner includes the fixed costs of the two approved training courses and travel costs. As travel costs are highly

[23] From 46 CFR 10.219(a), Table 1—Fees. Using column ''Evaluation then the fee is . . .'' and rows ''Original endorsement for ratings other than qualified ratings'' and ''Renewal endorsement for ratings other than qualified ratings.''

[24] Transportation Security Administration 30-Day notice. [Docket No. TSA–2006–24191] Revision of Agency Information Collection Activity Under OMB Review: Transportation Worker Identification Credential (TWIC®) Program (82 FR 14521, March 21, 2017).

[25] 73 FR 29060, May 20, 2008, ''Implementation of Vessel Security Officer Training and Certification Requirements-International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended'' rule corrected June 17, 2008 (73 FR 34190).

[26] See Table 4.—TOTAL NATIONAL SHARE OR PERCENTAGE OF—Total National Share of Percentage of VSOs THAT WILL COMMUTE, DRIVE/LODGE, AND FLY/LODGE That Will Commute, Drive/Lodge, and Fly/Lodge in 73 FR 29060, 29065.

[27] We use the average cost because the distribution in travel does not change in any given year. If the actual locations of individuals used to develop the baseline was known, then we could base the distribution on actual travel. However, this information is not known and could not be known for every individual in each year.

variable, we obtained the most recent cost figures for travel and lodging, available from either 2017 or 2018, as described in the source reference column.

TABLE 7—UNIT TRAVEL COST ESTIMATES (ADJUSTED TO 2018 USD)

Item	Unit cost	Source reference
Opportunity cost of applicant time ..	$60.66	The total opportunity cost of time is the base wage multiplied by the loaded wage factor to obtain total compensation including non-wage benefits. $39.61 is the mean wage estimate from the 2019 National Occupation Employment and Wage Statistics for Captains, Mates, and Pilots of Water Vessels (53–5021) *https://www.bls.gov/oes/2018/may/oes535021.htm.* The loaded wage factor of (33.11/21.62) is obtained by dividing the total compensation by wages and salaries for full-time transportation workers. These are annual averages of quarterly data series CMU2010000520610D and CMU2020000520610D respectively, obtained from BLS Employer Cost for Employee Compensation *https://www.bls.gov/data/.*
Driving Mileage (rate per mile)	$0.58	''Privately Owned Vehicle Mileage Reimbursement Rates'' from GSA tables published on January 1, 2019 *https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates.*
Non-Commuting Driving Time	100 mile/27.08 mph commuting speed.	For a mariner who would drive/lodge to the school 100 miles round trip, we divide 100 miles by the average commuting speed of 27.08 miles per hour (mph). We obtained 27.08 mph from the Federal Highway Administration's Summary of Travel Trends, 2017. *https://www.fhwa.dot.gov/policyinformation/documents/2017_nhts_summary_travel_trends.pdf* page 79
Round-trip Air-Fare	$346	From the U.S Department of Transportation, Bureau of Transportation Statistics. Average price of a round-trip airfare for 2018 in unadjusted dollars. *https://www.bts.gov/sites/bts.dot.gov/files/Annual%20Fares%201995–2018.xlsx.*
Round-trip Airport Transfer	$61.28	We used the cost of a round-trip airport transfer from a Coast Guard interim rule, ''Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Licenses and Certificates of Registry'', published on January 13, 2006 (71 FR 2154). Figure found in table 4, page 2,160. A later figure could not be found so this figure was adjusted for inflation using the GDP deflator factor of 1.23 times the original cost of $50. The round-trip airport transfer cost is based on research of the average private and public transfer costs, including taxi or car rental costs associated with U.S. airports and regional destinations. It is not a mathematical or rigorous estimate, but an average transfer cost based on information available from associations and trade groups, airports, transit authorities, and governments.
Flying Excursion Time	16 hours	A mariner that would fly/lodge in order to attend a training course or school would incur an opportunity cost of flying. We assume the total air excursion time of 16 hours, equivalent to two days of travel.
Incidentals and Meals (per diem) ...	$64.57	Obtained from the Composite of General Services Administration's domestic per diem rates for meals/incidentals (*https://www.gsa.gov/travel/plan-book/per-diem-rates*) in training site and REC cities for January 2018. Taxes ARE included in the M&IE rate per FAQ #12 *https://www.gsa.gov/travel/plan-book/per-diem-rates/frequently-asked-questions-per-diem#12.*
Lodging (per night)	$142.16	Obtained from the Composite of General Services Administration's domestic per diem rates for lodging (*https://www.gsa.gov/travel/plan-book/per-diem-rates*) training site, and REC cities for January 2018. Taxes are not automatically included, so lodging taxes and state sales taxes were added to the lodging per diem.

Table 8, ''MMC Costs for Mariners,'' shows how the above unit costs for travel and tuition contribute to the total average cost per mariner. The average cost of $8,957.93 is for each mariner expected to obtain an original MMC.

[28] See 46 CFR 13.120 Renewal of tankerman endorsement.

Tuition costs and travel costs do not apply for renewal if a mariner served at least 90 days of service during the preceding 5 years.[28] If a mariner cannot fulfill that service requirement, we assume that they turnover and must complete the requirements for an original MMC. The Coast Guard estimates the average travel cost for a mariner that commutes to approved training is about $8,899.05. The average travel cost for a mariner that drives and stays overnight for approved training is about $8,132.31. Finally, we estimate the average travel cost for a mariner that flies and stays overnight for approved training to be about $9,228.15. This cost analysis uses an average because the distribution of travel is constant year to year.

TABLE 8—MMC COSTS FOR MARINERS

Category	Derivation	Amount	Training cost by travel mode		
			Commuting	Drive/Lodge	Fly/Lodge
Tuition	Average price of $731.31 for Basic Firefighting, and $985.62 for Dangerous Liquids.	$1,716.93	$1,716.93	$1,716.93	$1,716.93
MMC Fees	$95 evaluation fee $45 issuance fee	140.00	140.00	140.00	140.00
Security Screening Fee	$125.25	125.25	125.25	125.25	125.25
Round-trip Airfare	346.00	346.00	NA	NA	346.00
Round-trip Airport transfer	61.28	61.28	NA	NA	61.28
Lodging	142.16 per lodging night × 9 lodging nights.	1,279.45	NA	1,279.45	1,279.45
Commuting Meals & Incidental Expenses	$48.43 per diem × 9 training days (equivalent to 75% of full per diem).	435.86	435.86	NA	NA
Non-Commuting Meals & Incidental Expenses	$64.57 per diem × (7 training days) + $48.43 × (4 first and last days of travel 75% of total).	645.71	NA	645.71	645.71
Commuting Motor Vehicle Costs	100-mile commute × $0.58 per mile × 9 training days.	522.00	522.00	NA	NA
Non-Commuting Motor Vehicle Costs	100-mile round-trip × $0.58 per mile	58.00	NA	58.00	NA
Training Time (Opportunity Cost)	65 hrs. training × loaded hourly wage	3,942.95	3,942.95	3,942.95	3,942.95
Commuting Driving Time (Opportunity Cost)	(100-mile round trip ÷ 27 mph commuting speed) × loaded hourly wage × 9 days.	2,016.05	2,016.05	NA	NA
One Non-Commuting Driving Time (Opportunity Cost)	(100-mile round trip ÷ 27 mph commuting speed) × loaded hourly wage.	224.01	NA	224.01	NA
One Flying Time (Opportunity Cost)	16 hours × loaded hourly wage	970.57	NA	NA	970.57
Total Cost per Mariner			8,899.05	8,132.31	9,228.15

We estimate the cost to individuals to generate a present-value discounted cost savings of about $265,559,822 over a 10-year period of analysis, in 2018 dollars using a 7-percent discount rate. We estimate annualized cost savings to be about $37,809,744, using a 7-percent discount rate. In table 9, we show how the individual costs apply to the affected population, reflected in the number of original MMCs and renewals, to generate the total cost savings.

TABLE 9—ESTIMATED COST SAVINGS TO INDIVIDUALS

Calendar year	Original MMCs	Total cost of original MMC	Renewals	Renewal fee + security screening	Total annual cost of new MMCs	Total annual cost of renewals	Grand total annual cost	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
2018	506								
2019	2,519								
2020	4,993	$8,958			$44,726,583		$44,726,583	$41,800,544	$43,423,867
2021	4,725	8,958			42,327,834		42,327,834	36,970,769	39,898,043
2022	5,204	8,958			46,615,639		46,615,639	38,052,248	42,659,914
2023	3,756	8,958	105	$220	33,649,426	$23,066	33,672,491	25,688,582	29,917,572
2024	3,756	8,958	521	220	33,649,426	114,814	33,764,240	24,073,436	29,125,330
2025	3,756	8,958	1,033	220	33,649,426	227,602	33,877,028	22,573,694	28,371,477
2026	3,756	8,958	978	220	33,649,426	215,396	33,864,821	21,089,309	27,535,199
2027	3,756	8,958	1,077	220	33,649,426	237,215	33,886,641	19,722,333	26,750,427
2028	3,756	8,958	777	220	33,649,426	171,233	33,820,659	18,396,198	25,920,719
2029	3,756	8,958	777	220	33,649,426	171,233	33,820,659	17,192,708	25,165,747
Total							370,376,595	265,559,822	318,768,294
Annualized								37,809,744	37,369,369

Note: Totals may not sum due to independent rounding; we do not round the turnover rate in our calculations, which carries throughout the table.

Cost Incurred To Prepare Letter of Designation

While the use of an LOD saves the individual approved training costs, the actual letter of designation still takes time to prepare. Using the time estimate from the existing collection of information for PICs, we assume the preparation of a letter takes approximately 10 minutes at a loaded hourly wage of $53.39 for a cost of about $8.92.[29] Over a 10-year period of analysis, we estimate the total discounted cost of writing LODs to be about $263,603 in 2018 dollars, using a

[28] See 46 CFR 13.120 Renewal of tankerman endorsement.

[29] From OMB Control Number 1625–0072 (ICR 201803–1625–007) − 0.167 hours equals approximately 10 minutes from Table 12.3 in Appendix A of ICR 201803–1625–007 (OMB Control Number 1625–0072) last updated in 2018. $34.86 is the mean hourly wage estimate from the 2018 National Occupation Employment and Wage Statistics for Compliance Officers (13–1041) *https://www.bls.gov/oes/2018/may/oes131041.htm.* The loaded wage factor of ($33.11/$21.62) is obtained by dividing the total compensation by wages and salaries for full-time transportation workers. These are annual averages of quarterly data series CMU2010000520610D and CMU2020000520610D respectively, obtained from BLS Employer Cost for Employee Compensation (*https://www.bls.gov/data/*).

7 percent discount rate. We estimate the annualized cost to be about $37,531, using a 7 percent discount rate.

annualized cost to be about $37,531, using a 7 percent discount rate.

TABLE 10—ESTIMATED COSTS INCURRED TO PREPARE LETTER OF DESIGNATION

Year	Individuals needing a new LOD	Cost of preparing LOD per Mariner	Total annual cost of preparing LOD	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
1	4,993	$8.92	$44,515	$41,603	$43,218
2	4,725	8.92	42,127	36,796	39,709
3	5,204	8.92	46,395	37,872	42,458
4	3,756	8.92	33,490	25,549	29,756
5	3,756	8.92	33,490	23,878	28,889
6	3,756	8.92	33,490	22,316	28,047
7	3,756	8.92	33,490	20,856	27,231
8	3,756	8.92	33,490	19,492	26,437
9	3,756	8.92	33,490	18,216	25,667
10	3,756	8.92	33,490	17,025	24,920
Total			367,468	263,603	316,333
Annualized				37,531	37,084

Note: Totals may not sum due to independent rounding; we do not round the turnover rate in our calculations, which carries throughout the table.

Cost Savings to Government

Without this deregulatory action, the Coast Guard would need to evaluate the MMC applications that would be submitted if an MMC with a Tankerman PIC endorsement were still required to serve as a PIC for fuel oil transfers. The avoided cost per MMC application is 55 minutes of review by a GS–8 employee for an avoided cost of about $44.92. As shown in table 11, over a 10-year period of analysis, we estimate the Coast Guard would save a discounted amount of about $1,471,506 in 2018 dollars, using a 7 percent discount rate. We estimate the annualized savings amount to be about $209,509, using a 7 percent discount rate.

TABLE 11—ESTIMATED COST SAVINGS TO COAST GUARD OF THE FINAL RULE

Effective year	Original MMC applications	Cost of reviewing original MMC	Renewals	Cost of reviewing renewed MMC	Grand total annual cost	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
1	4,993	$44.92			$224,267	$209,595	$217,735
2	4,725	44.92			212,239	185,378	200,056
3	5,204	44.92			233,739	190,801	213,904
4	3,756	44.92	105	44.92	173,428	132,307	154,089
5	3,756	44.92	521	44.92	192,139	136,992	165,741
6	3,756	44.92	1,033	44.92	215,140	143,357	180,177
7	3,756	44.92	978	44.92	212,651	132,428	172,905
8	3,756	44.92	1,077	44.92	217,101	126,355	171,381
9	3,756	44.92	777	44.92	203,645	110,769	156,077
10	3,756	44.92	777	44.92	203,645	103,523	151,531
Total					2,087,993	1,471,506	1,783,594
Annualized						209,509	209,092

Note: Totals may not sum due to independent rounding; we do not round the turnover rate in our calculations, which carries throughout the table.

Net Cost Savings

Using a perpetual period of analysis, the Coast Guard estimates the total annualized cost savings of the final rule to be $26,323,316 in 2016 dollars, using a 7 percent discount rate and discounted back to 2016 assuming implementation begins in 2020. The total cost savings is the sum of the cost savings to individuals no longer obtaining MMCs, shown in table 9, and the time cost savings to the Coast Guard, shown in table 11, of no longer reviewing MMCs. Net cost savings are the total cost savings minus the costs incurred, shown in table 12. We estimate the net cost savings of this final rule over a 10-year period of analysis to be about $266,767,725 in 2018 dollars, using a 7 percent discount rate.

TABLE 12—ESTIMATED NET COST SAVINGS OF THE FINAL RULE

	Cost savings	Costs incurred	Net cost savings	Annualized cost savings
Grand Total	$372,464,588	$367,468	$372,097,120	

TABLE 12—ESTIMATED NET COST SAVINGS OF THE FINAL RULE—Continued

	Cost savings	Costs incurred	Net cost savings	Annualized cost savings
Discounted, 7%	267,031,327	263,603	266,767,725	$37,981,722
Discounted, 3%	320,551,888	316,333	320,235,556	37,541,376

Alternatives

We considered three alternatives in this final rule, including the preferred alternative. The first alternative is to let the policy letter expire and continue to require formal training for Tankerman-PIC for any fuel oil transfer. The second alternative is to continue to issue limited endorsement MMCs with Tankerman-PIC Restricted to Fuel Oil Transfers on Towing Vessels. The third, and preferred, alternative is extend use of an LOD to qualify as a PIC for fuel oil transfers to inspected vessels.

(1) MMC with officer or Tankerman-PIC endorsement (No Limited Endorsement).

Continue to require inspected vessels with a fuel oil capacity of 250 barrels or more—or that obtain fuel oil from a vessel with a fuel oil capacity of 250 barrels or more—to have an individual holding an MMC with either an officer or Tankerman-PIC endorsement designated as the PIC of any fuel oil transfer. Under this alternative, any designated PIC of a fuel oil transfer would be required to hold an MMC with an officer or Tankerman-PIC endorsement, without a limited endorsement for fuel oil transfers.

The Coast Guard rejected this alternative because it does not generate more benefits than the preferred alternative and there are no cost savings associated with it and it would not meet the Coast Guard's goal of reducing regulations under Executive Order 13771. Individuals would still bear the cost of obtaining an MMC, and after a vessel receives its COI, individuals previously qualified as PIC through the LOD options would not be able to be designated as a PIC until they obtain their MMC.

(2) Continue to Issue Limited Endorsement MMCs with Tankerman-PIC Restricted to Fuel Oil Transfers on Towing Vessels.

Under this alternative the Coast Guard would continue to utilize the CG–MMC Policy Letter 01–17 to issue MMC endorsements for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels. Under this continued action alternative, the existing policy letter would continue to provide a means for individuals on towing vessels previously designated as PIC of a fuel oil transfer using an LOD to be issued a limited endorsement Tankerman-PIC restricted to Fuel Transfers.

Although one commenter on the NPRM requested that the limited endorsement be continued in addition to the use of the LOD, the Coast Guard rejected this alternative because while it achieves similar benefits as the preferred alternative, it provides neither a full solution nor an adequate long-term alternative for designating the PIC of a fuel oil transfer—and it is more costly than the preferred alternative. The policy letter only applies to one industry segment, and individuals who obtain an MMC according to the policy letter would still incur the cost of renewing their credential every 5 years.

(3) Preferred Alternative—new regulatory action allowing use of LODs for inspected vessels.

Under this alternative, the Coast Guard would provide the option for inspected vessels to designate the PIC of a fuel oil transfer utilizing an LOD. Under a new regulatory action, the Coast Guard would provide flexibility to all inspected vessels in how they designate the PIC of a fuel oil transfer. This is the preferred alternative because it relieves a regulatory burden for individuals who would have to obtain and renew a credential while also providing flexibility to industries—and it tends to provide the benefit of vessel specific training.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. We received no comments on the threshold analysis of the proposed rule, therefore we adopt the preliminary analysis as final.

Our analysis of the impacts on small entities from the NPRM has not changed; we present this analysis for the final rule below.

In lieu of current revenue figures that may be distorted by ongoing inspections, for this analysis we use the small entity impact analysis of the 2016 Subchapter M rule, which we assume will be closely representative of revenues after the inspection period is over. The 2016 rule's small entity impact analysis used a sample of 304 vessels from the initially estimated population of 5,509.[30] Of the 304 vessels, about 59 percent were owned or operated by a small entity. We assume the same number of small entities would be impacted going forward but will know better once inspections are completed and all fleets resume active status. As this is a deregulatory action, most of the impact is cost savings to individuals, who do not qualify as small entities. The only impact to small entities is the cost imposed to industry as the time cost of preparing the LOD.

The Coast Guard found the average annual cost to be $75.91 based on the known fleet sizes of all towing vessel entities. For this analysis, we make the most conservative assumption that entities would need to prepare LODs for their entire fleet every year and compare that to the revenue of the lowest earning fleet.

The average annual unit cost takes the number of vessels in a fleet—multiplied by the cost of preparing a letter, $8.92, and multiplied by 2—to account for each of the two PICs needed per vessel. This average varies by the number of vessels in an entity's fleet, see the distribution below. Note that the number of vessels in a fleet does not correlate with company size; a small business may have a large fleet or a large business may have a small fleet. On average, the cost incurred per entity is $75.91, which is on average 0.0152 percent of total annual revenues.[31]

[30] See 81 FR 40003, June 20, 2016.

[31] While fleet size is known for all 1,295 entities covering the entire affected population of vessels, revenues are known only for a sample of 183 vessels of the original 5,509 vessels, data from the original FRFA of Inspection of Towing Vessels final rule (81 FR 40003). In Table 14, ''Average cost'' is based on the entire population of entities for which the total annual revenues are known, ''Average Cost as a % of Total revenue'' is based only on entities for whom revenue is known.

TABLE 13—ESTIMATED AVERAGE COST OF THE FINAL RULE ON SMALL ENTITIES BY FLEET SIZE

Fleet size category	Description	Number of entities	Average cost	Average cost as % of total revenue
Small_1	Entity with only one vessel	611	$17.83	0.0011
Small_2–5	Entity with 2 to 5 vessels	571	52.25	0.0037
Medium	Entity with 6 to 25 vessels	179	194.05	0.0292
Large	Entity with > 25 vessels	32	873.17	0.0072
Average	All fleet sizes		75.91	0.0152

In the most conservative case, for a medium-sized fleet owned by the entity with the lowest revenue amount in the sample—which would have the highest possible cost as percentage of total revenues for the affected population—the cost imposed by this rule is still less than 1 percent of total revenues. In this conservative example, the entity's estimated annual cost would be approximately $321 for a fleet of 18 vessels, 0.76 percent of their $42,000 annual revenue amount.[32] On average, the cost incurred is less than a quarter of one percent of revenues.

TABLE 14—DISTRIBUTION OF REVENUE IMPACTS ON SMALL ENTITIES

Percent revenue impact	Average annual impact	Small entities with known revenue	Percentage of small entities with known revenue (%)
<1%	$75.91	183	100
1–3%	75.91	0	0
>3%	75.91	0	0

Since the most conservative case shows that the impact of this rule would be less than 1 percent of total annual revenues, we assume that the impact will be less than 1 percent of total annual revenues for 100 percent of the small entities in our sample size. Therefore, 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.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. Collection of Information

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires the U.S. Coast Guard to consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3506(c)(1)(B)(iii)(V) and 5 CFR 1320.8(b)(3)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The collection of information under this final rule falls under the same collection of information already required for letters of designation described in OMB Control Number 1625–0072. This final rule does not change the content of responses, nor the estimated burden of each response, but does increase the number of annual respondents and responses from 190 to 3,756.

As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Waste Management Plans, Refuse Discharge Logs, and Letters of Designation [33] for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping.

OMB Control Number: 1625–0072

Summary of the Collection of Information: The Letter of Designation, which is issued by the operator or agent of a vessel, designates the holder as the PIC for the transfer of fuel oil and documents that the holder has received sufficient formal instruction from the operator or agent of the vessel to meet the requirements of 33 CFR 155.715. As amended by this rule, § 155.710(e) will now permit LODs to be used on inspected vessels in addition to uninspected vessels.

Need for Information: This information is needed to ensure that: (1) Certain U.S. vessels develop and maintain a waste plan; (2) certain U.S. vessels maintain refuse discharge records; (3) certain individuals that act

[32] The value of $42,000 comes from the original FRFA of 81 FR 40003, June 20, 2016.

[33] As stated in the Discussion of the Rule section, this rule is amending 33 CFR 155.715 to make it clear that the letter that has been referred to as both a ''Letter of Instruction'' and a ''Letter of Designation'' should consistently be called a ''Letter of Designation.'' We are amending the title of this collection of information to reflect that change.

as fuel oil transfer PIC receive an LOD for both vessel safety and prevention of pollution; and (4) certain Great Lakes vessels conduct dry cargo residue recordkeeping.

Use of Information: To ensure that fuel oil transfer competency standards are met, all PICs on uninspected or inspected vessels must carry a Letter of Designation if they do not hold an MMC with either an officer endorsement or a Tankerman-PIC endorsement.

Description of Respondents: Compliance officers for entities conducting transfers of fuel oil and needing to designate a PIC of such transfers.

Number of Respondents: The currently OMB-approved number of respondents is 190, we are requesting an increase of 3,566 respondents for a total of 3,756. The reason for the increase is the number of PICs who choose the LOD option, or 11,540 PICs multiplied by the attrition rate of 0.3255, or PICs who leave the industry over a given period of time.

Burden of Response: 0.167 hours per response.

Estimate of Total Annual Burden: The currently OMB-approved burden hours is 32, we are requesting an increase of 595 hours (11,540 PICs × 0.3255 × 0.167 hours, the time it takes for a PIC to create a letter of instruction) for a total of 627 hours. The reason for the increase is due to the increase in the number of PICs who choose the LOD option.

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

We received no comments on this collection of information, so we are updating the population numbers as necessary and are adopting the collection of information from the NPRM as final.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000). This rule, as promulgated under 46 U.S.C. 3306 and 3703, concerns personnel qualifications because it will amend requirements for who may serve as the PIC of fuel oil transfers on inspected vessels. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards and Incorporation by Reference

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble. This rule is categorically excluded under paragraph L56 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L56 pertains to the training, qualifying, licensing, and disciplining of maritime personnel. This rule involves letters of designation to assign PICs of fuel oil transfers on inspected vessels.

List of Subjects in 33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting, and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 1. The authority citation for part 155 is revised to read as follows:

Authority: 3 U.S.C. 301 through 303; 33 U.S.C. 1321(j), 1903(b), 2735; 46 U.S.C 3306, 3703, 70011, 70034; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 155.1020 also issued under section 316 of Pub. L. 114–120. Section 155.480 also issued under section 4110(b) of Pub. L. 101–380.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153

■ 2. Amend § 155.710 as follows:
■ a. In paragraph (e) introductory text, remove the word ''shall'' and add in its place the word ''must'';
■ b. Revise paragraph (e)(1);
■ c. Remove paragraph (e)(2);
■ d. Redesignate paragraphs (e)(3) and (4) as paragraphs (e)(2) and (3), respectively; and
■ e. In newly redesignated paragraph (e)(2), remove the text ''or (2)''.

The revision reads as follows:

§ 155.710 Qualifications of person in charge.

* * * * *

(e) * * *

(1) On each inspected vessel required by 46 CFR chapter I to have an officer aboard, and on each uninspected vessel, either:

(i) Holds a valid merchant mariner credential issued under 46 CFR chapter I, subchapter B, with an endorsement as master, mate, pilot, engineer, or operator aboard that vessel, or holds a valid merchant mariner credential endorsed as Tankerman-PIC; or

(ii) Carries a letter satisfying the requirements of § 155.715 and designating him or her as a PIC, unless equivalent evidence is immediately available aboard the vessel or at his or her place of employment.

* * * * *

§ 155.715 [Amended]

■ 3. In § 155.715, remove the text ''letter of instruction required in § 155.710(e)(2)'' and add in its place the text ''letter referenced in § 155.710(e)(1)''.

Dated: May 21, 2020.

R.V. Timme,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2020–11366 Filed 5–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ97

Informed Consent and Advance Directives

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulation regarding informed consent and advance directives. We amend the regulation by reorganizing it and amending language where necessary to enhance clarity. In addition, we amend the regulation to facilitate the informed consent process, the ability to communicate with patients or surrogates through available modalities of communication, and the execution and witness requirements for a VA Advance Directive.

DATES:

Effective date: This final rule is effective May 27, 2020.

Comment date: Comments must be received by VA on or before July 27, 2020.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. 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–AQ97—Informed Consent and Advance Directives.'' 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 (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lucinda Potter, MSW, LSW, Ethics Policy Consultant, National Center for Ethics in Health Care (10E1E), Veterans Health Administration, 810 Vermont Ave. NW, Washington, DC 20420; 484–678–5150, *lucinda.potter@va.gov.* (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 7331 of title 38, United States Code (U.S.C.), requires, in relevant part, that the Secretary of Veterans Affairs, upon the recommendation of the Under Secretary for Health, prescribe regulations to ensure, to the maximum extent practicable, that all VA patient care be carried out only with the full and informed consent of the patient, or in appropriate cases, a representative thereof. Based on VA's interpretation of this statute and our mandate in 38 U.S.C. 7301(b) to provide a complete medical and hospital service, we recognize that patients with decision-making capacity have the right to state their treatment preferences in a VA or other valid advance directive. VA's use and recognition of advance directives is also consistent with practice in the health care industry at large; for instance, a condition of participation in the Medicare program requires providers to agree to abide by the requirements of the Patient Self-Determination Act of 1990 (codified at 42 U.S.C. 1395cc(f)), which, among other things, requires participating providers to inform patients of their rights under state law to indicate treatment preferences, including the right to accept or refuse medical or surgical treatment, in an advance directive.

VA regulations at 38 CFR 17.32 establish standards for obtaining informed consent from a patient for a medical treatment or a diagnostic or therapeutic procedure and standards for advance care planning; that is, the process by which a patient documents in an advance directive his or her future treatment preferences (encompassing medical, surgical, and mental health care) to be relied on in the event the patient loses the capacity to make health care decisions. We revise this section and publish it as an interim final rule to ensure that informed consent procedural and process changes are in

place immediately to address the urgent and emergent clinical care needs of patients related to delivery of health care services and for future health care decisions during the SARS-CoV–2 virus outbreak and the disease it causes named the ''Coronavirus Disease 2019'' (COVID–19) which has been declared a national emergency. The changes to current informed consent procedures and requirements, as described herein, are needed for the reasons explained, but the current national emergency has made it particularly vital that they be implemented immediately to deal with COVID-related treatment setting challenges (to include those arising from VA's announced contingent (formerly ''crisis'') standards of care during the COVID national emergency, VA's recognition of scarce resources during this emergency requiring changes to resources allocations, to include staffing decisions, changes in treatment locations, etc.), greater use of telehealth services, and CDC guidance (to include social distancing requirements and separation of infected patients from other patients) issued for this highly infectious disease crisis. This is addressed in greater detail under the Administrative Procedures Act section, where we set forth the good cause reasons supporting this approach.

As discussed in detail below, we amend that rule by reorganizing it and amending language where necessary to enhance clarity. We amend the definition of practitioner to expand the types of health care professionals authorized to obtain informed consent from a patient and define the scope of information that must be provided as part of the informed consent discussion. We establish the type of documentation required both when a patient consents to treatments and procedures that are low risk and within broadly-accepted standards of medical practice and to those necessitating signature consent. We expand the approved communication modalities that may be used by VA when an in-person discussion with a patient or surrogate regarding a proposed treatment or procedure is impracticable. We remove the special process related to consent for unusual or extremely hazardous treatments or procedures (long interpreted in regulation as including those that may result in irreversible brain damage or sterilization) as VA no longer performs such treatments or procedures. We amend the definition of advance directive to include two other types that VA recognizes: The Department of Defense Advance Medical Directive and a Mental Health (or Psychiatric) Advance Directive. We amend the witness requirement for advance directives to allow family members who are VA employees to serve as witness to the signing of a VA Advance Directive (if not otherwise precluded from serving as witness under the regulation), and remove restrictions on certain other VA employees serving as witness to the signing of a VA Advance Directive. Finally, we add a mechanism to allow a patient who, due to a physical impairment, is unable to execute a signature on a signature consent form to sign with an ''X'', a thumbprint, or a stamp on the form. Signature by use of an ''X'', thumbprint, or stamp is also available to a patient who, because of a physical impairment, cannot sign a VA Advance Directive and to a third party who is signing the directive at the direction and in the presence of the patient.

The title to prior § 17.32 is ''Informed consent and advance care planning.'' We change ''advance care planning'' to ''advance directives'' as we believe this term is more commonly used and understood by the public. These and other changes are discussed below in greater detail.

Definitions

We begin by amending the definitions found in paragraph (a). Former paragraph (a) defined three types of advance directive recognized by VA: a VA Living Will; a VA Durable Power of Attorney for Health Care; and State-Authorized Advance Directives. We amend the definition of VA Living Will to clarify the purpose of a living will, which is to document the personal preferences of an individual regarding future treatment options. We change the term from ''VA Living Will'' to ''Living Will'' to clarify that the definition is applicable to an instrument serving that purpose, regardless of whether the document is a VA form or not. For a similar reason we change the term ''VA Durable Power of Attorney for Health Care'' to ''Durable Power of Attorney for Health Care.'' Durable Power of Attorney for Health Care is defined as a type of advance directive in which an individual designates another person as a health care agent to make health care decisions on behalf of the individual.

VA believes that the best interests of veterans who have either a Mental Health Advance Directive or a DoD Advance Medical Directive are served by VA formally recognizing these types of advance care planning instruments. We therefore add a Mental Health (or Psychiatric) Advance Directive to the list of advance directives recognized by VA. It is executed by patients whose future decision-making capacity is at risk due to mental illness, and it allows them to indicate preferences about their future mental health care. We likewise add the Department of Defense (DoD) Advance Medical Directive to the list of advance directives recognized by VA. This addition gives equal legal recognition to DoD-authorized advance directives executed for members of the armed services or military dependents under 10 U.S.C. 1044C.

We revise material in former paragraph (h)(1) to formulate a definition for a VA advance directive, which is one example within the broader category of advance directives. We specify that a VA advance directive is completed on a form that is specified by VA and can be used to designate a health care agent and to document treatment preferences for medical care, including mental health care. This language combines and condenses language found in former paragraph (a). VA believes that the amendment improves consistency by incorporating all of the relevant definitions in the definitions section rather than interspersing them throughout the section.

We make minor non-substantive changes to the definitions of a State-authorized advance directive, close friend, legal guardian, and signature consent, to clarify the meaning of these terms.

Decision-making capacity is a key concept in both informed consents for clinical treatments and procedures and advance directives. We previously defined decision-making capacity to mean the ability to understand and appreciate the nature and consequence of health care decisions. We amend the definition of decision-making capacity to also state that it includes the ability to formulate a judgment and communicate a clear decision concerning clinical treatments and procedures. We believe it is appropriate to include this clarification in the definition of decision-making capacity, because each of these elements is evaluated by a practitioner when determining whether a patient has decision-making capacity.

The definition of health care agent in former paragraph (a) is amended to clarify the powers and duties of a health care agent. The amended language states that a health care agent is the individual named by the patient in a durable power of attorney for health care to make health care decisions on the patient's behalf, including decisions regarding the use of life-sustaining treatments,

when the patient can no longer make such decisions.

For purposes of obtaining informed consent for medical treatment, we previously defined ''practitioner'' to include any physician, dentist, or health care professional who has been granted specific clinical privileges to perform the treatment or procedure, including medical and dental residents and other appropriately trained health care professionals designated by VA regardless of whether they have been granted clinical privileges. The responsibility to obtain informed consent for medical treatment from the patient was formerly assigned to the practitioner who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment in paragraph (c).

We amend the definition of ''practitioner'' to include other health care professionals whose scope of practice agreement or other formal delineation of job responsibility specifically permits them to obtain informed consent, and who are appropriately trained and authorized to perform the procedure or to provide the treatment for which consent is being obtained. This change is consistent with the team concept for delivery of health care currently adopted by VA. The rationale for this change is discussed in greater detail below, where we make changes to the general requirements for informed consent in former paragraph (c).

We add a definition of ''State-authorized portable orders.'' State-authorized portable orders (SAPO) are a specialized form or identifier (*e.g.,* Do Not Attempt Resuscitation (DNAR) bracelets or necklaces) authorized by state law or a state medical board or association, that translates a patient's preferences concerning specific life-sustaining treatment decisions into portable medical orders. While SAPO and advance directives each reflect patient goals and preferences for treatment, the two instruments differ. An advance directive is a legal instrument completed by a patient with decision-making capacity in which the patient expresses his or her preferences about future health care decisions in the event that the patient becomes unable to make these decisions. In some types of advance directives, the patient may appoint an individual to serve as the patient's health care agent charged with making health care decisions on the patient's behalf, when the patient can no longer make such decisions. SAPO, on the other hand, translate a patient's preferences with regard to specific life-sustaining treatment decisions into standing, actionable, and portable medical orders. Critically ill incoming patients with SAPOs need to have their SAPOs translated into and followed within the VA health care system, no matter where they are being treated by VA. This definition codifies in regulation what these are, helping the field to also understand the distinction between SAPOs and advance directives. While an advance directive is normally retained by the patient in a safe and secure place, SAPO are designed to be retained on or near the patient so that the orders are easily accessible to emergency medical personnel or other health care personnel and also travel with the patient whenever the patient is transported to or from a health care facility. SAPO have been authorized in the majority of states over the last decade to ensure that a patient's portable orders are easily recognizable, understood, and respected by emergency medical service providers and receiving health care facilities. Examples of SAPO forms include: Oregon's Physician Orders for Life-Sustaining Treatment (POLST); West Virginia's Physician Orders for Scope of Treatment (POST); New York's Medical Orders for Life Sustaining Treatment (MOLST); and out-of-hospital DNAR orders (*e.g.,* New York State's Out-of-Hospital Do Not Resuscitate (DNR) order form).

The term ''surrogate'' was previously defined to mean an individual, organization or other body authorized under § 17.32 to give informed consent on behalf of a patient who lacks decision-making capacity. We amend this definition to state that the term ''surrogate'' is an individual authorized under this section to make health care decisions on behalf of a patient who lacks decision-making capacity and includes a health care agent, legal guardian, next-of-kin, or close friend. This change is consistent with the categories of individuals identified in earlier VA regulation (§ 17.32(e)(1)-(4)) and hence with longstanding practice regarding whom VA recognizes as being authorized to make health care decisions on behalf of a patient who lacks decision-making capacity.

Informed Consent

Former paragraph (b) addressed the concept of informed consent for treatments and procedures as interpreted in VA, while paragraph (c) addressed the requirements for obtaining informed consent. Laypersons generally think of informed consent in the context of a patient agreeing to a medical procedure or course of treatment. However, the concept of informed consent also encompasses a patient's right to refuse, or withhold consent, for a medical procedure or course of treatment recommended by a health care provider. We therefore update language in paragraph (b) to reflect the established legal and ethical principle that patients receiving treatments and procedures within the VA health care system have the right to accept or refuse any medical treatment or procedure recommended to them. We also amend the former first sentence in paragraph (b) to state that except as otherwise provided in § 17.32, no medical treatment or procedure may be performed without the prior, voluntary informed consent of the patient.

Prior to this interim final rule, then-current paragraph (b) contained a long compound sentence discussing the requirement that a patient must have decision-making capacity to give informed consent and that informed consent is to be obtained from a surrogate if the patient lacks decision-making capacity. We separate these into paragraphs (b)(1) and (2) for ease of understanding. Paragraph (b) formerly referred to actions that can be taken by either the patient or surrogate. For purposes of clarity and to enhance readability, we amend these references to refer to only the patient. Paragraph (b)(2) specifically states that in the event the patient lacks decision-making capacity, the requirements of § 17.32 are applicable to consent for treatments or procedures obtained from the surrogate.

Paragraph (b) also stated that a practitioner may provide necessary medical care in emergency situations without the express consent of the patient or surrogate when immediate medical care is necessary to preserve life or prevent serious impairment of the health of the patient, the patient is unable to consent, and the practitioner determines that the patient has no surrogate or waiting to obtain consent of the surrogate would increase the hazard to life or health of the patient. We move this to new paragraph (c)(7).

General Requirements for Informed Consent

Former paragraph (c) delineated the general requirements for informed consent. The first sentence of this paragraph provided a definition of informed consent that we believe is both unclear and not entirely consistent with current VA practice. We amend this sentence to state that informed consent is the process by which a practitioner discloses to and discusses appropriate information with a patient so that the patient may make an informed, voluntary choice about whether to

accept the proposed diagnostic or therapeutic procedure or course of treatment. While the earlier iteration of the opening sentence of paragraph (c) focused on the act of providing consent, the revised language focuses on the process and the required actions of the practitioner in providing appropriate information so that the patient can make an informed, voluntary choice.

Medical practice evolves over time. VA believes that former § 17.32 is now inconsistent with contemporary standards for health care delivery and current VA practice. Paragraph (c) previously stated, in relevant part: ''The practitioner, who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment, must explain in language understandable to the patient or surrogate the nature of a proposed procedure or treatment; the expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done.'' We believe that the language ''who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment'' is outdated and does not reflect the requirements of modern clinical practice. For example, medical residents (post-graduate trainees) frequently order blood testing for human immunodeficiency virus (HIV), which requires the patient's informed consent. It would therefore be appropriate for consent to HIV testing to be obtained by residents. However, the old regulatory language does not clearly support this practice because residents do not ever have ''primary responsibility for the patient'' in that they function under the supervision of a more senior physician, nor would they typically ''perform the particular procedure,'' since blood tests are typically performed by phlebotomists who draw the blood, along with lab technicians who perform the test. As another example, a patient's primary care physician might send a patient to a consulting physician who, in turn, might send the patient for a specialized treatment or procedure (*e.g.,* a cardiac stress test). A different health care professional, such as a registered nurse or a trained technician, might administer the treatment or procedure. Under these circumstances it is appropriate for informed consent to be obtained by the consulting physician who referred the patient for the specialized treatment or procedure, because this individual would be most knowledgeable about it. However, the former regulatory language requires that informed consent be obtained by either the primary care physician or the registered nurse or technician, neither of whom would be in the best position to communicate with the patient about the risks and benefits of, and alternatives to, the recommended procedure or treatment.

Further, former paragraph (c) is based on an outdated model of health care in which a single practitioner works in isolation from others. Health care is now typically delivered by teams in which professionals from a variety of clinical disciplines work together to achieve the patient's health care goals. These interdisciplinary, inter-professional teams may include a range of medical specialists, such as physicians, nurses, pharmacists, nutritionists, dieticians, social workers, behavioral and mental health providers, and physician assistants.

Within VA, care delivery has transitioned to the team-based care model. Under this model, VA uses a Patient-Aligned Care Team (PACT) approach in which the primary care practitioner is responsible for overseeing but not necessarily directly providing all of the patient's primary health care. Thus, the components of the patient visit that to do not require the primary care practitioner's expertise are assigned to other qualified clinical or support staff so that every member can ''work to the top of his or her competence.'' Department of Veterans Affairs, Report of the Universal Services Task Force, April 2009, p. 28. VA believes the changes to the definition of practitioner will provide sufficient flexibility to allow VA to respond in a timely manner to current and future changes in the scope of practice for appropriately trained team-based health care professionals.

To make the language in § 17.32 consistent with contemporary standards of team-based health care delivery, including those set by external organizations such as The Joint Commission and the Centers for Medicare & Medicaid Services, VA deletes the portion of paragraph (c) that reads ''. . . who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment . . .'' and makes minor edits throughout § 17.32 to allow for the fact that components of the patient's care are appropriately shared by multiple members of a team.

Former § 17.32 did not specify a standard for the adequacy of information disclosure and could therefore be interpreted to obligate VA to disclose all known information about the nature of a proposed procedure or treatment; the expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done. Accordingly, VA amends the rule to more clearly describe VA's standard for adequate information disclosure by defining the term ''appropriate information'' in paragraph (c) as information that a reasonable person in the patient's situation would expect to receive in order to make an informed choice about whether or not to undergo the treatment or procedure. The term ''appropriate information'' also includes tests that yield information that is extremely sensitive or that may have a high risk of significant consequence (*e.g.,* physical, social, psychological, legal, or economic) that a reasonable person would want to know and consider as part of his or her consent decision. In these cases, the health record must specifically document that the patient or surrogate consented to the specific test.

Paragraph (c)(1) addresses the setting in which the informed consent discussion should take place. We state that the informed consent discussion should be conducted in person with the patient whenever practical. However, other forms of communication may also be appropriate depending on the circumstances. Former paragraph (c) did not reflect new modalities that facilitate communication between practitioners and patients or their surrogates. The widespread adoption of technology that allows for video conferencing and web-based communications now makes it possible for the informed consent process to be conducted in a way that is more convenient and flexible for patients. The informed consent process may reasonably take place over a period of time and involve educational activities and a number of discussions about the risks and benefits, as well as alternatives to a proposed treatment or procedure. To ensure that the regulation allows the flexibility enabled by these communication modalities, we amend paragraph (c)(1) to permit the informed consent discussion to be conducted either in person, by telephone, through video conference, or by other VA-approved electronic communication methods when it is impractical to conduct the discussion in person, or if preferred by the patient or surrogate.

Paragraphs (c)(2) through (4) address steps that must be taken by the practitioner during the informed consent discussion. Paragraph (c)(2) states that the practitioner must explain in language understandable to the

patient each of the following, as appropriate to the treatment or procedure in question: the nature of the proposed treatment or procedure; expected benefits; reasonably foreseeable associated risks; complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done. The language in paragraph (c) is substantively the same as in former paragraph (c), and in fact, the language in paragraphs (c)(2), (3) and (4) is essentially the same as in former paragraph (c). The only difference is that we remove references here to the surrogate, as obtaining informed consent from the surrogate is addressed in paragraph (e).

Paragraph (c)(5) states that the patient may withhold or revoke consent at any time, which is consistent with legal and ethical standards, and with paragraph (b), described above, which says VA patients have the right to refuse medical treatment. Consistent with the team-based care model, paragraph (c)(6) provides that the practitioner may delegate to other trained personnel responsibility for providing the clinical information needed for the patient to make a fully informed consent decision. However, the practitioner must personally verify with the patient that the patient has been appropriately informed and voluntarily consents to the treatment or procedure. We believe this requirement benefits both the patient and practitioner, providing the patient an opportunity to freely communicate with the practitioner and other team members regarding the proposed treatment or procedure, and allowing the practitioner to confirm that appropriate information was provided to the patient and that consent is voluntary.

As described above, paragraph (c)(7) states that express consent is not required when immediate medical care is necessary to preserve life or prevent serious impairment of the health of the patient, the patient is unable to consent, and the patient has no surrogate or waiting to obtain consent of the surrogate would increase the hazard to life or health of the patient.

Documentation of Informed Consent

Paragraph (d) focuses on documentation of informed consent. As noted in paragraph (d), the informed consent process must be appropriately documented in the health record. Content in former paragraph (d) could be interpreted to mean that VA practitioners must specifically document informed consent for every treatment or procedure a patient receives. However, this is impractical and inconsistent with modern standards for health care delivery. The type of documentation required should depend on the level of risk for the particular treatment or procedure. For instance, while most, if not all, health care organizations require specific documentation of informed consent for major procedures such as surgery or radiation therapy, we are aware of no organization in the country that requires specific documentation of informed consent for oxygen administration, blood pressure measurement, electrocardiograms, and other treatments and procedures that are low risk and within broadly-accepted standards of medical practice. The new language in this interim final rule therefore differentiates between documentation requirements for patient consent to treatments and procedures that are low risk and within broadly-accepted standards of medical practice and those that require signature consent because they pertain to treatments and procedures that require anesthesia or narcotic analgesia, are considered to produce significant discomfort to the patient, have a significant risk of complication or morbidity, or require injections of any substance into a joint space or body cavity. Paragraph (d)(1) provides that, for purposes of treatments and procedures that are low risk and within broadly-accepted standards of medical practice, a progress note describing the clinical encounter and the treatment plan suffices to document that informed consent was obtained. For tests that provide information that is extremely sensitive or that may have a high risk of significant consequences (*e.g.,* physical, social, psychological, legal or economic) that the patient might reasonably want to consider as part of their consent decision, the health record must specifically document that the patient or surrogate consented to the specific test.

The type of informed consent documentation required for a treatment or procedure is dependent on the level of risk for such procedure. Patient consent to treatments or procedures requiring signature consent, as discussed above, must be documented on a form prescribed by VA for that purpose that is signed by both the patient and practitioner, except as described in paragraph (d)(3). Paragraph (d)(2) lists the types of diagnostic and therapeutic treatments that continue to require signature consent. The content of paragraph (d)(2) is the same as that found in former paragraph (d)(1), with minor non-substantive edits. These changes (related to documentation) are consistent with longstanding VA policy and practice. The documentation requirement for consent to a treatment or procedure requiring signature consent is addressed in paragraph (d)(3).

Due to a drafting error, former paragraph (d)(2) combines a discussion of how to document signature consent when the patient or surrogate has a significant physical impairment and/or difficulty in executing a signature due to an underlying health condition or is unable to read and write, and the 60-day validity period for signature consent. Due to a missing line break, the numbering in the paragraph could be misinterpreted to mean that the requirement of ''valid for a period of 60 calendar-days'' applies only if a patient signs the consent for with an ''X.'' We move the former to paragraph (d)(3)(i) with revisions as noted below. We move the latter to paragraph (d)(3)(ii), with amendments. Former paragraph (d)(3) is redesignated paragraph (d)(3)(iii), with changes as discussed below.

Paragraph (d)(3)(i) focuses on how signature consent is to be documented when physical impairment prevents the execution of a signature on a VA-authorized consent form. As noted above, we move this content from former paragraph (d)(2). Paragraph (d)(2) stated that a patient or surrogate will sign with an ''X'' when the patient or surrogate has a debilitating illness or disability; that is, a significant physical impairment and/or difficulty in executing a signature due to an underlying health condition(s) or is unable to read and write. The placing of the ''X'' on the form must be witnessed by two adults. That earlier version of the regulation referred to actions that can be taken by either the patient or surrogate. We remove the clause ''and/or difficulty in executing a signature due to an underlying health condition(s)'' because we believe this is redundant, and the concept is adequately covered by the phrase ''physical impairment.'' Likewise, we remove the clause ''or is unable to read and write'' because an individual unable to read or write, but otherwise not physically impaired, may still be able to place some type of mark on the document that would serve the purpose of a signature, and VA believes it is burdensome to require the signature of two witnesses to the ''X'' mark. Former paragraph (d)(2) further stated that by signing, the witnesses are attesting only to the fact that they saw the patient or surrogate and the practitioner sign the form. The signed form is then filed in the patient's medical record. We remove the requirement that the witnesses attest

that they also saw the practitioner sign the form, as this is inconsistent with current VA practice and unnecessary. The overall purpose of the witness requirement is to confirm the validity of the patient's or surrogate's ''X'' mark on the form. This is accomplished by the witnesses documenting they witnessed the act of signing by the patient or surrogate.

Further, to allow greater flexibility to meet the needs of those with physical impairments, we allow either the placement of the ''X'' or the use of a thumbprint or stamp to meet the signature requirement in these cases. Finally, we state that a third party may also be designated to assist either the patient or the surrogate if physical impairment prevents signature by either. VA believes that obtaining signature consent is better facilitated if any third party, acting at the direction and in the presence of the patient or surrogate, performs this task.

Paragraph (d)(3)(ii) consists of that portion of former paragraph (d)(2) relating to the 60-day validity period of a properly executed VA-authorized consent form. Former paragraph (d)(2) stated that if there is a change in the patient's condition that might alter the diagnostic or therapeutic decision, the consent is automatically rescinded. We amend that sentence by removing the phrase ''consent is automatically rescinded'' and instead state that the practitioner must initiate a new informed consent process, and, if needed, complete a new signature consent form with the patient. We believe this will, consistent with current VA practice, ensure that the practitioner will further engage the patient in a discussion of treatment options whenever there is a change in clinical circumstances that might alter the diagnostic or therapeutic decision about upcoming or continuing treatment.

Paragraphs (d)(3)(iii) and (iv) address those instances in which signature consent is required, but it is not practicable to obtain the signature in person following the informed consent discussion. Former paragraph (d)(3) allowed for surrogates (who might not be available in person) to give signature consent over the telephone and/or by mail or facsimile, but it does not give this option to patients who may benefit from the same flexibility. For instance, patients may have limited mobility or live far from the VA facility, which in either case makes them unable to travel to the facility until shortly before the scheduled treatment or procedure. To ensure that patients as well as surrogates can conveniently participate in the informed consent process, the revised language in the interim final rule permits that process to be conducted with the use of current and anticipated communication modalities when the patient (or surrogate) and the practitioner are not able to meet in person prior to a treatment or procedure. Paragraph (d)(3)(iii) permits the signed informed consent form to be transmitted to VA not only by mail or facsimile but also by secure electronic mail or other VA-approved modalities. It then requires that the form be scanned into the record. This provision does not specify which modalities are VA-approved for this purpose, because VA believes this is better placed in policy which can more easily be amended to reflect evolving forms of communications technology.

Former § 17.32(d)(3) provided, in part, that a facsimile copy of a signed consent form is adequate to proceed with treatment, and also required the surrogate to agree to submit a signed consent form to the practitioner. Requiring both the facsimile copy and the hard copy is redundant and potentially confusing. We therefore delete the language in former paragraph (d)(3) requiring that, when a signed consent form is transmitted by facsimile, ''the surrogate must agree to submit a signed consent form to the practitioner.'' We also add to paragraph (d)(3)(iii) a requirement that a signed consent form submitted by mail, facsimile, by secure electronic mail, or other VA-approved modalities be scanned into the record. This obviates the need for VA to keep a hard copy. We also delete the specific reference to consent being obtained by telephone. We believe the other language in this paragraph establishing the conditions for use of the telephone in lieu of a signed consent form is sufficient.

As briefly alluded to above, we add the phrase ''following the informed consent discussion'' to paragraph (d)(3)(iii)'s treatment of circumstances where signature consent cannot be obtained in person. This language clarifies that a signed consent form submitted by mail, facsimile, transmitted by secure electronic mail, or other VA-approved modalities is not by itself sufficient to satisfy the consent requirement; rather, an informed consent discussion is a prerequisite to the validity of any signed informed consent form.

Receiving signed consent forms by mail, facsimile, secure electronic mail, or other VA-approved modalities may still, in some cases, cause undue delay. To provide VA, patients, and surrogates further flexibility, paragraph (d)(3)(iv) permits the informed consent conversation conducted by telephone or video conference to be audiotaped, videotaped, or witnessed by a second VA employee. In addition, it specifies that the practitioner must document the details of the conversation in the medical record. If someone other than the patient is giving consent, the name of the person giving consent and the authority of that person to act as surrogate must be adequately identified in the medical record. These actions, together, suffice to obviate the need for a signed consent form.

Obtaining Consent for Patients Who Lack Decision-Making Capacity

Former paragraph (e) addressed surrogate consent while paragraph (f) dealt with consent for patients without a surrogate. We combine former paragraphs (e) and (f) into a single paragraph (e). This change places into one paragraph how consent is to be obtained when a patient has been determined to lack decision-making capacity. Paragraph (e)(1) explains when consent is to be obtained from a surrogate decision maker and identifies who may serve as a surrogate decision maker in order of priority. Paragraph (e)(2) addresses the process for obtaining consent for a patient lacking decision-making capacity who has no such surrogate. We redesignate former paragraph (e) as paragraph (e)(1). Paragraph (e)(1) states that patients who are incapable of giving consent as a matter of law will be deemed to lack decision-making capacity for the purposes of this section. We delete the clause in former paragraph (e) specifying that these patients are either persons judicially declared to be incompetent or minors who are otherwise incapable of giving consent. We believe this language is redundant, since we already state in paragraph (e)(1) that patients who are incapable of giving consent as a matter of law will be deemed to lack decision-making capacity for purposes of § 17.32.

Consistent with former paragraph (e), paragraph (e)(1)(i) identifies the persons authorized to act as a surrogate to consent on behalf of a patient who lacks decision-making capacity and the order of priority for surrogates. The language in the interim final rule is unchanged from former paragraph (e) except we remove ''special guardian'' from the list. Because ''special'' guardians are appointed as an outcome of a legal process, they are also ''legal guardians.'' Including ''special guardian'' as a separate category of surrogate, however, suggests that there could be a special guardian who is not a legal guardian. To avoid this confusion, we remove the

designation of ''special guardian.'' While this is the only change to this content and is only technical in nature, VA takes this opportunity to invite public comment on whether VA should consider inclusion of emancipated minors among those listed as next-of-kin or with respect to any situations that might arise with respect to an emancipated minor (*e.g.,* a spouse who is an emancipated minor under the age of 18). Currently, next-of-kin must be 18 years of age or older. In addition, we note that VA makes no change to the order of hierarchy of surrogates. As is currently the case, a health care agent has, and would retain here, highest priority because this is the individual selected by the patient himself/herself and so best reflects the patient's wishes. Needed checks on the actions of a surrogate already exist in current regulation: A surrogate must make treatment decisions based on the known wishes of the patient, or in the absence thereof, based on the best interests of the patient. This standard would still apply and is addressed below, with respect to new paragraph (e)(1)(ii).

As noted, paragraph (e)(1)(i) identifies the persons authorized to act as a surrogate to consent on behalf of a patient who lacks decision-making capacity and the order of priority for surrogates. A patient with decision making capacity may select a surrogate and document that selection by designating a health care agent, and an alternate if desired, in an advance directive. VA practitioners engage patients in a discussion of the option of completing an advance directive and appointing a health care agent during goals of care conversations which occur as part of VA's delivery of quality health care to eligible veterans. In this way, potential disputes and associated uncertainty can be avoided regarding who the patient prefers to make health care decisions in the event of loss of capacity by having already memorialized that decision in an advance directive. We further note that if a patient with decision-making capacity has a change of mind regarding appointment of a health care agent, the patient may revoke the advance directive and designate another individual in a new advance directive. See discussion below of paragraph (g)(4) which addresses revocation of an advance directive. If the patient chooses to not appoint a health care agent and subsequently loses decision making capacity, VA identifies a surrogate decision maker utilizing the priority list found in paragraph (e)(1)(i). We add new paragraph (e)(1)(ii) to consist of a slight modification of language in former paragraph (e) describing the surrogate's role in the consent process. Former paragraph (e) states: ''the surrogate's decision must be based on his or her knowledge of what the patient would have wanted, *i.e.,* substituted judgment.'' The next sentence states: ''if unknown, the surrogate's decision must be based on the patient's best interest.'' In paragraph (e)(1)(ii), we retain these requirements but combine the two sentences into one.

Former paragraph (f)(1) explained the process for obtaining consent for a patient who lacks decision-making capacity where no surrogate is available. Former paragraph (f)(1) provided that the practitioner may request Regional Counsel assistance to obtain a special guardian for health care or follow the internal procedures in that paragraph. Former paragraph (f)(1) is redesignated as paragraph (e)(2)(i). The content remains the same with the two following exceptions: (1) The reference in former paragraph (f)(1) to ''Regional Counsel'' is changed in paragraph (e)(2)(i) to ''District Chief Counsel'' to reflect a change in title; and (2) the reference therein to a ''special guardian for health care'' is amended to refer to ''legal guardian'' for the reasons previously stated.

Former paragraph (f)(2) allowed practitioners to use a multi-disciplinary committee process for patients who lack decision-making capacity and have no surrogates, but it is very detailed and lengthy. We retain that content but bifurcate it for the sake of clarity. Paragraph (e)(2)(ii)(A) focuses on treatments and procedures that involve minimal risk, while paragraph (e)(2)(ii)(B) addresses treatments and procedures that require signature consent. The content of paragraphs (e)(2)(ii)(A) and (B) is substantively the same as former paragraph (f), with one exception. In paragraph (e)(2)(ii)(B) we now state that if the patient has valid standing orders regarding life-sustaining treatment, such as State Authorized Portable Orders, review by a multi-disciplinary committee appointed by the facility Director is not required for a decision to withhold or withdraw life-sustaining treatment. For such patients, the requirement to request the assistance of District Chief Counsel in obtaining a legal guardian for health care or to initiate the multi-disciplinary process is effectively superseded. This approach is consistent with VA's commitment to promoting patient-centered care and ensuring that veterans' values, goals, and treatment preferences are respected and reflected in the care they receive. Valid standing orders should be the basis for any patient's VA treatment plan.

Special Consent Situation

Former paragraph (g) addressed special consent situations where the patient is granted special additional procedural due process protections. We redesignate this paragraph as paragraph (f). The three ''special consent situations'' specifically addressed in former paragraph (g) are unusual or extremely hazardous treatments or procedures (*e.g.,* those that may result in irreversible brain damage or sterilization), administration of psychotropic medication to an involuntarily committed patient against his or her will, and proposed procedures or courses of treatment related to approved medical research.

We delete the provisions in former paragraph (g)(1) relating to unusual or extremely hazardous treatments or procedures. This paragraph was intended to provide enhanced protection against now archaic practices of forced sterilization and lobotomy, neither of which are performed by VA. As VA no longer performs the types of treatments or procedures contemplated in this paragraph, we believe continuing to include it in our informed consent rule is unnecessary and potentially misleading to the public. VA believes that the existing informed consent processes and procedures adequately protect patients undergoing other types of procedures that carry significant risk.

Former paragraph (g)(2) is redesignated as paragraph (f)(1). In paragraph (f)(1), we state that in involuntary commitment cases where the forced administration of medications is against the patient's will or the surrogate's non-consent, procedural protections identified therein must be provided. These protections were already set forth together in former § 17.32(g)(2), although here we set the elements out in separate paragraphs (f)(1)(i)–(iii) for ease of reading.

Former paragraph (g)(3), relating to the need for informed consent for a proposed course of treatment or procedure that is part of approved medical research, is redesignated as paragraph (f)(2). We also make non-substantive changes to the language to enhance clarity and readability.

Advance Directives

Former paragraph (h) is titled ''Advance health care planning'' and addresses issues related to the VA Advance Directive. This includes general principles, patient signature and witness requirements, revocation, and

instructions given by a patient in critical situations. We make several changes to this paragraph. We redesignate this paragraph as paragraph (g) and revise the paragraph header to ''Advance directives.'' We also make non-substantive changes to this paragraph for the purpose of clarity and substantive changes as noted in the following discussion.

The introductory text to former paragraph (h) is redesignated as paragraph (g)(1). Paragraph (h) previously stated that VA will follow the wishes of a patient expressed in an advance directive when the attending physician determines and documents in the patient's health record that the patient lacks decision-making capacity and is not expected to regain it. In redesignated paragraph (g)(1), we modify that language by inserting ''within a reasonable period of time'' after ''regain it''. VA believes the former language could be misinterpreted to mean that the practitioner should not rely on an advance directive unless the patient is never expected to regain decision-making capacity. The amended language addresses that potential misperception. We also add introductory language to redesignated paragraph (g)(1) to reflect that a patient's wishes are to be followed to the extent they are consistent with applicable Federal law, VA policy, and generally accepted standards of medical practice. This reflects current practice, but its codification serves to provide public notice of these practice limitations.

The introductory information in former paragraph (h) provided that an advance directive that is valid in one or more States under applicable State law will be recognized throughout the VA health care system. In redesignated paragraph (g)(1), VA modifies that language slightly for purposes of clarification. It provides that valid advance directives will be recognized throughout the VA health care system, with the exception of any components that are inconsistent with applicable Federal law, VA policy, or generally accepted standards of medical practice. This clarification is not a change in practice, as former § 17.32(h)(4) provided that clear instructions in an advance directive or instructions in critical situations will not be given effect if inconsistent with VA policy. Moreover, the terms of 38 CFR 17.38(b) require all VA care to be in accord with generally accepted standards of medical care. So, the language added to the introductory information just clarifies how, even if an advance directive is valid in a state, VA will not honor a provision therein that is inconsistent with applicable Federal law, policy, or generally accepted standards of medical practice. This is intended to help underscore that VA is a Federal health care system with its own rules governing valid advance directives. Without this clarification, paragraph (g) could be misinterpreted to mean that VA practitioners must, in honoring a patient's state-authorized advance directive, comply with that state's standards and procedures. Such an interpretation could be inconsistent with the Supremacy Clause of the U.S. Constitution. U.S. Const. art. VI, cl 2.

Former paragraph (h)(1) addresses signature and witness requirements for a VA Advance Directive. We redesignate this as paragraph (g)(2). A VA Advance Directive must be signed by the patient in the presence of two witnesses. This remains VA practice.

As stated, former § 17.32(h)(1) requires the patient to sign the form. It does not, however, provide an alternative means for signing if a physical impairment prevents the patient from signing the VA Advance Directive. We remedy this by using the same approach used in paragraph (d)(3)(i), related to signature consent forms. Specifically, in paragraph (g)(2) we allow such a patient to provide signature consent by placing an ''X'', thumbprint, or stamp on the form. In addition, we permit a patient to designate a third party to sign the directive at the direction of the patient and in the presence of the patient.

Under the old rule, neither witness may to the witness' knowledge be named in the patient's will, appointed as health care agent in the advance directive, or financially responsible for the patient's care. We now add language stating that neither witness may be the third party designated by the patient to sign at the patient's direction and in the patient's presence.

Former paragraph (h)(1) indicated that except for specific classes of employees that are listed in § 17.32, VA clinical employees are not permitted to serve as witness, with a few stated exceptions: VA employees of the Chaplain Service, Psychology Service, and Social Work Service may serve as witnesses. We remove, and do not include in paragraph (g)(2), the prior bar on these VA employees serving as witnesses, based on what the contemporary legal and ethics literature describes as an unnecessary burden to completion of advance directives. Although the originally-intended purpose of restricting who, among staff, may serve as a witness was meant to protect patients, as mentioned above, the current literature observes that there is no evidence that the restrictions fulfill these purposes. Rather, they make it difficult for patients, especially those who are socially isolated or homeless, to complete an advance directive. In addition, the witnesses to an advance directive play no substantive role; they are attesting only to the fact that they saw the patient sign the form. Given that many clinicians play a substantial role in guiding the care of veterans, the literature does not support disqualifying them from serving as witnesses; that is, performing this non-substantive attestation.

For the same reasons, it is illogical to allow social workers and psychologists involved in the patient's care to serve as witnesses but prohibit nurses and physicians from serving as witnesses if they are available to do so.

Finally, in addition to creating a barrier to completion of advance directives, witness restrictions can have the harmful consequence of providing narrow technical grounds for family members, who do not agree with a patient's stated substantive treatment wishes, to challenge the validity of the patient's directive (in toto). Such challenges undermine a patient's use of an advance directive as an exercise of the patient's personal autonomy. Thus, VA believes that our patients are best served by removing restrictions on which VA employees may serve as witnesses under this section.

Former paragraphs (h)(2) through (4) are redesignated as paragraphs (g)(3) through (5), respectively. The content related to instructions in critical situations essentially remain the same but for the changes reflected herein. In paragraph (g)(3), VA's goal is to honor the unambiguous verbal or non-verbal instructions of a patient with decision-making capacity in situations when they are critically ill and their loss of decision-making capacity is imminent—even if those instructions are different from preferences expressed earlier in an advance directive. The existence of a critical clinical situation does not diminish the right of a patient with decision-making capacity to accept or refuse treatments.

We modify the requirement related to documentation of a patient's instructions in a critical situation by co-signature, as co-signature is not a functionality in the electronic health record. Under previous rulemaking, the patient's instructions in critical situations must be expressed to at least two members of the health care team, the substance of these instructions recorded in a progress note in the patient's health record, and the note co-signed by at least two members of the

team who were present and who can attest to the wishes expressed by the patient. We now require when a patient provides instructions in critical situations, expressed to at least two members of the health care team, the substance of the patient's instructions and the names of at least two members of the health care team to whom they were expressed must be entered in the patient's electronic health record. Former paragraphs (h)(3) and (4) is unchanged and are redesignated as paragraphs (g)(4) and (5).

We also update the parenthetical information included at the end of § 17.32 that is related to information collection requirements to refer to the correct Office of Management and Budget (OMB) control number covering information collection related to advance care planning. OMB control number 2900–0583 expired in 2008, and the currently approved OMB control number related to this information collection is 2900–0556.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B), to publish this interim final rule without prior notice and the opportunity for public comment, and under 5 U.S.C. 553(d)(3), to dispense with the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).

Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The Secretary finds that it is impractical to delay issuance of this rule for the purpose of soliciting prior public comment because there is an immediate and pressing need for VA to respond to the current public health crisis and national emergency by ensuring (1) effective use of health care resources as part of the announced VA contingent/crisis standards of care, including identification of which practitioners may be allowed to obtain informed consent from patients or surrogates for clinical treatments and procedures and by providing alternative methods and modalities for doing so when having the informed consent discussion or obtaining consent in-person is not practicable; (2) use of facilitated processes and procedures by which to provide patients or their surrogates with adequate information during an informed consent discussion; (3) use of procedures and processes by which patients, their surrogates, or VA health care practitioners may effectively communicate and document informed consent for treatments and procedures through available electronic means; (4) recognition in regulation of State Authorized Portable Orders; and, (5) immediate implementation of changes to the advance care planning process (including amending signature and witness requirements for a VA advance directive) to remove barriers to veterans documenting treatment preferences in the event of a loss of decision making capacity.

Multiple provisions of this interim final rule directly support VA's response to the COVID–19 public health emergency, and improve our ability to provide timely quality health care to patients.

Changes to the definition of ''practitioner'' allows VA to shift health care resources as needed to meet requirements for obtaining informed consent as well as other patient needs. Adding regulatory recognition of SAPOs supports the health care needs of critically ill incoming patients with SAPOs in ensuring that the portable order is recognized and honored by VA. This definition assists VA health care providers in understanding the distinction between SAPOs and Advance Directives. VA believes recognizing SAPOs will prevent delays in translating these orders into VA orders so that they may be of-record and complied with.

This interim final rule revises multiple elements of the informed consent process and provides VA with flexibility to address the current public health emergency. In the absence of these revisions, VA cannot adequately respond to COVID–19-related issues related to informed consent because our regulation did not provide for waiver of certain regulatory requirements. Revising the general requirements for informed consent supports VA's response to COVID–19 under VA contingent/crisis standards of care where the patient needs to have all the appropriate information to make an informed consent decision for both non-COVID care and COVID care. As an example, some inpatients receiving care for other conditions need to understand the risk of getting inpatient care there amidst the current emergency such that it may be difficult to prevent possible transmission of the infection to non-infected patients. Changes to requirements related to the setting in which informed consent may be obtained supports providing treatment and evaluation to our many outpatients receiving medical services via telehealth. These patients cannot see their provider in person under the current public health restrictions. VA needs flexibility in obtaining informed consent through these new modalities. In addition, the need to place COVID–19 inpatients in separate wards and block certain staff from accessing patients in these areas prevents some practitioners and staff from having in-person discussions with inpatients. Flexibility is needed to adjust with a continually changing delivery of care system during a pandemic.

Allowing for delegation of some duties for providing information to patients related to informed consent gives VA necessary flexibility to delegate this responsibility in a manner aligned with the current standards of care and reallocation of resources.

Delineating documentation requirements to informed consent for low risk treatments and procedures supports VA contingent/crisis standards of care by easing documentation requirements for these procedures. These changes help VA address the need for flexibility in how signature consent for low risk procedures documented. Providing a mechanism for obtaining signature consent where the patient has a physical impairment supports VA contingent/crisis standards of care because many patients unable to sign signatures due to their critical condition. These changes help VA address need for flexibility during contingent/crisis standards of care and scarce resources allocation. Allowing for third-party assistance in documentation of signature consent provides VA with necessary flexibility during contingent/crisis standards of care and scarce resources allocation. This change removes a needless procedural obstacle that hinders VA's ability to obtain valid consent when time is of the essence. Third-party assistance is needed in many COVID–19 cases where the need for treatment urgent or emergent and the patient with decision making capacity is unable to physically place an ''X'' on the consent form.

Removing the mandatory rescission provision for informed consent in certain situations eliminates unnecessary evaluative steps where a change in condition is de minimis and will not affect outcomes and keeps the consent process active and up-to-date. Providing for other communication modalities for completing and documenting the signature consent requirement is necessary under VA contingent/crisis standards of care

where telehealth being used for many patients, including those with suspected COVID–19 as well as other non-COVID patients. Currently, the emergency compels compliance with social distance and separation guidance, making it impossible to comply with many current procedures and requirements. Revising documentation requirements where the informed consent discussion is not held face to face supports COVID–19 response needs under VA contingent/crisis standards of care where the phone or/telehealth is more practicable for the informed consent discussion with patients, including those at home with suspected COVID–19. VA could not waive regulatory requirements under the prior rulemaking, which potentially caused disruption and created obstacles to the informed consent process where providers and patients are more and more necessarily geographically separated and unable to meet in person.

Clarifying that VA cannot honor certain preferences in an advance directive supports VA standards of care in which health care teams must be able to act on patient's advance directive in real time but still be aware that we do not enforce provisions inconsistent with Federal law, VA policy, or generally accepted standards of medical practice. Revising the rule on how a physically incapacitated patient, or a patient unable to physically sign because of medical equipment in use, may sign an advance directive provides us needed flexibility, especially with respect to use of a designated third party. Removing restrictions on who may serve as witness to the signing of an advance directive allows us to better serve patients who are in isolation wards or areas that are off-limits to non-health care team members. Under the previous rule precious time was lost trying to locate suitable VA employees and then they find work arounds whereby the remote employee can witness the patient signing the form by being in the line of sight but at a safe distance.

Removing unnecessary documentation requirements related to patient instructions given in critical situations ensures that the patient's wishes and instructions can be acted upon promptly.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be both impracticable and contrary to the public interest, and is accordingly issuing this rule as an interim final rule. The Secretary will consider and address comments that are received within 60 days after the date that this interim final rule is published in the **Federal Register**, and address them in a subsequent **Federal Register** document announcing a final rule incorporating any changes made in response to the public comments.

The APA also requires a 30-day delayed effective date, except for ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d). For the reasons stated above, the Secretary finds that there is also good cause for this interim rule to be effective immediately upon publication. It is in the public interest for VA to immediately adopt the process changes noted above to provide for effective utilization of VA practitioners as it relates to the informed consent process during this period of increased demand for health care, to provide flexibility to utilize alternative modalities of communications during the COVID–19 National Emergency, and remove barriers to veterans documenting treatment preferences in an advance directive. By relieving these restrictions and barriers, and making necessary processes changes, the Secretary finds good cause to exempt this interim final rule from the APA's delayed effective date requirement.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) 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 collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This interim final rule will impose the following revised information collection requirements to an existing information collection approved by OMB under OMB Control Number 2900–0556. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this rulemaking and the information collection revisions to OMB for approval. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Information collection under OMB Control number 2900–0556 relates to collection of information related to patients documenting treatment preferences on an approved VA form. VA Form 10–0137, VA Advance Directive: Durable Power of Attorney for Health Care and Living Will, is the VA recognized legal document that permits VA patients to designate a health care agent and/or specify preferences for future health care. The VA Advance Directive is invoked if a patient becomes unable to make health care decisions for him or herself. This rulemaking revises the information collection only as it relates to restrictions on certain VA employees serving as witness to a patient executing VA Form 10–0137.

These restrictions are reflected in the form's instructions. We note that for clarity that consent for VA medical treatment by the patient or surrogate is not a collection of information as defined by the Paperwork Reduction Act.

Title 38 CFR 17.32(g) contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection or of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

We are also revising the information collection, in the case of a close friend designated by VA as a surrogate decision maker, to require the signed written statement for the record that describes that person's relationship to and familiarity with the patient in the definition of a close friend who may serve as a surrogate.

Comments on the revision of the collection of information contained in this interim final rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, 727 17th St NW, Washington, DC 20503. Comments should indicate that they are submitted in response to ''RIN 2900–AQ97.''

OMB will take action on the revision of the information collection contained in this rule between 30 and 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 publication. This does not affect the deadline for the public to comment on the interim rule.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of

the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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, such as permitting electronic submission of responses.

The collection of information contained in 38 CFR 17.32 is described immediately following this paragraph.

Title: Durable Power of Attorney for Health Care and Living Will, VA Advance Directive.

OMB control number 2900–0556 (amended).

Summary of collection of information: OMB Control number 2900–0556 relates to collection of information related to patients documenting treatment preferences on an approved VA form. VA Form 10–0137, VA Advance Directive: Durable Power of Attorney for Health Care and Living Will, is the VA recognized legal document that permits VA patients to designate a health care agent and/or specify preferences for future health care. The VA Advance Directive is invoked if a patient becomes unable to make health care decisions for him or herself. Former 38 CFR 17.32 stipulates that VA employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees (*e.g.,* Medical Administration Service, Voluntary Service or Environmental Management Service) may serve as witnesses. Other individuals employed by your VA facility may not sign as witnesses to the advance directive unless they are your family members. The interim final rule removes restrictions on VA employees signing as a witness to execution of a VA advance directive. Witness restrictions are reflected in the instructions found in the most recent version of VA Form 10–0137, and those restrictions will be removed from the form instructions if the interim final rule becomes final. We note that revisions to the rule regarding removing the restrictions on the types of VA employees who are authorized to serve as a witness to execution of an advance directive impact time that would be expended by a veteran trying to locate a suitable witness rather than a collection of information which is defined at 5 CFR 1320.3(c) as the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. Collection of information includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information.

In addition to VA Form 10–0137, the information collection would be expanded to include, in the case of a close friend designated by VA as a surrogate decision maker, the signed written statement for the record that describes that person's relationship to and familiarity with the patient in the definition of a close friend who may serve as a surrogate. For purposes of this analysis we estimate that 300 individuals each year are a close friend as that term is used in § 17.32, are designated by VA as a surrogate decision maker, and are therefore required to submit a signed written statement for the record that describes that person's relationship to and familiarity with the patient. We estimate that the signed written statement would take 10 minutes to complete.

Description of the need for information and proposed use of information: The collection of information is necessary to facilitate the process of advance care planning for veterans who elect to complete a VA advance directive to designate a health care agent and/or record their preferences for future health care. Advance directives are legal documents that allow a patient to spell out preferences about end-of-life care ahead of time. Advance directives are utilized to communicate treatment preferences and wishes to family, friends, and health care professionals and to avoid confusion later on. The document may also be used by the veteran to designate a health care agent to make decisions on behalf of the veteran following loss of decision-making capacity. Completion of an advance directive by a VA patient is entirely voluntary. The decision to complete an advance directive has no bearing on a patient's right or ability to access VA health care. If a patient completes an advance directive and the completed document is provided to a VA practitioner, the information it contains is used to identify the appropriate health care decision maker and to inform decisions about the patient's care. The form is signed by the veteran in the presence of two witnesses, and the witnesses must sign the form attesting that they were present and witnessed the veteran signing the advance directive form. Information contained in the VA Advance Directive is used routinely in VA to help surrogates and clinicians decide what treatments or procedures to provide to patients who have lost decision-making capacity. For close friends designated as a surrogate decision maker, the signed written statement is required to document the nature of the relationship and familiarity with the patient. The following calculations represent changes to the information collection attributable to documentation required from close friends designated as a surrogate decision maker.

Description of likely respondents: Veterans who want to use the approved VA form to document their preferences for future care in the event they lose decision making capacity, and to identify the appropriate health care decision maker, and individuals who agree to serve as a surrogate decision maker and qualify under the definition of close friend.

Estimated number of respondents per year: 300.

Estimated frequency of responses per year: One response annually.

Estimated average burden per response: 10 minutes.

Estimated cost to respondents per year: VA estimates the total cost to all respondents to be $1,286 (50 burden hours X $25.72 per hour). The Bureau of Labor Statistics gathers information on full-time wage and salary workers. Assuming a forty (40) hour work week, the mean hourly wage is $25.72 based on the BLS wage code—''00–0000 All Occupations.'' This information was taken from the following website: *https://www.bls.gov/oes/current/oes_nat.htm#00-0000* May 2019.

Estimated total annual reporting and recordkeeping burden: 50 hours in FY2020 and 50 hours in FY2021.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim 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, because it affects only the informed consent process and use of advance directives within the VA health care system.

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 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 rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs.

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 interim final rule will not result in the expenditure of $100 million or more by State, local, and tribal governments, in the aggregate, or by 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

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.008—Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.024—VA Homeless Providers Grant and Per Diem Program; 64.026—Veterans State Adult Day Health Care; 64.029—Purchase Care Program; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care; 64.054—Research and Development.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, 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, Reporting and recordkeeping requirements, 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 November 22, 2019, for publication.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding an authority for § 17.32 in numerical order to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

Section 17.32 also issued under 38 U.S.C. 7331–7334.

* * * * *

■ 2. Revise § 17.32 to read as follows:

§ 17.32 Informed consent and advance directives.

(a) *Definitions.* The following definitions are applicable for purposes of this section:

Advance directive. A written statement by a person who has decision-making capacity regarding preferences about future health care decisions if that person becomes unable to make those decisions, in any of the following:

(i) *Durable power of attorney for health care.* A durable power of attorney for health care (DPAHC) is a type of advance directive in which an individual designates another person as an agent to make health care decisions on the individual's behalf.

(ii) *Living will.* A living will is a type of advance directive in which an individual documents personal preferences regarding future treatment options. A living will typically includes preferences about life-sustaining treatment, but it may also include preferences about other types of health care.

(iii) *Mental health (or psychiatric) advance directive.* A mental health or psychiatric advance directive is executed by patients whose future decision-making capacity is at risk due to mental illness. In this type of directive, the individual indicates future mental health treatment preferences.

(iv) *State-authorized advance directive.* A state-authorized advance directive is a non-VA DPAHC, living will, mental health directive, or other advance directive document that is legally recognized by a state. The validity of state-authorized advance directives is determined pursuant to applicable state law. For the purposes of this section, ''applicable state law'' means the law of the state where the advance directive was signed, the state where the patient resided when the advance directive was signed, the state where the patient now resides, or the state where the patient is receiving treatment. VA will resolve any conflict between those state laws regarding the validity of the advance directive by following the law of the state that gives effect to the wishes expressed by the patient in the advance directive.

(v) *Department of Defense (DoD) advance medical directive.* A DoD advance medical directive is executed for members of the armed services or military dependents pursuant to 10 U.S.C. 1044C. It may include a durable power of attorney for health care or a living will. Federal law exempts such advance directives from any requirement of form, substance, formality, or recording that is provided for under the laws of an individual

state. Federal law requires that this type of advance directive be given the same legal effect as an advance directive prepared and executed in accordance with the laws of the state concerned.

(vi) *VA Advance Directive.* A VA Advance Directive is completed on a form specified by VA. In VA, this form can be used by patients to designate a health care agent and to document treatment preferences, including medical care, surgical care, and mental health care.

Close friend. Any person eighteen years or older who has shown care and concern for the welfare of the patient, who is familiar with the patient's activities, health, religious beliefs and values, and who has presented a signed written statement for the record that describes that person's relationship to and familiarity with the patient.

Decision-making capacity. The ability to understand and appreciate the nature and consequences of health care treatment decisions, and the ability to formulate a judgment and communicate a clear decision concerning health care treatments

Health care agent. An individual named by the patient in a durable power of attorney for health care (DPAHC) to make health care decisions on the patient's behalf, including decisions regarding the use of life-sustaining treatments, when the patient can no longer do so.

Legal guardian. A person appointed by a court of appropriate jurisdiction to make decisions, including medical decisions, for an individual who has been judicially determined to be incompetent.

Practitioner. A practitioner is any physician, dentist, or health care professional granted specific clinical privileges to perform the treatment or procedure. The term practitioner also includes:

(i) Medical and dental residents, regardless of whether they have been granted specific clinical privileges; and

(ii) Other health care professionals whose scope of practice agreement or other formal delineation of job responsibility specifically permits them to obtain informed consent, and who are appropriately trained and authorized to perform the procedure or to provide the treatment for which consent is being obtained.

Signature consent. The documentation of informed consent with the signature of the patient or surrogate and practitioner on a form prescribed by VA for that purpose.

State-authorized portable orders. Specialized forms or identifiers (*e.g.,* Do Not Attempt Resuscitation (DNAR) bracelets or necklaces) authorized by state law or a state medical board or association, that translate a patient's preferences with respect to life-sustaining treatment decisions into standing portable medical orders.

Surrogate. An individual authorized under this section to make health care decisions on behalf of a patient who lacks decision-making capacity. The term includes a health care agent, legal guardian, next-of-kin, or close friend.

(b) *Informed consent.* Patients receiving health care from VA have the right to accept or refuse any medical treatment or procedure recommended to them. Except as otherwise provided in this section, no medical treatment or procedure may be performed without the prior, voluntary informed consent of the patient.

(1) In order to give informed consent, the patient must have decision-making capacity.

(2) In the event that the patient lacks decision-making capacity, the requirements of this section are applicable to consent for treatments or procedures obtained from a surrogate acting on behalf of the patient.

(c) *General requirements for informed consent.* Informed consent is the process by which the practitioner discloses to and discusses appropriate information with a patient so that the patient may make a voluntary choice about whether to accept the proposed diagnostic or therapeutic procedure or course of treatment. Appropriate information is information that a reasonable person in the patient's situation would expect to receive in order to make an informed choice about whether or not to undergo the treatment or procedure. (Appropriate information includes tests that yield information that is extremely sensitive or that may have a high risk of significant consequence (*e.g.,* physical, social, psychological, legal, or economic) that a reasonable person would want to know and consider as part of his or her consent decision.) The specific information and level of detail required will vary depending on the nature of the treatment or procedure.

(1) The informed consent discussion should be conducted in person with the patient whenever practical. If it is impractical to conduct the discussion in person, or the patient expresses a preference for communication through another modality, the discussion may be conducted by telephone, through video conference, or by other VA-approved electronic communication methods.

(2) The practitioner must explain in language understandable to the patient each of the following, as appropriate to the treatment or procedure in question: The nature of the proposed procedure or treatment; expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done.

(3) The patient must be given the opportunity to ask questions, to indicate comprehension of the information provided, and to grant or withhold consent freely without coercion.

(4) The practitioner must advise the patient if the proposed treatment is novel or unorthodox.

(5) The patient may withhold or revoke consent at any time.

(6) The practitioner may delegate to other trained personnel responsibility for providing the patient with clinical information needed for the patient to make a fully informed consent decision but must personally verify with the patient that the patient has been appropriately informed and voluntarily consents to the treatment or procedure.

(7) Practitioners may provide necessary medical care in emergency situations without the express consent of the patient when all of the following apply:

(i) Immediate medical care is necessary to preserve life or prevent serious impairment of the health of the patient.

(ii) The patient is unable to consent.

(iii) The practitioner determines that the patient has no surrogate or that waiting to obtain consent from the surrogate would increase the hazard to the life or health of the patient.

(d) *Documentation of informed consent.* (1) The informed consent process must be appropriately documented in the health record. For treatments and procedures that are low risk and within broadly accepted standards of medical practice, a progress note describing the clinical encounter and the treatment plan are sufficient to document that informed consent was obtained for such treatments or procedures. For tests that provide information that is extremely sensitive or that may have a high risk of significant consequences (*e.g.,* physical, social, psychological, legal, or economic) that a patient might reasonably want to consider as part of the consent decision, the health record must specifically document that the patient or surrogate consented to the specific test.

(2) The patient's and practitioner's signature on a form prescribed by VA for that purpose is required for all diagnostic and therapeutic treatments or procedures that meet any of the following criteria:

(i) Require the use of sedation;

(ii) Require anesthesia or narcotic analgesia;

(iii) Are considered to produce significant discomfort to the patient;

(iv) Have a significant risk of complication or morbidity; or

(v) Require injections of any substance into a joint space or body cavity.

(3) Consent for treatments and procedures that require signature consent must be documented in the health record on a form prescribed by VA for that purpose, or as otherwise specified in this paragraph (d).

(i) If the patient or surrogate is unable to execute a signature on the form due to a physical impairment, the patient or surrogate may, in lieu of a signature, sign the consent form with an ''X'', thumbprint, or stamp. Two adult witnesses must witness the act of signing and sign the consent form. By signing, the witnesses are attesting only to the fact that they saw the patient or surrogate sign the form. As an alternative to such a patient or surrogate using a duly witnessed ''X'', thumbprint, or stamp to sign the form, a designated third party may sign the form if acting at the direction of the patient or surrogate and in the presence of the patient or surrogate. The signed form must be filed in the patient's health record.

(ii) A properly executed VA-authorized consent form is valid for a period of 60 calendar days. If, however, the treatment plan involves multiple treatments or procedures, it will not be necessary to repeat the informed consent discussion and documentation so long as the course of treatment proceeds as planned, even if treatment extends beyond the 60-day period. If there is a change in the patient's condition that might alter the diagnostic or therapeutic decision about upcoming or continuing treatment, the practitioner must initiate a new informed consent process and, if needed, complete a new signature consent form with the patient.

(iii) When signature consent is required, but it is not practicable to obtain the signature in person following the informed consent discussion, a signed VA consent form transmitted by mail, facsimile, in by secure electronic mail, or other VA-approved modalities and scanned into the record, is adequate to proceed with treatment or procedure.

(iv) When signature consent is required, but it is not practicable to obtain the signed consent form, the informed consent conversation conducted by telephone or video conference must be audiotaped, videotaped, or witnessed by a second VA employee in lieu of the signed consent form. The practitioner must document the details of the conversation in the medical record. If someone other than the patient is giving consent, the name of the person giving consent and the authority of that person to act as surrogate must be adequately identified in the medical record.

(e) *Patients who lack decision-making capacity*—(1) *Identifying a surrogate decision maker.* If the practitioner who has primary responsibility for the patient determines that the patient lacks decision-making capacity and is unlikely to regain it within a reasonable period of time, informed consent must be obtained from the surrogate. Patients who are incapable of giving consent as a matter of law will be deemed to lack decision-making capacity for the purposes of this section.

(i) The following persons are authorized to act as a surrogate to consent on behalf of a patient who lacks decision-making capacity in the following order of priority:

(A) Health care agent;

(B) Legal guardian;

(C) Next-of-kin: a close relative of the patient eighteen years of age or older in the following priority: Spouse, child, parent, sibling, grandparent, or grandchild; or

(D) Close friend.

(ii) A surrogate generally assumes the same rights and responsibilities as the patient in the informed consent process. The surrogate's decision must be based on his or her knowledge of what the patient would have wanted; that is, substituted judgment, or, if the patient's specific values and wishes are unknown, the surrogate's decision must be based on the patient's best interest.

(2) *Consent for a patient without a surrogate.* (i) If none of the surrogates listed in paragraph (e)(1) of this section is available, a practitioner may either request the assistance of District Chief Counsel to obtain a legal guardian for health care or follow the procedures outlined in paragraph (e)(2)(ii) of this section.

(ii) Facilities may use the following process to make treatment decisions for patients who lack decision-making capacity and have no surrogate.

(A) For treatments and procedures that involve minimal risk, the practitioner must verify that no authorized surrogate can be located, or that the surrogate is not available. The practitioner must attempt to explain the nature and purpose of the proposed treatment to the patient and enter this information in the health record.

(B) For procedures that require signature consent, the practitioner must certify that the patient has no surrogate to the best of their knowledge. The attending physician and the Chief of Service (or designee) must indicate their approval of the treatment decision in writing. Any decision to withhold or withdraw life-sustaining treatment for such patients must be reviewed by a multi-disciplinary committee appointed by the facility Director, unless the patient has valid standing orders regarding life-sustaining treatment, such as state-authorized portable orders. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the Chief of Staff who must note his or her approval of the report in writing. The facility Director must be informed about the case and results of the review and may concur with the decision to withhold or withdraw life-sustaining treatment, delegate final decision-making authority to the facility Chief of Staff, or request further review by District Chief Counsel.

(f) *Special consent situations.* (1) In the case of involuntarily committed patients where the forced administration of psychotropic medication is against the will of a patient (or the surrogate does not consent), the following procedural protections must be provided:

(i) The patient or surrogate must be allowed to consult with independent specialists, legal counsel or other interested parties concerning the treatment with psychotropic medication. Any recommendation to administer or continue medication must be reviewed by a multi-disciplinary committee appointed by the facility Director for this purpose.

(ii) The multi-disciplinary committee must include a psychiatrist or a physician who has psychopharmacology privileges. The facility Director must concur with the committee's recommendation to administer psychotropic medications contrary to the patient's or surrogate's wishes.

(iii) Continued administration of psychotropic medication must be reviewed every 30 days. The patient (or a representative on the patient's behalf) may appeal the treatment decision to a court of appropriate jurisdiction.

(2) The patient must be informed if a proposed course of treatment or procedure involves approved medical research in whole or in part. If so, the patient's separate informed consent must be obtained for the components that constitute research pursuant to the informed consent requirements for human-subjects research set forth in part 16 of this title.

(g) *Advance directives*—(1) *General.* To the extent consistent with applicable Federal law, VA policy, and generally accepted standards of medical practice, VA will follow the wishes of a patient expressed in a valid advance directive when the practitioner determines and documents in the patient's health record that the patient lacks decision-making capacity and is unlikely to regain it within a reasonable period of time. An advance directive that is valid in one or more states under applicable law, including a mental health (or psychiatric) advance directive, a valid Department of Defense advance medical directive, or a valid VA Advance Directive will be recognized throughout the VA health care system, except for components therein that are inconsistent with applicable Federal law, VA policy, or generally accepted standards of medical practice.

(2) *Signing and witness requirements.* (i) A VA Advance Directive must be signed by the patient. If the patient is unable to sign a VA Advance Directive due to a physical impairment, the patient may sign the advance directive form with an ''X'', thumbprint, or stamp. In the alternative, the patient may designate a third party to sign the directive at the direction of the patient and in the presence of the patient.

(ii) In all cases, a VA Advance Directive must be signed by the patient in the presence of both witnesses. Witnesses to the patient's signing of an advance directive are attesting by their signatures only to the fact that they saw the patient or designated third party sign the VA Advance Directive form. Neither witness may, to the witness' knowledge, be named as a beneficiary in the patient's estate, appointed as health care agent in the advance directive, or financially responsible for the patient's care. Nor may a witness be the designated third party who has signed the VA Advance Directive form at the direction of the patient and in the patient's presence.

(3) *Instructions in critical situations.* In certain situations, a patient with decision-making capacity may present for care when critically ill and loss of decision-making capacity is imminent. In such situations, VA will document the patient's unambiguous verbal or non-verbal instructions regarding preferences for future health care decisions. These instructions will be honored and given effect should the patient lose decision-making capacity before being able to complete a new advance directive. The patient's instructions must have been expressed to at least two members of the health care team. To confirm that the verbal or non-verbal instructions of the patient are, in fact, unambiguous, the substance of the patient's instructions and the names of at least two members of the health care team to whom they were expressed must be entered in the patient's electronic health record.

(4) *Revocation.* A patient who has decision-making capacity may revoke an advance directive or instructions in a critical situation at any time by using any means expressing the intent to revoke.

(5) *VA policy and disputes.* Neither the treatment team nor surrogate may override a patient's clear instructions in an advance directive or in instructions given in a critical situation, except that those portions of an advance directive or instructions given in a critical situation that are not consistent with applicable Federal law, VA policy, or generally accepted standards of medical practice will not be given effect.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0556)

[FR Doc. 2020–10264 Filed 5–26–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 18–122; FCC 20–22; FRS 16735]

Expanding Flexible Use of the 3.7 to 4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved the information collection requirements associated with the eligible space station operator accelerated relocation election, eligible space station operator transition plan, and incumbent earth station lump sum payment election rules adopted in the Federal Communications Commission's (Commission) *3.7 GHz Report and Order,* FCC 20–22, and that compliance with the new rules is now required. This document is consistent with the *3.7 GHz Report and Order,* FCC 20–22, which states that the Commission will publish a document in the **Federal Register** announcing a compliance date for the new rule sections and revise the Commission's rules accordingly.

DATES: Compliance date: Compliance with 47 CFR 27.1412(c) introductory text, (c)(2), 27.1412(d) introductory text and (d)(1), and 27.1419, published at 85 FR 22804 on April 23, 2020, is required on May 27, 2020.

FOR FURTHER INFORMATION CONTACT: Anna Gentry, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–7769 or *Anna.Gentry@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirements in §§ 47 CFR 27.1412(c) introductory text, (c)(2), 27.1412(d) introductory text and (d)(1), and 27.1419, on May 5, 2020. These rules were adopted in the *3.7 GHz Report and Order,* FCC 20–22, published at published at 85 FR 22804 on April 23, 2020. The Commission publishes this document as an announcement of the compliance date of these new rules. OMB approval for all other new or amended rules for which OMB approval is required will be requested, and compliance is not yet required for those rules. Compliance with all new or amended rules adopted in the *3.7 GHz Report and Order* that do not require OMB approval will be required as of June 22, 2020, *see* 85 FR 22804 (Apr. 23, 2020).

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW, Washington, DC 20554, regarding OMB Control Number 3060–1272. Please include the OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received final OMB approval on May 5, 2020, for the information collection requirements contained in §§ 47 CFR 27.1412(c) introductory text, (c)(2), 27.1412(d) introductory text and (d)(1), and 27.1419. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information

unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for the information collection requirements in §§ 27.1412(c) introductory text, (c)(2), 27.1412(d) introductory text and (d)(1), and 27.1419, is 3060–1272. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1272.

OMB Approval Date: May 5, 2020.

OMB Expiration Date: November 30, 2020.

Title: 3.7 GHz Band Space Station Operator Accelerated Relocation Elections and Transition Plans; 3.7 GHz Band Incumbent Earth Station Lump Sum Payment Elections.

Form Number: N/A.

Respondents: Business or other for profit entities.

Number of Respondents and Responses: 3,010 respondents; 3,010 responses.

Estimated Time per Response: 16 hours per eligible space station accelerated relocation election; 80–600 hours per eligible space station transition plan; 32 hours per incumbent earth station lump sum payment election.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309.

Total Annual Burden: 109,680 hours.

Total Annual Cost: $900,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collected under this collection will be made publicly available, however, to the extent information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment pursuant to section 0.459 of the Commission's rules for such information. *See* 47 CFR 0.459.

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Federal Communications Commission (Commission) adopted the *3.7 GHz Report and Order,* FCC 20–22, in which it reformed the use of the 3.7–4.2 GHz band, also known as the C-Band. The 3.7 GHz-4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. The *3.7 GHz Report and Order* calls for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and making the lower 280 megahertz (3.7–3.98 GHz) available for flexible-use throughout the contiguous United States through a Commission-administered public auction of overlay licenses that is scheduled to occur later this year, with the 20 megahertz from 3.98–4.0 GHz reserved as a guard band.

The Commission adopted a robust transition schedule to achieve an expeditious relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation wireless deployments, while also ensuring effective accommodation of relocated incumbent users. The *3.7 GHz Report and Order* establishes a deadline of December 5, 2025, for full relocation to ensure that all FSS operations are cleared in a timely manner, but provides an opportunity for accelerated clearing of the band by allowing incumbent space station operators, as defined in the *3.7 GHz Report and Order,* to commit to voluntarily relocate on a two-phased accelerated schedule (with additional obligations and incentives for such operators), with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.

The Commission concluded in the *3.7 GHz Report and Order* that, before the public auction of overlay licenses commences, it is appropriate for potential bidders to know when they will get access to the spectrum in the 3.7–3.98 GHz band that is currently occupied by incumbent FSS space station operators and earth stations, as defined in the *3.7 GHz Report and Order,* and to have an estimate of how much they may be required to pay for incumbent relocation costs and accelerated relocation payments should they become overlay licensees, as overlay licensees are required to pay for the reasonable relocation costs of incumbent space station and incumbent earth station operators that are required to clear the lower portion of the band.

Under this new information collection, the Commission will collect information that will be used by the Commission to determine when, how, and at what cost existing operations in the lower portion of the 3.7–4.2 GHz band will be relocated to the upper portion of the band. Specifically, the Commission collect the following information from incumbents as adopted in the *3.7 GHz Report and Order:*

Accelerated Relocation Elections

The Commission concluded in the *3.7 GHz Report and Order* that overlay licensees would only value accelerated relocation if a significant majority of incumbents are cleared in a timely manner, and therefore determined that at least 80% of accelerated relocation payments must be accepted in order for the Commission to accept accelerated elections and require overlay licensees to pay accelerated relocation payments. The *3.7 GHz Report and Order* calls for an eligible space station operator, as defined in the *3.7 GHz Report and Order,* that chooses to commit to clear on the accelerated schedule in exchange for accelerated relocation payments to submit a written, public, irrevocable accelerated relocation election with the Commission by May 29, 2020, to permit the Commission to determine whether there are sufficient accelerated relocation elections to trigger early relocation and in turn provide bidders with adequate certainty regarding the clearing date and payment obligations associated with each license well in advance of the auction.

Transition Plans

The *3.7 GHz Report and Order* requires each eligible space station operator to submit to the Commission by June 12, 2020, and make available for public review, a detailed transition plan describing the necessary steps and estimated costs for the eligible space station operator to complete the transition of existing operations in the lower portion of the 3.7–4.2 GHz band to the upper 200 megahertz of the band and its individual timeline for doing so consistent with the regular relocation deadline or by the accelerated relocation deadlines. An eligible space station operator that elects to receive

accelerated relocation payments is responsible for relocating all of its associated incumbent earth stations and must outline the details of such relocation in the transition plan (unless an incumbent earth station owner elects to receive a lump sum payment and assumes responsibility for transitioning its own earth stations). Similarly, an incumbent space station operator that does not elect to receive accelerated relocation payments but nevertheless plans to assume responsibility for relocating its own associated incumbent earth stations must make that clear in its transition plan.

Incumbent Earth Station Lump Sum Payment Elections

The *3.7 GHz Report and Order* provides an incumbent earth station operator with the option of accepting reimbursement payments for its reasonable relocation costs for the transition, or opting out of the formal relocation process and accepting a lump sum reimbursement payment for all of its incumbent earth stations based on the average, estimated costs of relocating all of their incumbent earth stations in lieu of actual relocation costs. The *3.7 GHz Report and Order* directs the Wireless Telecommunications Bureau to announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments and requires that no later than 30 days after this announcement, an incumbent earth station operator that wishes to receive a lump sum payment make an irrevocable lump sum payment election that will apply to all of its earth stations in the contiguous United States.

This information collection will serve as the starting point for planning and managing the process of efficiently and expeditiously clearing of the lower portion of the band, so that this spectrum can be auctioned for flexible-use service licenses.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–10167 Filed 5–26–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200325–0088; RTID 0648–XX056]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; 2020 Closure of the Northern Gulf of Maine Scallop Management Area to the Limited Access General Category Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Northern Gulf of Maine Scallop Management Area for the remainder of the 2020 fishing year for Limited Access General Category vessels. Regulations require this action once NMFS projects that 100 percent of the Limited Access General Category total allowable catch for the Northern Gulf of Maine Scallop Management Area will be harvested. This action is intended to prevent the overharvest of the 2020 total allowable catch allocated to the Limited Access General Category Fishery.

DATES: Effective 0001 hr local time, May 23, 2020, through March 31, 2021.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, (978) 282–8456.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing fishing activity in the Northern Gulf of Maine (NGOM) Scallop Management Area in 50 CFR 648.54 and 648.62. These regulations authorize vessels issued a valid Federal scallop permit to fish in the NGOM Scallop Management Area under specific conditions, including a total allowable catch (TAC) of 206,282 lb (93,567 kg) for the Limited Access General Category (LAGC) fleet for the 2020 fishing year, and a State Waters Exemption Program for the State of Maine and Commonwealth of Massachusetts. Section 648.62(b)(2) requires the NGOM Scallop Management Area to be closed to scallop vessels issued Federal LAGC scallop permits, except as provided below, for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that 100 percent of the LAGC TAC for the fishing year is projected to be harvested. Any vessel that holds a Federal NGOM (LAGC B) or Individual Fishing Quota (IFQ) (LAGC A) permit may continue to fish in the Maine or Massachusetts state waters portion of the NGOM Scallop Management Area under the State Waters Exemption Program found in § 648.54 provided it has a valid Maine or Massachusetts state scallop permit and fishes only in that state's respective waters.

Based on trip declarations by federally permitted LAGC scallop vessels fishing in the NGOM Scallop Management Area and analysis of fishing effort, we project that the 2020 LAGC TAC will be harvested as of May 23, 2020. Therefore, in accordance with § 648.62(b)(2), the NGOM Scallop Management Area is closed to all federally permitted LAGC scallop vessels as of May 23, 2020. As of this date, no vessel issued a Federal LAGC scallop permit may fish for, possess, or land scallops in or from the NGOM Scallop Management Area after 0001 local time, May 23, 2020, unless the vessel is fishing exclusively in state waters and is participating in an approved state waters exemption program as specified in § 648.54. Any federally permitted LAGC scallop vessel that has declared into the NGOM Scallop Management Area, complied with all trip notification and observer requirements, and crossed the vessel monitoring system demarcation line on the way to the area before 0001, May 23, 2020, may complete its trip and land scallops. This closure is in effect until the end of the 2020 scallop fishing year, through March 31, 2021. This closure does not apply to the Limited Access (LA) scallop fleet, which was allocated a separate TAC of 140,000 lb (63,503 kg) for the 2020 fishing year under Framework Adjustment 32 to the Atlantic Sea Scallop Fishery Management Plan. Vessels that are participating in the 2020 scallop Research Set-Aside Program and have been issued letters of authorization to conduct compensation fishing activities will harvest the 2020 LA TAC.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. NMFS also finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons noted below. The NGOM Scallop Management Area opened for the 2020

fishing year on April 1, 2020. The regulations at § 648.60(b)(2) require this closure to ensure that federally permitted scallop vessels do not harvest more than the allocated LAGC TAC for the NGOM Scallop Management Area. NMFS can only make projections for the NGOM closure date as trips into the area occur on a real-time basis and as activity trends appear. As a result, NMFS can typically make an accurate projection only shortly before the TAC is harvested. A rapid harvest rate that has occurred in the last 2 weeks makes it more difficult to project a closure well in advance. To allow federally permitted LAGC scallop vessels to continue taking trips in the NGOM Scallop Management Area during the period necessary to publish and receive comments on a proposed rule would result in vessels harvesting more than the 2020 LAGC TAC for the NGOM Scallop Management Area. This would result in excessive fishing effort in the area thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures to make up for the excessive harvest. Also, the public had prior notice and full opportunity to comment on this closure process when we put the final NGOM management provisions in place for the 2020 fishing year on March 31, 2020 (85 FR 17754).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–11361 Filed 5–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200505–0127; RTID 0648–XW028]

Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fisheries; Inseason Action #6

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason modification of 2020 management measures.

SUMMARY: NMFS announces one inseason action in the 2020 ocean salmon fisheries. This inseason action modified the commercial salmon fishery in the area from the U.S./Canada border to Leadbetter Point, WA.

DATES: This inseason action became applicable on 0001 hours Pacific Daylight Time, May 6, 2020, and remains in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2020 annual management measures for ocean salmon fisheries (85 FR 27317, May 8, 2020), NMFS announced management measures for the commercial and recreational fisheries in the area from Cape Falcon, OR, to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 6, 2020, until the effective date of the 2021 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions). The state management agencies that participated in the consultation described in this document were: The Washington Department of Fish and Wildlife (WDFW) and the Oregon Department of Fish and Wildlife (ODFW).

Inseason Action

Inseason Action #6

Description of the action: Inseason action #6 made modifications to the landing restrictions for the commercial salmon fishery in the area from the U.S./Canada border to Leadbetter Point, WA. Prior to this action, vessels fishing or in possession of salmon north of Leadbetter Point could not land fish east of the Sekiu River, WA. Under this inseason action, fish cannot be landed east of Port Angeles, WA (approximately 50 miles, or 80 km, east of the Sekiu River). Additionally, for delivery to Washington ports east of the Sekiu River, vessels must notify WDFW at 360–249–1215 prior to crossing the Bonilla-Tatoosh line (Washington Administrative Code 220–300–360) with the area fished, total number of Chinook, coho, and halibut catch aboard, and the vessel's destination and approximate time of delivery.

Effective dates: Inseason action #6 took effect on May 6, 2020, and remains in effect until modified by further inseason action.

Reason and authorization for the action: The commercial salmon fishery north of Leadbetter Point, WA, traditionally lands their catch at Neah Bay, WA, or La Push, WA. Currently, those ports, which are located on the reservations of the Makah Tribe and Quileute Nation, respectively, are closed to public access out of public health and safety concerns. The purpose of inseason action #6 was to provide the commercial salmon fishery access to open ports to land and deliver their catch north of Leadbetter Point. The addition of a telephone reporting provision is to monitor catch in the area in order to manage fishery impacts, consistent with preseason planning, on Puget Sound Chinook salmon, which are listed as threatened under the Endangered Species Act. The NMFS West Coast Regional Administrator (RA) considered public health and safety concerns, port access issues, and the need to monitor landings in the area, and determined that this inseason action was necessary to meet management and conservation objectives while accommodating public health and safety concerns. Inseason modification of landing boundaries is authorized by 50 CFR 660.409(b)(1)(v).

Consultation date and participants: Consultation on inseason action #6 occurred on May 5, 2020. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

All other restrictions and regulations remain in effect as announced for the 2020 ocean salmon fisheries (85 FR 27317, May 8, 2020).

The RA determined that the above inseason action recommended by the state of Washington was warranted and based on the best available information, as presented by WDFW, and supported concerns regarding public health and safety, access to ports, and monitoring fishery impacts, as described above. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone consistent with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory action was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners

broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NOAA's Assistant Administrator (AA) for NMFS finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (85 FR 27317, May 8, 2020), the Pacific Coast Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time the need to provide alternative landing ports was known and the opening of the fishery on May 6, 2020. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of this action would not provide a legal option for landing commercial catch north of Leadbetter Point, WA, due to the closure of the traditional ports, and would, therefore, have precluded the ability for the fishery to function as anticipated preseason.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–11358 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 102
Wednesday, May 27, 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 Part 50

[Docket No. PRM–50–121; NRC–2020–0055]

Voluntary Adoption of Revised Design Basis Accident Dose Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing, and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking from John G. Parillo dated November 23, 2019, requesting that the NRC develop a voluntary rule allowing licensees to adopt revised design basis accident dose acceptance criteria that reflect modern health physics recommendations and modern plant designs, that better balance the protection of the control room operator and of the public, and that relieve the regulatory burden associated with meeting the current control room dose criterion. The petition was docketed by the NRC on February 19, 2020, and has been assigned Docket No. PRM–50–121. The NRC is examining the issues raised in PRM–50–121 to determine whether they should be considered in rulemaking. The NRC is requesting public comment on this petition at this time.

DATES: Submit comments by August 10, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0055. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications 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: Mark Lintz, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–415–4051.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0055 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–2020–0055.
- *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 petition is available in ADAMS under Accession No. ML20050M894.
- *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2020–0055 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. The Petitioner and Petition

The petition for rulemaking was filed by John Parillo, a private citizen. The petition requests the NRC revise its regulations to allow power reactor licensees to adopt revised accident dose acceptance criteria as an alternative to the accident dose criteria specified in § 50.67, ''Accident source term.'' The revised accident dose criteria would be described in a separate voluntary rule § 50.67(a) specifying a uniform value of 100 milli-Sieverts (10 rem) for offsite locations and for the control room. The petition may be found in ADAMS at Accession No. ML20050M894.

III. Discussion of the Petition

The petition states that the NRC design basis accident dose criteria and the resulting design of accident mitigation systems could be perceived to emphasize protection of the control room operator over protection of the public. The control room criterion restricts the calculated 30-day accident dose to the annual occupational limit of 5 rem while the offsite dose criteria allows for a calculated dose of 25 rem in 2 hours. The petition states that the offsite dose criteria were derived from the siting practices of the earliest reactors and do not reflect current health physics knowledge or modern

plant construction. As a result, the petition argues that the design of accident mitigation systems may not be optimized for protecting public health and safety, and that the control room accident dose criterion has proven to be challenging to demonstrate with most plants having very little margin to meet the regulation.

The petition proposes an alternative, voluntary rule that would allow licensees to adopt revised accident dose criteria that the petition asserts resolve the concerns identified above.

IV. Conclusion

The NRC has determined that the petition meets the threshold sufficiency requirements for docketing a petition for rulemaking under 10 CFR 2.803, ''2.803 Petition for rulemaking—NRC action.'' The NRC is examining the merits of the issues raised in PRM–50–121 to determine whether these issues should be considered in rulemaking.

Dated this 12th day of May, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2020–10599 Filed 5–26–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 354

RIN 3064–AF31

Parent Companies of Industrial Banks and Industrial Loan Companies; Extension of Comment Period

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking: Extension of comment period.

SUMMARY: On March 31, 2020, the Federal Deposit Insurance Corporation published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) entitled ''Parent Companies of Industrial Banks and Industrial Loan Companies'' proposing a rule that would require certain conditions and commitments for each deposit insurance application approval, non-objection to a change in control notice, and merger application approval that would result in an insured industrial bank or industrial loan company becoming, after the effective date of any final rule, a subsidiary of a company that is not subject to consolidated supervision by the Federal Reserve Board. The proposed rule also would require that before any industrial bank or industrial loan company may become a subsidiary of a company that is not subject to consolidated supervision by the Federal Reserve Board, such company and the industrial bank or industrial loan company must enter into one or more written agreements with the Federal Deposit Insurance Corporation. The NPR provided for a 60-day comment period, which would have closed on June 1, 2020. The FDIC has determined that an extension of the comment period until July 1, 2020, is appropriate. This action will allow interested parties additional time to analyze the proposal and prepare comments.

DATES: The comment period for the NPR on parent companies of industrial banks and industrial loan companies published on March 31, 2020 (85 FR 17771), is extended from June 1, 2020, to July 1, 2020.

ADDRESSES: You may submit comments, identified by RIN 3064–AF31, on the notice of proposed rulemaking using any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF31 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal.*

FOR FURTHER INFORMATION CONTACT: Mark Flanigan, Senior Counsel, (202) 898–7426, *mflanigan@fdic.gov;* Catherine Topping, Counsel, (202) 898–3975, *ctopping@fdic.gov;* Gregory Feder, Counsel, (202) 898–8724, *gfeder@fdic.gov;* Joyce Raidle, Counsel, (202) 898–6763, *jraidle@fdic.gov;* Merritt Pardini, Counsel, (202) 898–6680, *mpardini@fdic.gov,* Legal Division; Don Hamm, Special Advisor, (202) 898–3528, *dhamm@fdic.gov;* Scott Leifer, Senior Review Examiner, (508) 698–0361, Extension 8027, *sleifer@fdic.gov,* Division of Risk Management Supervision.

SUPPLEMENTARY INFORMATION: On March 31, 2020, the Federal Deposit Insurance Corporation published in the **Federal Register** [1] an NPR proposing a new rule, Part 354 of the FDIC's Rules and Regulations, that would require certain conditions, commitments, and written agreements for each deposit insurance application approval, non-objection to a change in control notice, and merger application approval that would result in an insured industrial bank or industrial loan company becoming, after the effective date of any final rule, a subsidiary of a company that is not subject to consolidated supervision by the Federal Reserve Board.

The NPR stated the comment period would close on June 1, 2020. An extension of the comment period will provide additional time for interested parties to prepare comments to address the matters raised in the NPR. Therefore, the FDIC is extending the comment period for the NPR on parent companies of industrial banks and industrial loan companies from June 1, 2020, to July 1, 2020.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on May 22, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–11446 Filed 5–22–20; 4:15 pm]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124810–19]

RIN 1545–BP76

Guidance Clarifying Premium Tax Credit Unaffected by Suspension of Personal Exemption Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document includes proposed regulations under sections 36B and 6011 of the Internal Revenue Code (Code) that clarify that the reduction of the personal exemption deduction to zero for taxable years beginning after December 31, 2017, and before January 1, 2026, does not affect an individual taxpayer's ability to claim the premium tax credit. These proposed regulations affect individuals who claim the premium tax credit.

DATES: Written or electronic comments and requests for a public hearing must be received by July 27, 2020. Requests for a public hearing must be submitted

[1] 85 FR 17771.

as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–124810–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–124810–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Suzanne Sinno at (202) 317–4718 (not a toll-free number); concerning submissions of comments and/or requests for a public hearing, call Regina Johnson at (202) 317–5177 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 36B and 6011 of the Code.

Section 151 of the Code generally allows a taxpayer to claim a personal exemption deduction, based on the exemption amount defined in section 151(d), for the taxpayer, the taxpayer's spouse, and any dependents, as defined in section 152 of the Code. On December 22, 2017, section 151(d)(5) was added to the Code by section 11041 of Public Law 115–97, 131 Stat. 2054, 2082, commonly referred to as the Tax Cuts and Jobs Act (TCJA). Section 151(d)(5)(A) provides that, for taxable years beginning after December 31, 2017, and before January 1, 2026, the term ''exemption amount'' means zero. However, section 151(d)(5)(B) provides that the reduction of the exemption amount to zero is not taken into account in determining whether a deduction under section 151 is allowed or allowable to a taxpayer, or whether a taxpayer is entitled to a deduction under section 151, for purposes of any other provision of the Code. The Conference Report states that this provision clarifies that the reduction of the personal exemption to zero ''should not alter the operation of those provisions of the Code which refer to a taxpayer allowed a deduction . . . under section 151.'' *See* H.R. Rep. No. 115–466 at 203 n.16 (Conf. Rep.) (2017).

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, Affordable Care Act), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange (Exchange) established under section 1311 of the Affordable Care Act may claim a premium tax credit under section 36B. Several rules relating to the premium tax credit apply based on whether a taxpayer properly claims or claimed a personal exemption deduction under section 151 for the taxpayer, the taxpayer's spouse, and any dependents. These rules affect eligibility for the premium tax credit, computation of the premium tax credit, reconciliation of advance credit payments with the premium tax credit a taxpayer is allowed for the taxable year, and income tax return filing requirements related to the premium tax credit.

Eligibility for, and Computation of, the Premium Tax Credit

To be eligible for the premium tax credit, an individual must be an applicable taxpayer. Under section 36B(c)(1), an applicable taxpayer generally is a taxpayer whose household income for the taxable year is at least 100 percent but not more than 400 percent of the Federal poverty line for the taxpayer's family size for the taxable year. A taxpayer's family size is equal to the number of individuals in the taxpayer's family. Section 1.36B–1(d) of the Income Tax Regulations provides that, for purposes of §§ 1.36B–1 through 1.36B–5, a taxpayer's family means the individuals for whom a taxpayer properly claims a deduction for a personal exemption under section 151 for the taxable year. Section 1.36B–2(b)(3) provides that an individual is not an applicable taxpayer if another taxpayer may claim a deduction under section 151 for the individual for a taxable year beginning in the calendar year in which the individual's taxable year begins.

Section 36B(c)(2) provides that the premium tax credit generally is not allowed for a month with respect to an individual if for that month the individual is eligible for minimum essential coverage other than coverage in the individual market. However, under a special eligibility rule in § 1.36B–2(c)(4)(i), an individual who may enroll in minimum essential coverage because of a relationship to another person eligible for the coverage but for whom the other eligible person does not claim a personal exemption deduction under section 151, is treated as eligible for minimum essential coverage under such coverage only for months that the related individual is enrolled in the coverage.

Under section 36B(a), a taxpayer's premium tax credit is equal to the premium assistance credit amount for the taxable year. Section 36B(b)(1) and § 1.36B–3(d) generally provide that the premium assistance credit amount is the sum of the premium assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family, as defined in § 1.36B–1(d).

Reconciliation of Advance Credit Payments With the Premium Tax Credit

Under section 1412 of the Affordable Care Act, advance payments of the premium tax credit (advance credit payments) may be paid directly to qualified health plans on behalf of eligible individuals. The amount of advance credit payments made on behalf of a taxpayer in a taxable year is determined by a number of factors, including projections of the taxpayer's household income and family size for the taxable year. Under § 1.36B–4, a taxpayer generally must reconcile all advance credit payments for coverage of any member of the taxpayer's family with the amount of the premium tax credit allowed under section 36B.

Section 1.36B–4(a)(1)(ii)(B)(*1*) and (*2*) provide specific allocation rules to reconcile advance credit payments when an individual is enrolled by one taxpayer but another taxpayer claims a personal exemption deduction for the individual. If advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, § 1.36B–4(a)(1)(ii)(C) provides that the taxpayer who attested to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the advance credit payment eligibility determination for coverage of the individual must reconcile the advance credit payments.

Income Tax Return Filing Requirements Related to the Premium Tax Credit

Section 6011 provides the general rules for filing a return. Section 1.6011–

8 requires a taxpayer who receives the benefit of advance credit payments to file an income tax return for that taxable year to reconcile advance credit payments with the taxpayer's premium tax credit. The regulation further provides that if advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attested to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the advance credit payment eligibility determination for coverage of the individual must file a tax return and reconcile the advance credit payments. Taxpayers who are required to reconcile advance credit payments or who claim the premium tax credit must complete Form 8962, *Premium Tax Credit (PTC),* and file it with their tax return.

Notice 2018–84

On November 5, 2018, the Treasury Department and the IRS issued Notice 2018–84, 2018–45 I.R.B. 768, which provided interim guidance clarifying that the reduction of the personal exemption deduction to zero under section 151(d)(5) does not affect the ability of individual taxpayers to claim the premium tax credit. Specifically, the notice provides that (1) a taxpayer is considered to have claimed a personal exemption deduction for himself or herself for a taxable year if the taxpayer files an income tax return for the year and does not qualify as a dependent of another taxpayer under section 152 for the year; and (2) a taxpayer is considered to have claimed a personal exemption deduction for an individual other than the taxpayer if the taxpayer is allowed a personal exemption deduction for the individual, taking into account section 151(d)(5)(B), and lists the individual's name and taxpayer identification number (TIN) on the Form 1040, *U.S. Individual Income Tax Return,* or Form 1040NR, *U.S. Nonresident Alien Income Tax Return,* the taxpayer files for the year. The notice states that until further guidance is issued, the interim guidance described in the notice applies. The notice also states that the Treasury Department and the IRS intend to amend the regulations under sections 36B and 6011 to clarify the application of section 151(d)(5).

Explanation of Provisions

The current regulations under section 36B provide that a taxpayer's family means the individuals for whom the taxpayer claims a personal exemption deduction under section 151. For tax years prior to 2018, a taxpayer determined the personal exemption deduction by putting the name and TIN of each individual in the taxpayer's family on the taxpayer's income tax return, multiplying the number of allowed exemptions by the exemption amount, and entering that amount on his or her income tax return. Under newly enacted section 151(d)(5), the personal exemption deduction is zero for taxable years beginning after December 31, 2017, and before January 1, 2026. Although the amount of the deduction for personal exemptions is reduced to zero for those years, taxpayers must include on their tax returns the names and TINs of individuals for whom they are allowed a personal exemption deduction (taking into account section 151(d)(5)(B)) in order to claim various tax benefits with respect to those individuals.

These proposed regulations adopt the substance of the guidance in Notice 2018–84 by amending the regulations under sections 36B and 6011 to clarify that the reduction of the personal exemption deduction to zero under section 151(d)(5) does not affect the ability of individual taxpayers to claim the premium tax credit. Specifically, these proposed regulations amend the definition of family in § 1.36B–1(d) to provide that a taxpayer's family means the taxpayer, including both spouses in the case of a joint return (except for individuals who qualify as a dependent of another taxpayer under section 152), and any other individual for whom the taxpayer is allowed a personal exemption deduction (taking into account section 152(d)(5)(B)) and whom the taxpayer properly reports on the taxpayer's income tax return for the taxable year. The proposed regulations provide that an individual is reported on the taxpayer's income tax return if the individual's name and TIN are listed on the taxpayer's Form 1040 series return.

The definition of family and family size in proposed § 1.36B–1(d) will apply for purposes of §§ 1.36B–1 through 1.36B–5. Thus, the definition will apply to determine the computation of the premium tax credit under § 1.36B–3(d), which is based on the sum of the premium assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family. In addition, the proposed regulations make conforming changes to the rules in § 1.36B–2 (relating to eligibility for, and computation of, the premium tax credit), § 1.36B–4 (relating to reconciliation of advance credit payments with the premium tax credit), and § 1.6011–8 (relating to the income tax return filing requirements for taxpayers who receive the benefit of advance credit payments or claim the premium tax credit). These conforming changes delete references such as ''claim a personal exemption deduction,'' ''claims a personal exemption deduction,'' or ''claimed as a personal exemption deduction'' in the current regulations and replace them with other terms consistent with the definition of family in proposed § 1.36B–1(d).

Proposed Applicability Date

These regulations are proposed to apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. In addition, taxpayers may rely on these proposed regulations for taxable years to which section 151(d)(5) applies ending on or before that date. *See* section 7805(b)(7).

Special Analyses

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations affect individual taxpayers, not entities.

Pursuant to section 7805(f), these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') 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 preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Statement of Availability of IRS Documents

The regulations, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble in the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Suzanne R. Sinno of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding sectional authorities in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Sections 1.36B–0, 1.36B–1, 1.36B–2, and 1.36B–4 also issued under 26 U.S.C. 36B(g).

Section 1.6011–8 also issued under 26 U.S.C. 6011.

* * * * *

■ **Par. 2.** Section 1.36B–0 is amended by:

■ a. Revising the entries for § 1.36B–1(d) and (o);

■ b. Revising the entries for § 1.36B–2(c)(4)(i) and (e); and

■ c. Revising the entries for § 1.36B–4(a)(1)(ii)(B) and (C), and (c).

The revisions read as follows:

§ 1.36B–1 Premium tax credit definitions.

* * * * *

(d) Family and family size.

(1) In general.

(2) Special rule for tax years to which section 151(d)(5) applies.

* * * * *

(o) Applicability dates.

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(4) * * *

(i) Related individual.

* * * * *

(e) Applicability dates.

§ 1.36B–4 Reconciling the premium tax credit with advance credit payments.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(B) Individuals enrolled by a taxpayer and claimed by another taxpayer.

(C) Responsibility for advance credit payments for an individual not reported on any taxpayer's return.

* * * * *

(c) Applicability dates.

■ **Par. 3.** Section 1.36B–1 is amended by

■ a. Redesignating the text of paragraph (d) as paragraph (d)(1);

■ b. Adding a paragraph heading to newly designated paragraph (d)(1);

■ c. Adding paragraph (d)(2); and

■ d. Revising paragraph (o).

The additions and revision read as follows:

§ 1.36B–1 Premium tax credit definitions.

* * * * *

(d) Family and family size—(1) *In general.* * * *

(2) *Special rule for tax years to which section 151(d)(5) applies.* For taxable years to which section 151(d)(5) applies, a taxpayer's family means the taxpayer, including both spouses in the case of a joint return, except for individuals who qualify as a dependent of another taxpayer under section 152, and any other individual for whom the taxpayer is allowed a personal exemption deduction and whom the taxpayer properly reports on the taxpayer's income tax return for the taxable year. For purposes of this paragraph (d)(2), an individual is reported on the taxpayer's income tax return if the individual's name and taxpayer identification number (TIN) are listed on the taxpayer's Form 1040 series return. *See* § 601.602.

* * * * *

(o) *Applicability dates.* (1) Except for paragraphs (d)(2), (l), and (m) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraph (d)(2) of this section applies to taxable years ending after [the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**].

(3) Paragraphs (l) and (m) of this section apply to taxable years beginning after December 31, 2018. Paragraphs (l) and (m) of § 1.36B–1 as contained in 26 CFR part 1 edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

■ **Par. 4.** Section 1.36B–2 is amended by:

■ a. Revising paragraph (c)(4)(i);

■ b. Revising the heading for paragraph (e); and

■ c. Adding paragraph (e)(4).

The addition and revisions read as follows:

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(4) *Special eligibility rules*—(i) *Related individual.* An individual who may enroll in minimum essential coverage because of a relationship to another person eligible for the coverage, but is not included in the family, as defined in § 1.36B–1(d), of the other eligible person, is treated as eligible for such minimum essential coverage only

for months that the related individual is enrolled in the coverage.

* * * * *

(e) *Applicability dates.* * * *

(4) Paragraph (c)(4)(i) of this section applies to taxable years ending after [the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**].

■ **Par. 5.** Section 1.36B–4 is amended by:

■ a. Adding a sentence to the end of paragraph (a)(1)(ii)(B)(*1*);

■ b. Revising paragraphs (a)(1)(ii)(B)(*2*) and (a)(1)(ii)(C); and

■ c. Revising the heading to paragraph (c) and adding a sentence at the end of the paragraph.

The additions and revisions read as follows:

§ 1.36B–4 Reconciling the premium tax credit with advance credit payments.

(a) * * *

(1) * * *

(ii) * * *

(B) *Individual enrolled by a taxpayer and claimed by another taxpayer*—(*1*) *In general.* * * * For taxable years to which section 151(d)(5) applies, the claiming taxpayer is the taxpayer who properly includes the shifting enrollee in his or her family for the taxable year.

(*2*) *Allocation percentage.* The enrolling taxpayer and claiming taxpayer may agree on any allocation percentage between zero and one hundred percent. If the enrolling taxpayer and claiming taxpayer do not agree on an allocation percentage, the percentage is equal to the number of shifting enrollees properly included in the enrolling taxpayer's family divided by the number of individuals enrolled by the enrolling taxpayer in the same qualified health plan as the shifting enrollee.

* * * * *

(C) *Responsibility for advance credit payments for an individual not reported on any taxpayer's return.* If advance credit payments are made for coverage of an individual who is not included in any taxpayer's family, as defined in § 1.36B–1(d), the taxpayer who attested to the Exchange to the intention to include such individual in the taxpayer's family as part of the advance credit payment eligibility determination for coverage of the individual must reconcile the advance credit payments.

* * * * *

(c) *Applicability dates.* * * * The last sentence of paragraph (a)(1)(ii)(B)(*1*), paragraph (a)(1)(ii)(B)(*2*), and paragraph (a)(1)(ii)(C) of this section apply to taxable years ending after [the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**].

■ **Par. 6.** Section 1.6011–8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.6011–8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.

(a) *Requirement of return.* Except as otherwise provided in this paragraph (a), a taxpayer who receives the benefit of advance payments of the premium tax credit (advance credit payments) under section 36B must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing) and reconcile the advance credit payments. However, if advance credit payments are made for coverage of an individual who is not included in any taxpayer's family, as defined in § 1.36B–1(d), the taxpayer who attested to the Exchange to the intention to include such individual in the taxpayer's family as part of the advance credit payment eligibility determination for coverage of the individual must file a tax return and reconcile the advance credit payments.

(b) *Applicability dates*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, paragraph (a) of this section applies for taxable years ending on or after December 31, 2020.

(2) *Prior periods.* Paragraph (a) of this section as contained in 26 CFR part 1 edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (a) of this section as contained in 26 CFR part 1 edition revised as of April 1, 2020, applies to taxable years beginning after December 31, 2016, and ending before December 31, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–10069 Filed 5–26–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 35

[REG–100320–20]

RIN 1545–BP69

Income Tax Withholding on Certain Periodic Retirement and Annuity Payments Under Section 3405(a)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth a proposed regulation that provides rules for Federal income tax withholding on certain periodic retirement and annuity payments to implement an amendment made by the Tax Cuts and Jobs Act. This proposed regulation would affect payors of certain periodic payments, plan administrators that are required to withhold on such payments, and payees who receive such payments.

DATES: Written or electronic comments and requests for a public hearing must be received by July 27, 2020. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100320–20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–100320–20), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Kara M. Soderstrom of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–5234; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth a proposed amendment to the Employment Tax Regulations (26 CFR parts 31 and 35) under section 3405 of the Internal Revenue Code (Code). This proposed regulation would update certain provisions of § 35.3405–1T to conform to a change to section 3405(a)(4) made by section 11041(c)(2)(G) of the Tax Cuts and Jobs Act, Public Law 115–97,

131 Stat. 2054 (2017) (TCJA). Prior to amendment by TCJA, section 3405(a)(4) provided that, in the case of any periodic payment for which a withholding certificate is not in effect, the amount withheld from the periodic payment (the default rate of withholding) is determined by treating the payee as a married individual claiming three withholding exemptions. As amended by TCJA, section 3405(a)(4) provides that the default rate of withholding on periodic payments is determined under rules prescribed by the Secretary. Section 35.3405–1T reflects the rule under section 3405(a)(4) prior to amendment by TCJA.

1. Statutory and Regulatory Framework

Section 3405 provides Federal income tax withholding rules for payments of pensions, annuities, and certain other deferred income (retirement and annuity payments). Retirement and annuity payments that are subject to withholding under section 3405 include periodic payments, nonperiodic distributions, and eligible rollover distributions.

The Treasury Department and the IRS have issued several sets of regulations under section 3405 that provide guidance regarding withholding on periodic payments, nonperiodic distributions, and eligible rollover distributions. On October 14, 1982, the Treasury Department and the IRS issued § 35.3405–1T (TD 7839) (47 FR 45868), which provides general rules addressing withholding requirements and specific rules addressing withholding on periodic payments and nonperiodic distributions (other than eligible rollover distributions), notice and election procedures, and reporting and recordkeeping requirements. On September 22, 1995, the Treasury Department and the IRS issued § 31.3405(c)–1 (TD 8619) (60 FR 49215), which provides rules for withholding on eligible rollover distributions, as defined in section 402(f)(2)(A) (generally referring to distributions from plans qualified under section 401(a), section 403(a) plans, section 403(b) tax-sheltered annuity plans, or section 457(b) plans maintained by a governmental employer that are eligible to be rolled over to an IRA (an individual retirement account or individual retirement annuity) or another eligible retirement plan). On February 8, 2000, the Treasury Department and the IRS issued § 35.3405–1 (TD 8873) (65 FR 6007), which provides rules regarding the medium through which notices required under section 3405 may be provided. On May 31, 2019, proposed § 31.3405(e)–1 was published in the **Federal Register** (84 FR 25209) to propose rules applicable to periodic payments and nonperiodic distributions (other than eligible rollover distributions) that are to be delivered outside the United States and its possessions.

2. Definition of Periodic Payment

While the guidance described in Section 1 of this Background relates to all types of payments and distributions subject to withholding under section 3405, this proposed regulation addresses only the change made by section 11041(c)(2)(G) of TCJA to section 3405(a)(4), and therefore applies only to certain periodic payments.

A periodic payment is defined in section 3405(e)(2) as ''a designated distribution which is an annuity or similar periodic payment.'' Subject to certain exceptions,[1] a designated distribution generally is defined in section 3405(e)(1)(A) as any distribution or payment from or under an employer deferred compensation plan, an individual retirement plan (as defined in section 7701(a)(37)), or a commercial annuity. For this purpose, an employer deferred compensation plan is defined in section 3405(e)(5) as any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation, and a commercial annuity is defined in section 3405(e)(6) as an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State. Section 35.3405–1T, Q&A a–9, provides that a periodic payment includes an annuity or similar periodic payment, whether paid by a licensed life insurance company, a financial institution, or a plan, and that an ''annuity'' is a series of payments payable over a period greater than one year and taxable under section 72 as amounts received as an annuity, whether or not the payments are variable in amount.

[1] Under section 3405(e)(1)(B), a designated distribution does not include any amount that is wages without regard to section 3405; the portion of a distribution or payment (excluding any distribution or payment from or under an individual retirement plan, other than a Roth IRA) which it is reasonable to believe is not includible in gross income; any amount that is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty; or any distribution described in section 404(k)(2) (relating to distributions of ''applicable dividends'' by an employee stock ownership plan).

3. Withholding on Periodic Payments

Section 3405(a) requires the payor of any periodic payment to withhold from the payment as if the payment were wages paid by an employer to an employee, unless an individual has elected under section 3405(a)(2) not to have withholding apply, subject to the following exceptions. First, section 3405(c)(1)(A) provides that section 3405(a) does not apply in the case of any designated distribution that is an eligible rollover distribution (as defined in section 402(f)(2)(A)). Second, section 3405(e)(12) provides that no election under section 3405(a)(2) will be treated as in effect (and the provisions of section 3405(a)(4) for determining the default rate of withholding will not apply) if a payee fails to furnish the payee's Taxpayer Identification Number (TIN) to the payor in the manner required by the Secretary or the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect. Third, under section 3405(e)(13), no election under section 3405(a)(2) may be made with respect to certain periodic payments to be delivered outside of the United States and its possessions.

4. Default Rate of Withholding on Periodic Payments and TCJA Amendment

Before amendment by TCJA, section 3405(a)(4) provided that, in the case of any periodic payment with respect to which a withholding certificate is not in effect, the amount withheld from the periodic payment is ''determined by treating the payee as a married individual claiming 3 withholding exemptions.'' TCJA amended section 3405(a)(4) to eliminate the requirement that the payee be treated as a married individual claiming three withholding exemptions and to provide instead that, in the case of any periodic payment with respect to which a withholding certificate is not in effect, the amount withheld from the periodic payment will be ''determined under rules prescribed by the Secretary.''

5. Guidance Regarding the Default Rate of Withholding on Periodic Payments

Following enactment of TCJA, the Treasury Department and the IRS issued guidance addressing the change to section 3405(a)(4). Section V of Notice 2018–14, 2018–7 I.R.B. 353, and section 10 of Notice 2018–92, 2018–51 I.R.B. 1038, provided that, for 2018 and 2019, respectively, the rules for withholding when no withholding certificate is furnished with respect to periodic payments under section 3405(a) would

parallel the rules for prior years and would be based on treating the payee as a married individual claiming three withholding allowances. Similarly, section IV of Notice 2020–3, 2020–3 I.R.B. 330, provides that, for 2020, the default rate of withholding from periodic payments under section 3405(a) is based on treating the payee as a married individual claiming three withholding allowances and applying that status when referring to the applicable withholding tables and related computational procedures in the 2020 Publication 15–T, ''Federal Income Tax Withholding Methods.'' [2]

Explanation of Provisions

1. Default Rate of Withholding on Periodic Payments

As indicated in the Background section of the preamble, certain provisions of § 35.3405–1T reflect the rule under section 3405(a)(4) prior to amendment by TCJA.[3] Specifically, Q&As a–10, b–3, and b–4 of § 35.3405–1T each provide that the default rate of withholding on periodic payments is determined by treating the payee as married and claiming three withholding allowances. The proposed regulation would remove these three Q&As from § 35.3405–1T because they prescribe the substantive default rate of withholding rule under section 3405(a)(4) prior to amendment by TCJA. The proposed regulation would not remove other Q&As in § 35.3405–1T that reference the pre-TCJA rule under section 3405(a)(4) but do not require payors to withhold based upon that pre-TCJA rule (for example, the sample notice in § 35.3405–1T, Q&A d–21).[4] The proposed regulation would update and replace the provisions of Q&As a–10, b–3, and b–4 in new § 31.3405(a)–1, which provides that the default rate of withholding on periodic payments is determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner.

This proposed § 31.3405(a)–1 provides a flexible and administrable rule that leaves the communication and mechanical details of the default rate of withholding on periodic payments to be provided in applicable forms, instructions, publications, and other guidance. These materials can be updated quickly as needed (for legislative changes or other reasons) to provide payors and plan administrators processing payments adequate time to program their systems to withhold the proper amount of income tax. Currently, withholding on periodic payments, including the default rate of withholding, is explained in the instructions to the 2020 Form W–4P, ''Withholding Certificate for Pension or Annuity Payments,'' the 2020 Publication 15–T, and related publications. The 2020 Publication 15–T also provides the tables that payors use to calculate withholding on periodic payments (and the tables that employers use to calculate withholding on taxable wages).

Proposed § 31.3405(a)–1 would also generally update Q&As a–10, b–3, and b–4 of § 35.3405–1T to reflect relevant statutory changes and provide clarifications. Notably, in accordance with section 3405(a)(3), proposed § 31.3405(a)–1 would update the rules for determining the effective date of a payee's Form W–4P by referencing the rules under section 3402(f)(3) and the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner.[5] Section 3402(f)(3) provides different withholding certificate effective date rules for cases in which there is no previous withholding certificate in effect and cases in which a previous withholding certificate is in effect. Form W–4P effective date information is provided in the 2019 Publication 505, ''Tax Withholding and Estimated Tax.''

2. Other Provisions of § 35.3405–1T

Proposed § 31.3405(a)–1 refers taxpayers to § 35.3405–1T, among other regulations under section 3405, for additional guidance regarding Federal income tax withholding on periodic payments, and is intended to be read in conjunction with those other regulations. For example, proposed § 31.3405(a)–1(b) provides general guidance regarding Federal income tax withholding on periodic payments, but an election of no withholding under section 3405(a)(2) may be available as described in § 35.3405–1T, Q&A d–1.

While this proposed regulation would update certain Q&As in § 35.3405–1T, it would not update all of the Q&As, including several Q&As that do not reflect legislative changes that became effective after the publication of § 35.3405–1T. For example, the description in § 35.3405–1T, Q&A d–1, of an election of no withholding has not been updated to reflect that an election may not be available due to the restrictions set forth in section 3405(e)(12) (failure to provide correct TIN) or 3405(e)(13) (certain payments to be delivered outside of the United States and its possessions). The current priority of the Treasury Department and the IRS is to address the provisions of § 35.3405–1T that were impacted by TCJA. In the future, the Treasury Department and the IRS intend to update the provisions of § 35.3405–1T to reflect all statutory changes since the initial promulgation of the temporary regulation.

Proposed Applicability Date

This regulation is proposed to apply to periodic payments made after December 31, 2020. Notwithstanding § 35.3405–1T, taxpayers may rely on the rules set forth in this notice of proposed rulemaking, in their entirety, until the date of publication of a Treasury Decision adopting this proposed rule as a final regulation.

Special Analyses

1. Regulatory Planning and Review

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

2. Paperwork Reduction Act

Any collection of information associated with this notice of proposed

[2] Notice 2020–3 also provides that the Treasury Department and the IRS are considering whether the default rate of withholding from periodic payments that is in effect for 2020 will continue to be appropriate for calendar years after 2020, and requests comments on whether the adoption of a new default rate of withholding on periodic payments that applies prospectively would present any administrative challenges. One comment was received on this issue (available at: *https://www.regulations.gov/document?D=IRS-2019-0051-0004*). The commenter provides suggestions regarding the effective date and prospective application of any change to the default rate of withholding on periodic payments and suggestions regarding the applicable withholding tables for periodic payments for calendar years after 2020.

[3] In addition to the amendment made by section 11041(c)(2)(G) of TCJA, described in the Background section of the preamble, section 11041(c)(2)(F) of TCJA amended section 3405(a)(3) and (4) (and the heading for paragraph (4)) to replace each reference to ''exemption'' with ''allowance,'' effectively replacing references to ''withholding exemption certificate'' with ''withholding allowance certificate.'' However, the Treasury Department and the IRS have determined that no updates to § 35.3405–1T are required to implement section 11041(c)(2)(F) of TCJA because § 35.3405–1T refers to a ''withholding certificate.''

[4] As described in Section 2 of this Explanation of Provisions, the Treasury Department and the IRS intend to update other Q&As in § 35.3405–1T in the future.

[5] Thus, proposed § 31.3405(a)–1 addresses the amendment of section 3402(f)(3)(B) by section 10302(a) of the Omnibus Budget Reconciliation Act of 1987, Public Law No. 100–203, 101 Stat. 1330 (1987). The amendment to section 3402(f)(3)(B) affected the rules in Q&A b–3 of § 35.3405–1T for determining the effective date of a payee's Form W–4P.

rulemaking has been submitted to the Office of Management and Budget for review under OMB control number 1545–0074 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In general, the collection of information is required under section 3405 of the Code. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to this proposed regulation, including estimates for how much time it would take to comply with the paperwork burdens described in OMB control number 1545–0074 and ways for the IRS to minimize the paperwork burden. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

3. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities that are directly affected by the proposed regulation. The proposed regulation will apply to all payors of periodic payments, including small entities, and is likely to affect a substantial number of small entities. The economic impact, however, will not be significant. The primary change is to effect a TCJA legislative amendment to remove the reference in section 3405(a)(4) to a married individual claiming three exemptions as the default withholding rate and to provide, in its place, that the amount to be withheld is determined in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner. Accordingly, this rule would conform the current regulation to the statute and will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact this rule would have on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability of IRS Documents

IRS Notices cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Comments and Requests for a Public Hearing

Before this proposed amendment to the regulations is adopted as a final regulation, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Kara M. Soderstrom, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these proposed regulations.

List of Subjects

26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35

Employment taxes, Income taxes, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 35 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 is amended by adding an entry for § 31.3405(a)–1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 31.3405(a)–1 also issued under 26 U.S.C. 3405(a)(4).

* * * * *

■ **Par. 2.** Section 31.3405(a)–1 is added to read as follows:

§ 31.3405(a)–1 Questions and answers relating to Federal income tax withholding on periodic retirement and annuity payments.

(a) The following questions and answers relate to Federal income tax withholding on periodic payments under section 3405(a), as amended by section 11041(c)(2)(G) of the Tax Cuts and Jobs Act (Pub. L. 115–97, 131 Stat. 2054 (2017)). The withholding rules of section 3405(a) do not apply to periodic payments that are eligible rollover distributions (as defined in section 402(f)(2)(A)). See generally section 3405(c) and § 31.3405(c)–1 for Federal income tax withholding rules applicable to eligible rollover distributions. See section 3405(e)(13) for additional rules applicable to certain periodic payments under section 3405(a) and nonperiodic distributions under section 3405(b) that are to be delivered outside the United States and its possessions. For additional guidance regarding periodic payments, see §§ 35.3405–1 and 35.3405–1T of this chapter.

(b)(1) Q–1: How will Federal income tax be withheld from a periodic payment?

(2) A–1: In the case of a periodic payment that is subject to withholding under section 3405(a), amounts are withheld as if the payment were a payment of wages by an employer to the employee for the appropriate payroll period. If the payee has not furnished a withholding certificate, the amount to be withheld is determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner. The rules for withholding when the payee has not furnished a withholding certificate apply regardless of whether the payor is aware of the payee's actual marital status or actual Federal income tax filing status.

(c)(1) Q–2: Do rules similar to those for wage withholding apply to the furnishing of a withholding certificate for periodic payments?

(2) A–2: Yes. Unless the rules of section 3405 specifically conflict with the rules of section 3402, the rules for withholding on periodic payments that are not eligible rollover distributions will parallel the rules for wage

withholding. Thus, if a withholding certificate is furnished by a payee, it will generally take effect in accordance with section 3402(f)(3) and as provided in applicable forms, instructions, publications, and other guidance prescribed by the Commissioner. If no withholding certificate is furnished, the amount withheld must be determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner for withholding on periodic payments when no withholding certificate is furnished.

(d)(1) Q–3: What is the applicability date of this section?

(2) A–3: This section applies with respect to periodic payments made after December 31, 2020.

PART 35—EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

■ **Par. 3.** The authority citation for part 35 continues to read in part as follows:

Authority: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Public Law 97–248 (96 Stat. 623) * * *

§ 35.3405–1T [Amended]

■ **Par. 4.** Section 35.3405–1T is amended by removing and reserving Q&A a–10, Q&A b–3, and Q&A b–4.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–10679 Filed 5–26–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0005; Notice No. 190]

RIN 1513–AC60

Proposed Establishment of The Burn of Columbia Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 16,870-acre ''The Burn of Columbia Valley'' viticultural area in Klickitat County, Washington. The proposed AVA is located entirely within the existing Columbia Valley AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: TTB must receive your comments on or before July 27, 2020.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2020–0005 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov*, U.S. mail, or hand delivery, and for full details on how to view or obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore

appropriate for separate recognition; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Petition To Establish The Burn of Columbia Valley AVA

TTB received a petition from Kevin Corliss, Vice President of Vineyards for Ste. Michelle Wine Estates, Joan R. Davenport, Professor of Soil Sciences at Washington State University, and John Derrick, Vice President of Operations for Mercer Ranches, Inc., proposing to establish ''The Burn of Columbia Valley'' AVA. The proposed AVA is located in Klickitat County, Washington, and is entirely within the existing Columbia Valley AVA (27 CFR 9.74). Within the 16,870-acre proposed AVA, there are three (3) commercial vineyards which cover a total of approximately 1,261 acres and are owned by two different entities. The petition was originally submitted under the name ''The Burn,'' but the petitioners later requested to change the name to the more geographically specific ''The Burn of Columbia Valley.'' The distinguishing features of the proposed The Burn of Columbia Valley AVA are its soils, climate, and topography.

Proposed The Burn of Columbia Valley AVA

Name Evidence

According to an excerpt from *History of Klickitat County*[1] that was included in the petition, the origin of the name ''The Burn'' is uncertain. One theory is that the Native Americans in the region would burn the prairie grasses in order to discourage or frighten away settlers, while another theory is that the Native Americans regularly burned the area to insure adequate grass for their horses in the spring. A third explanation is that the dry east winds that blow through the region leave the farmers' wheat fields burned and shriveled. Regardless of the derivation of the name, the petition states that the region of the proposed AVA has been referred to as ''The Burn'' since at least the early 1900's, when mail destined for the area carried the designation ''The Burn.''

The petition included evidence that the name ''The Burn'' continues to be used to describe the region of the proposed AVA into modern times. For example, the 1965 Goodnoe Hills and the 1971 Sundale, NW. U.S.G.S. topographic maps both label the region of the proposed AVA as ''The Burn.'' Although the current paper U.S.G.S. topographic maps do not label the region of the proposed AVA, the petition did include a screen shot of the current U.S.G.S. online National Map[2] which shows the region between Rock Creek and Chapman Creek labeled as ''The Burn.'' The National Map also shows a road named ''Burn Road'' running through the region of the proposed AVA. In an email to TTB, one of the petitioners states that, based on her knowledge of the history of the region, the road derives its name from the common name for the region. The petition also included a page from a high school biology website that shows a photo of wildflowers growing ''in an area of south-central Klickitat County known as The Burn.''[3] Finally, another web page included in the petition provides general information about Klickitat County and lists ''The Burn'' as an area within the county.[4]

Boundary Evidence

The proposed The Burn of Columbia Valley AVA is a roughly triangular region of gently sloping land in the southwestern portion of the established Columbia Valley AVA. The northern bank of the Columbia River forms the southern boundary of the proposed AVA (the base of the triangle) and separates the proposed AVA from the flatter terrain across the river in Oregon. The western boundary (the left edge of the triangle) follows Paterson Slough, Rock Creek, and the boundary of the trust lands held by the Yakima Nation. The petition states that the trust lands were not included in the proposed AVA due to their steeper slope angles and because tribal lands are excluded from commercial wine grape production. The eastern boundary of the proposed AVA (the right edge of the triangle) largely follows the bed of Chapman Creek and separates the proposed AVA from steeper regions with higher elevations.

Distinguishing Features

According to the petition, the distinguishing features of the proposed The Burn of Columbia Valley AVA are its soils, climate, and topography.

Soils

The petition states that there are 32 soil series found within the proposed The Burn of Columbia Valley AVA, although approximately 80 percent of the soils within the proposed AVA are derived from only 9 soil series or complexes. The following table lists the nine most commonly found soils within the proposed AVA, along with the percentage of the total soils each series or complex comprises.

TABLE 1—MOST COMMON SOILS OF THE PROPOSED AVA

Soil series/complex name	Percentage of total soils
Walla Walla silt loam (without cemented substratum)	30.16
Rock outcrop–Haploxeroll complex	13.57
Haploxeroll–Fluvaquent complex	8.37
Fluventic Haploxeroll-Riverwash complex	6.51
Rock outcrop Rubble and complex	6.08
Wato silt loam	4.85
Walla Walla silt loam (with cemented substratum)	4.07
Endicott silt loam	3.73
Endicott–Moxee complex	2.55

According to the petition, the silty loam soils that comprise the majority of the proposed The Burn of Columbia Valley AVA have a good plant-available water holding capacity. Such soils are capable of delivering sufficient water to the vines during the growing season. The higher water holding capacity of the soils also means that vines which have been irrigated post-harvest will have adequate access to water through the winter and thus will have a reduced risk of frost or freeze injury to the roots. Finally, the petition states that the silty loam soils of the proposed AVA are in the taxonomic order Mollisols, which means they are relatively high in organic matter and can provide adequate nutrients to the vines, particularly nitrogen.

The soils of the region due west of the proposed The Burn of Columbia Valley AVA are the most similar to the soils of the proposed AVA, with Walla Walla silt loam without cemented substratum comprising 41.55 percent of the soils. However, 24.27 percent of the soils found in the region to the west are not found within the proposed AVA, including the Cheviot–Tronsen complex, the Goodnoe–Swalecreek–Horseflat complex, and Asotin silt loam. To the east and northeast of the proposed AVA, only 8.39 percent of the land contains the 9 types of soil that dominate the proposed AVA. Instead, the region contains sizeable amounts of soil that are not present within the proposed AVA, including the Renslow–Ralls–Wipple complex, Van Nostern silt

[1] May, Peter. *History of Klickitat County.* Goldendale, WA: Klickitat Historical Society, 1982, p. 92.

[2] *https://viewer.nationalmap.gov/advanced-viewer.*

[3] *http://science.halleyhosting.com/nature/bloomtime/egorge/11/19.html.*

[4] *http://www.us-places.com/Washington/Klickitat-County.htm.*

loam, and Van Nostern–Bakeoven complex. To the south of the proposed AVA, only 14.60 percent of the soils are from the 9 series and complexes that are most prevalent within the proposed AVA. Soils present in the region to the south which are not present within the proposed AVA include Ritzville silt loam, Willis silt loam, and Roloff–Rock outcrop complex. To the northwest of the proposed AVA, the 9 soils that dominate the proposed AVA cover only 12.54 percent of the region. Soils found in the region but not in the proposed AVA include Colockum–Cheviot complex, Swalecreek–Rockly complex, and Goldendale silt loam.

Climate

The proposed The Burn of Columbia Valley AVA petition included information on the climate of the proposed AVA, including growing degree day [5] (GDD) accumulations and precipitation amounts. The climate information was developed from the weather records from 1981–2010 from the Western Regional Climate Center.[6]

The petition included information on the minimum, maximum, and average annual GDD accumulations for the proposed AVA and the surrounding regions for the period of record. The GDD information is compiled in the following table.

TABLE 2—ANNUAL GDD ACCUMULATIONS

Region	Average	Minimum	Maximum
Proposed AVA	2,763	2,405	3,249
East-northeast	2,414	1,723	3,298
South	2,768	2,464	3,305
West	2,570	1,766	3,191
Northwest	2,178	1,570	2,995

The proposed AVA has higher average and minimum GDD accumulations than each of the surrounding regions except the region to the south, and a maximum GDD accumulation that is greater than two of the surrounding regions. The petition states that the higher average GDD accumulations within the proposed AVA indicate a climate that is warmer than most of the surrounding regions. The petition shows that GDD accumulations within the proposed AVA favor the production of grape varietals that have higher heat unit requirements, including Cabernet Sauvignon and Syrah, which are the two most commonly grown grape varietals in the proposed AVA.

The petition included information on the minimum, maximum, and average annual precipitation amounts for the proposed AVA and the surrounding regions for the period of record. The precipitation information is compiled in the following table.

TABLE 3—ANNUAL PRECIPITATION AMOUNTS IN INCHES

Region	Average	Minimum	Maximum
Proposed AVA	8.76	6.65	10.44
East-northeast	10.23	6.80	11.63
South	9.39	6.67	10.38
West	9.81	7.03	12.53
Northwest	11.58	10.45	12.69

The proposed The Burn of Columbia Valley AVA has average, minimum, and maximum annual precipitation amounts that are lower than those of each of the surrounding regions, except that the region to the south has a lower maximum annual precipitation amount. The petition states that the low rainfall amounts mean that vineyards in the proposed AVA need supplemental irrigation. However, the petition notes that because of the high water holding capacity of the soils of the proposed AVA, vines remain adequately hydrated.

Topography

The proposed AVA is located on gently sloping bench lands above the Columbia River. The average slope angle within the proposed AVA is 7.27 percent. The proposed AVA has a large contiguous expanse of land with easterly, southeasterly, and southern aspects. The petition also provided information about the average, maximum, and minimum elevations of the proposed AVA and the surrounding regions. However, the petition did not adequately describe the specific effects of elevation on viticulture, so TTB cannot consider elevation to be a distinguishing topographic feature of the proposed AVA.

When compared to the proposed AVA, each of the surrounding regions has higher average slope angles with the exception of the region to the south, which has a lower average slope angle. The regions to the west and northwest of the proposed AVA have predominately southerly aspects. The petition states that the regions to the south and east-northeast have predominately southeasterly aspects, similar to those of the proposed AVA. However, the petition states that the proposed AVA has a larger contiguous region with a southeasterly aspect.

The petition states that the gentle slopes of the proposed AVA are suitable for mechanical cultivation of vineyards, yet are steep enough to avoid the pooling of cold air that could damage grapes. The southeasterly aspect of the proposed AVA allows excellent sunlight exposure for vineyards.

Summary of Distinguishing Features

The following table summarizes the distinguishing features of the proposed The Burn of Columbia Valley AVA and the surrounding regions.

[5] See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd. ed. 1974), pages 61–64. In the Winkler scale, the GDD regions are defined as follows: Region I = less than 2,500 GDDs; Region II = 2,501–3,000 GDDs; Region III = 3,001–3,500 GDDs; Region IV = 3,501–4,000 GDDs; Region V = greater than 4,000 GDDs.

[6] *https://wrcc.dri.edu.*

TABLE 4—SUMMARY OF DISTINGUISHING FEATURES

Region	Soils	Climate	Topography
Proposed The Burn of Columbia Valley AVA.	Silty loam soils including Walla Walla silt loam without cemented substratum, relatively high organic material, high water holding capacity.	Average annual GDD accumulations of 2,763, minimum annual GDD accumulations of 2,405, maximum annual GDD accumulations of 3,249; average annual precipitation of 8.76 inches, minimum annual precipitation of 6.65 inches, and maximum annual precipitation of 10.44 inches.	Gently sloping bench lands with average slope angle of 7.27 percent and large contiguous expanse of land with easterly, southeasterly, and southern aspects.
East-northeast	Sizeable amount of soils that are not present in proposed AVA.	Lower average and minimum annual GDD accumulation; Higher maximum annual GDD accumulations; Higher average, minimum, and maximum annual precipitation amounts.	Higher slope angles, predominately southeasterly slope aspects.
South	Sizeable amount of soils that are not present in proposed AVA.	Higher average, minimum, and maximum annual GDD accumulations; Higher average and minimum annual precipitation amounts; Lower maximum annual precipitation amounts.	Lower slope angles, predominately southeasterly slope aspects.
West	Silty loam soils including Walla Walla silt loam without cemented substratum, but with soils not found in proposed AVA.	Lower average, minimum, and maximum annual GDD accumulations; Higher average, minimum, and maximum annual precipitation amounts.	Higher slope angles, predominately southerly slope aspects.
Northwest	Sizeable amount of soils that are not present in proposed AVA.	Lower average, minimum, and maximum annual GDD accumulations; Higher average, minimum, and maximum annual precipitation amounts.	Higher slope angles, predominately southerly slope aspects.

Comparison of the Proposed The Burn of Columbia Valley AVA to the Existing Columbia Valley AVA

The Columbia Valley AVA was established by T.D. ATF–190, which was published in the **Federal Register** on November 13, 1984 (49 FR 44895). T.D. ATF–190 describes the Columbia Valley AVA as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers. Growing Degree Day accumulations within the Columbia Valley AVA range from 2,000 to 3,000, and annual precipitation amounts are between 6 and 22 inches. Elevations within the Columbia Valley AVA are generally below 2,000 feet.

The proposed The Burn of Columbia Valley AVA shares some of the general viticultural features of the larger Columbia Valley AVA. For instance, the average annual rainfall amounts and elevation within the proposed AVA are within the range of those features for the Columbia Valley AVA. However, the proposed AVA can accumulate over 3,000 GDDs annually, indicating a climate that is slightly warmer than most of the rest of the Columbia Valley AVA. Additionally, because the proposed The Burn of Columbia Valley AVA is much smaller than the Columbia Valley AVA, the proposed AVA has a greater uniformity of characteristics within its boundaries.

TTB Determination

TTB concludes that the petition to establish the 16,870-acre ''The Burn of Columbia Valley'' AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed The Burn of Columbia Valley AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''The Burn of Columbia Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''The Burn of Columbia Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area's name ''The Burn of Columbia Valley.'' TTB is not proposing to designate ''The Burn,'' standing alone, as a term of viticultural significance because the term ''The Burn'' is used to refer to multiple areas in the United States. Therefore, wine bottlers using ''The Burn,'' standing alone, in a brand name or in another label reference on their wines would not be affected by the establishment of this proposed AVA.

The approval of the proposed The Burn of Columbia Valley AVA would not affect any existing AVA, and any bottlers using ''Columbia Valley'' as an appellation of origin in a brand name for wines made from grapes grown within the Columbia Valley AVA would not be affected by the establishment of this new AVA. The establishment of the proposed The Burn of Columbia Valley AVA would allow vintners to use ''The Burn of Columbia Valley'' or ''Columbia Valley'' as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed The Burn of Columbia Valley AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, and other required information submitted in support of the AVA petition. In addition, because the proposed The Burn of Columbia Valley AVA would be within the existing Columbia Valley AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the Columbia Valley AVA that the proposed The Burn of Columbia Valley AVA should no longer be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed The Burn of Columbia Valley AVA on wine labels that include the term ''The Burn of Columbia Valley'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2020–0005 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 190 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab at the top of the page.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 190 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2020–0005 on the Federal e-rulemaking portal, *Regulations.gov*, at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 190. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab at the top of the page.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You also may view copies of this document, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Public Reading Room, 1310 G Street, NW, Suite 400, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's Regulations and Rulings Division at the above address, by email using the web form at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–1039, ext. 175, to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by

Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.____to read as follows:

§ 9.____ The Burn of Columbia Valley.

(a) *Name.* The name of the viticultural area described in this section is ''The Burn of Columbia Valley''. For purposes of part 4 of this chapter, ''The Burn of Columbia Valley'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of The Burn of Columbia Valley viticultural area are titled:

(1) Sundale NW, OR–WA, 2017;

(2) Goodnoe Hills, WA, 2017;

(3) Dot, WA, 2017; and

(4) Sundale, WA–OR, 2017.

(c) *Boundary.* The Burn of Columbia Valley viticultural area is located in Klickitat County in Washington. The boundary of The Burn of Columbia Valley viticultural area is as described below:

(1) The beginning point is on the Sundale NW map, at the intersection of the Columbia River and the east shore of Paterson Slough. From the beginning point, proceed northerly along the east shore of Paterson Slough to its junction with Rock Creek, and continuing northeasterly along Rock Creek to its intersection with the boundary of the Yakima Nation Trust Land; then

(2) Proceed south, then east, then generally northeasterly along the boundary of the Yakima Nation Trust Land, crossing onto the Goodnoe Hills map, to the intersection of the Trust Land boundary with Kelley Road; then

(3) Proceed north in a straight line to the intersection with the main channel of Chapman Creek; then

(4) Proceed southeasterly (downstream) along Chapman Creek, crossing over the Dot map and onto the Sundale map, to the intersection of Chapman Creek with its southernmost tributary; then

(5) Proceed due east in a straight line to the creek running through Old Lady Canyon; then

(6) Proceed southerly along the creek to its intersection with the northern shoreline of the Columbia River; then

(7) Proceed westerly along the northern shoreline of the Columbia River, returning to the beginning point.

Signed: March 31, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: May 13, 2020.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2020–10921 Filed 5–26–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0004; Notice No. 189]

RIN 1513–AC57

Proposed Establishment of the White Bluffs Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 93,738-acre ''White Bluffs'' viticultural area in Franklin County, Washington. The proposed AVA is located entirely within the existing Columbia Valley AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before July 27, 2020.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2020–0004 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov*, U.S. mail, or hand delivery, and for full details on how to view or obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a

wine made from grapes grown in an area to its geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- An explanation showing the proposed AVA is sufficiently distinct from an existing AVA so as to warrant separate recognition, if the proposed AVA is to be established within, or overlapping, an existing AVA; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Petition To Establish the White Bluffs AVA

TTB received a petition from Kevin Pogue, a college geology professor, proposing to establish the ''White Bluffs'' AVA. The petition was submitted on behalf of local vineyard owners and winemakers. The proposed AVA is located in Franklin County, Washington, and is entirely within the existing Columbia Valley AVA (27 CFR 9.74). Within the 93,738-acre proposed AVA, there are 9 commercial vineyards, covering a total of approximately 1,127 acres, along with 1 winery. The distinguishing features of the proposed White Bluffs AVA are its topography, geology, soils, and climate.

Proposed White Bluffs AVA

Name Evidence

The proposed White Bluffs AVA takes its name from a steep escarpment that lies along the eastern bank of the Columbia River and forms the western boundary of the proposed AVA. An early reference to the region can be found in an 1893 U.S. Geological Survey bulletin, which states, ''The White bluffs [sic] afford favorable ground for collecting fossil bones * * *.'' [1] A 1917 geological bulletin titled ''Age of the strata referred to as Ellensburg formation in the White Bluffs of the Columbia River'' notes, ''The White Bluffs follow the river closely from a point ten or twelve miles north of Pasco to the northwestward for about thirty miles.'' [2] A more recent geological publication states, ''The White Bluffs line the north and east sides of the Columbia River for about 30 miles along the Hanford Reach near Richland.'' [3]

The petition also included examples of use of the term ''White Bluffs'' by businesses and organizations within or serving the proposed AVA. For example, the White Bluffs Quilt Museum, which is in Richland, Washington, describes itself as ''a Regional Textile Arts Center, serving the Tri-Cities and the Mid-Columbia Basin,'' which includes the region of the proposed AVA. Claar Cellars Winery, which is located within the proposed AVA, has a vineyard called White Bluffs Vineyard. The website of the Washington State Wine Commission states that both the White Bluffs Vineyard and Claar Cellars Winery are located ''north of Pasco, WA in the White Bluffs area of the Columbia Valley Appellation.'' [4] Finally, the petition notes that an endangered plant that grows primarily within and around the proposed AVA is named the White Bluffs bladderpod.[5]

Boundary Evidence

The proposed White Bluffs AVA is located in the central portion of the established Columbia Valley AVA along the eastern bank of the Columbia River and is shaped roughly like a mitten with the ''thumb'' pointing east. The proposed boundaries encompass a plateau upon which the proposed AVA is located. The northern, eastern, and southern boundaries each primarily follow elevation contours that approximate the escarpments that form the edges of the plateau. The western boundary separates the proposed AVA from the Hanford Reach National Monument and is formed by the east bank of the Columbia River and the boundary of the monument.

Distinguishing Features

According to the petition, the distinguishing features of the proposed White Bluffs AVA are its topography, geology, soils, and climate.

Topography

The proposed White Bluffs AVA is located on a broad plateau that rises, on average, 200 feet above the surrounding landscape. The Ringold and Koontz coulees divide the plateau into two distinct areas that are capped by flat surfaces known as Columbia Flat and Owens Flat. The surface of the plateau is described as being ''remarkably even, excepting where interrupted by occasional drainage courses that have cut below its level.'' [6] Elevations within the proposed AVA range from 700 feet in the coulees to approximately 1,200 feet in the northeastern section. The majority of the proposed AVA has elevations between 800 and 1,000 feet.

By contrast, the surrounding regions are generally characterized by lower elevations. To the immediate north, the elevations drop slightly along the Wahluke Slope Habitat Management Area before rising into the Saddle Mountains. To the east, elevations slope downward into the Esquatzel Coulee. To the south, elevations descend into the Pasco Basin. To the west, elevations slope down to the Columbia River.

According to the petition, the topography of the proposed AVA has an effect on viticulture. The plateau's escarpments provide gently sloping vineyard sites with a southern component. Sites with a southern aspect absorb more solar energy per unit area than other sites, which helps warm the soil and promote an earlier onset of bud break, flowering, veraison, and harvest. Additionally, vineyards planted on the plateau are above colder air that pools

[1] Russell, I.C., A geological reconnaissance in central Washington: U.S. Geological Survey Bulletin, p. 108 (1893).

[2] Merriam, J.C., and Buwalda, J.P., Age of the strata referred to as Ellensburg formation in the White Bluffs of the Columbia River: University of California Publications Bulletin of the Department of Geology, v. 10, p. 255–266 (1917).

[3] Bjornstad, B., On the trail of the Ice Age floods, a geological guide to the Mid-Columbia Basin: Keokee Books, Sandpoint, ID, p.308 (2006).

[4] *https://www.washingtonwine.org/vineyards/white-bluffs-vineyard.*

[5] *https://ecos.fws.gov/ecp0/profile/speciesProfile?sld=5390.*

[6] Merriam, J.C., and Buwalda, J.P., 1917, Age of the strata referred to as Ellensburg formation in the White Bluffs of the Columbia River: University of California Publications Bulletin of the Department of Geology, v. 10, p. 255–266.

on the floor of the surrounding lower elevations at night. Vineyards above the pooling cold air have a longer growing season and are at less risk of damage from late spring and early fall frost and freeze events.

Geology

The proposed White Bluffs AVA is underlain by a thick layer of sedimentary rocks called the Ringold Formation. The sediments that comprise the Ringold Formation were deposited in lakes and rivers between 8.5 and 3.4 million years ago. The upper part of the Ringold Formation contains an erosion-resistant mineralized layer commonly referred to as caliche. This layer reaches depths of at least 15 feet and limits root penetration and soil water holding capacity. As a result, areas with thick layers of caliche routinely undergo deep ripping with bulldozers to break up the caliche before vineyards can be planted. The Ringold Formation overlies Columbia River basalt.

The underlying rock formations of the regions surrounding the proposed White Bluffs AVA also consist of Columbia River basalt. However, the Ringold Formation is generally much thinner or entirely absent in the surrounding regions, leaving the Columbia River basalt exposed. Unlike vines planted in the proposed AVA, vines planted in the surrounding region are able to encounter the basalt bedrock and are therefore exposed to a suite of very different minerals, including olivine and plagioclase feldspar.

Soils

The soils of the proposed White Bluffs AVA are developed in wind-deposited silt and fine sand overlying sediment deposited by ice-age floods, which in turn overlies the Ringold Formation. Most of the ice-age flood sediment deposited within the proposed AVA is a mixture of silt and sand that settled out of suspension in glacial Lake Lewis. The maximum elevation of Lake Lewis was approximately 1,250 feet, and thus the entire proposed AVA was submerged. The thickness of the flood sediment gradually increases with decreasing elevation, since there were multiple ice-age floods of varying intensity and lower elevations were flooded more frequently. Thus, the soil depths of the regions surrounding the proposed AVA are likely to be thicker due to their lower elevations. Additionally, the soils surrounding the proposed AVA are much more likely to consist of coarse-grained gravel rather than fine sand and silt, since they were deposited by fast-flowing flood currents instead of by wind.

Because of the thinness of the soils of the proposed AVA, the roots of grapevines are able to reach the Ringold Formation, which has a high clay content. High clay content allows the soils to release water more slowly than sandier soils, allowing vines to be less stressed during dry conditions.

Climate

According to the petition, the cooler nighttime air flows away from the upper surface of the plateau of the proposed White Bluffs AVA and into the surrounding lower elevations. As a result, the proposed AVA has a longer growing season, which is characterized by an earlier last-frost date and later first-frost date than the surrounding regions. The following table summarizes the climate data provided in the petition. Data was not available for the region to the west, within the Hanford Reach National Monument.

TABLE—CLIMATE DATA OF THE PROPOSED AVA AND SURROUNDING REGIONS [7]

Weather station (direction from proposed AVA)	Average last-frost date	Average first-frost date	Average growing season length in days
Pasco North (within)	March 21	November 8	229
KWAELTOP3 (within)	March 15	November 16	246
Radar Hill (north)	April 15	October 29	196
Basin City (north)	April 4	October 28	204
Connell Bench (northeast)	May 2	October 15	164
Mesa SE (east)	April 26	October 14	169
Juniper (southeast)	April 19	October 17	181
Tri-Cities (south)	April 17	October 25	191

The petition illustrates that the early last-frost dates mean that the proposed White Bluffs AVA is less prone to spring frosts that can damage the vines after bud break than the surrounding regions. Additionally, a later first-frost date means that the proposed AVA is less likely to experience fall frosts that halt the ripening process and delay harvest.

Summary of Distinguishing Features

The proposed White Bluffs AVA is located on a large plateau that rises, on average, 200 feet above the surrounding regions. The geology is characterized by a thick layer of clay, silt, sand, and gravel called the Ringold Formation, which overlies Columbia River basalt. Soils in the proposed AVA are comprised of thin layers of wind-deposited silt and fine sand overlying sediment deposited by ice-age floods. The proposed AVA has a long growing season of between 229 and 246 days, with an average last-frost date in mid-March and an average first-frost date in early-to-mid November.

By contrast, the surrounding regions are at lower elevations than the proposed AVA. As a result, the soils are thicker and are likely to have more coarse-grained gravel because those regions were more frequently covered by ice-age flooding. The geology of the surrounding regions features Columbia River basalt, but the Ringold Formation is either significantly thinner than within the proposed AVA or it is entirely absent. Finally, the surrounding regions have significantly shorter growing seasons, with later last-frost dates and earlier first-frost dates.

Comparison of the Proposed White Bluffs AVA to the Existing Columbia Valley AVA

T.D. ATF–190, published in the **Federal Register** on November 13, 1984 (49 FR 44895), established the Columbia Valley AVA. It describes the Columbia Valley AVA as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers. Growing season lengths within the Columbia Valley AVA are over 150 days, and annual precipitation amounts are less than 15 inches. Elevations within the Columbia Valley AVA are below 2,000 feet.

The proposed White Bluffs AVA shares some of the general viticultural

[7] Data from Pasco, Pasco North, Radar Hill, Juniper, Mesa SE, Connell Bench, Basin City, and Tri-Cities weather stations were collected from 2008–2016. Data from the KWAELTOP3 station was only available from 2014–2016.

features of the larger Columbia Valley AVA. For instance, the proposed AVA has elevations below 2,000 feet and both have geologies that consist of Columbia River basalt. The petition states that the proposed AVA also has annual precipitation amounts of less than 15 inches, although no data was provided to support this claim.

The proposed AVA, however, also has characteristics that distinguish it from the larger Columbia Valley AVA. Most notably, the proposed AVA is an elevated plateau, rather than a broad plain. Although the elevations within the proposed AVA are within the range of elevations found within the Columbia Valley AVA, the proposed AVA's elevations are significantly higher than those of the immediately surrounding regions. Finally, due to the higher elevations, soil depths within the proposed White Bluffs AVA are shallower than the soil depths found within the majority of the Columbia Valley AVA, which was more frequently inundated by ice-age floods.

TTB Determination

TTB concludes that the petition to establish the 93,738-acre ''White Bluffs'' AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed White Bluffs AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, ''White Bluffs,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''White Bluffs'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. If approved, the establishment of the proposed White Bluffs AVA would allow vintners to use ''White Bluffs'' or ''Columbia Valley'' as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed White Bluffs AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, and other required information submitted in support of the AVA petition. In addition, because the proposed White Bluffs AVA would be within the existing Columbia Valley AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the Columbia Valley AVA that the proposed White Bluffs AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed White Bluffs AVA on wine labels that include the term ''White Bluffs'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2020–0004 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 189 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab at the top of the page.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 189 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2020–0004 on the Federal e-rulemaking portal, *Regulations.gov*, at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 189. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You also may view copies of this document, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Suite 400, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's Regulations and Rulings Division at the above address, by email at *https://www.ttb.gov/webforms/contact_RRD.*shtm, or by telephone at 202–453–1039, ext. 175, to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.____ to read as follows:

§ 9.__ White Bluffs.

(a) *Name.* The name of the viticultural area described in this section is ''White Bluffs''. For purposes of part 4 of this chapter, ''White Bluffs'' is a term of viticultural significance.

(b) *Approved maps.* The 10 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are titled:

(1) Hanford, NE, Washington, 1986;

(2) Mesa West, Washington, 1986;

(3) Wooded Island, Washington, 1992;

(4) Matthews Corner, Washington, 1992;

(5) Basin City, Washington, 1986;

(6) Eltopia, Washington, 1992;

(7) Eagle Lakes, Washington, 1986;

(8) Savage Island, Washington, 1986;

(9) Richland, Washington, 1992; and

(10) Columbia Point, Washington, 1992.

(c) *Boundary.* The White Bluffs viticultural area is located in Franklin County in Washington. The boundary of the White Bluffs viticultural area is as described below:

(1) The beginning point is on the Richland map at the intersection of Columbia River Road and an unnamed secondary highway known locally as Sagemoor Road. From the beginning point, proceed north along Columbia River Road, crossing onto the Wooded Island map, to the Potholes Canal; then

(2) Proceed west along the Potholes Canal for 150 feet to its intersection with the shoreline of the Columbia River; then

(3) Proceed north along the Columbia River shoreline, crossing onto the Savage Island map, to the intersection of the shoreline with the Wahluke Slope Habitat Management boundary on Ringold Flat; then

(4) Proceed east, then generally northwesterly, along the Wahluke Slope Habitat Management boundary to its intersection with the 950-foot elevation contour along the western boundary of section 16, T13N/R29E; then

(5) Proceed easterly, then generally northeasterly, along the 950-foot elevation contour, passing over the Hanford NE map and onto the Eagle Lakes map, to the intersection of the elevation contour with an unimproved road in the southeast corner of section 32, T14N/T29E; then

(6) Proceed east along the unimproved road for 100 feet to its intersection with an unnamed light-duty improved road known locally as Albany Road; then

(7) Proceed south along Albany Road, crossing onto the Basin City map, to the road's intersection with an unnamed improved light-duty road known locally as Basin Hill Road along the southern boundary of section 21, T13N/R29E; then

(8) Proceed south in a straight line for 2 miles to an improved light-duty road known locally as W. Klamath Road; then

(9) Proceed east along W. Klamath Road, crossing onto the Mesa West map, to the road's intersection with another improved light-duty road known locally as Drummond Road; then

(10) Proceed north along Drummond Road for 0.75 mile to its intersection with a railroad; then

(11) Proceed easterly along the railroad to its intersection with an improved light-duty road known locally as Langford Road in the northeastern corner of section 4, T12N/R30E; then

(12) Proceed south along Langford Road for 0.5 mile to its intersection with the 800-foot elevation contour; then

(13) Proceed southwesterly along the 800-foot elevation contour, crossing onto the Eltopia map, to the contour's intersection with Eltopia West Road; then

(14) Proceed east along Eltopia West Road to its intersection with the 700-foot elevation contour; then

(15) Proceed southerly, then northerly along the 700-foot elevation contour, circling Jackass Mountain, to the

contour's intersection with Dogwood Road; then

(16) Proceed west along Dogwood Road for 1.1 mile, crossing onto the Matthews Corner map, to the road's intersection with the 750-foot elevation contour; then

(17) Proceed southwesterly along the 750-foot elevation contour to its intersection with Taylor Flats Road; then

(18) Proceed south along Taylor Flats Road, crossing onto the Columbia Point map, to the road's intersection with Birch Road; then

(19) Proceed west along Birch Road for 1 mile to its intersection with Alder Road; then

(20) Proceed south along Alder Road for 0.7 mile to its intersection with the 550-foot elevation contour; then

(21) Proceed westerly along the 550-foot elevation contour to its intersection with Sagemoor Road; then

(22) Proceed westerly along Sagemoor Road for 0.7 mile, crossing onto the Richland map and returning to the beginning point.

Signed: March 4, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: May 13, 2020.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2020–10920 Filed 5–26–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2019–0024]

RIN 0651–AD40

PTAB Rules of Practice for Instituting on All Challenged Patent Claims and All Grounds and Eliminating the Presumption at Institution Favoring Petitioner as to Testimonial Evidence

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (''USPTO'' or ''Office'') proposes changes to the rules of practice for instituting review on all challenged claims or none in *inter partes* review (''IPR''), post-grant review (''PGR''), and the transitional program for covered business method patents (''CBM'') proceedings before the Patent Trial and Appeal Board (''PTAB'' or ''Board'') in accordance with *SAS Institute Inc.* v. *Iancu* (''*SAS*''). Consistent with *SAS,* the Office also proposes changes to the rules of practice for instituting a review on all grounds of unpatentability for the challenged claims that are asserted in a petition. Additionally, the Office proposes changes to the rules to conform to the current standard practice of providing sur-replies to principal briefs and providing that a patent owner response and reply may respond to a decision on institution. The Office further proposes a change to eliminate the presumption that a genuine issue of material fact created by the patent owner's testimonial evidence filed with a preliminary response will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute a review.

DATES: Comment Deadline Date: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before June 26, 2020 to ensure consideration.

ADDRESSES: Comments should be sent by email addressed to: *PTABNPRM2020@uspto.gov.*

Comments may also be sent via the Federal eRulemaking Portal at *http://www.regulations.gov.* See the Federal eRulemaking Portal website for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO–P–2019–0024).

Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Michael Tierney, Vice Chief Administrative Patent Judge.

Although comments may be submitted by postal mail, the Office prefers to receive comments by email to more easily share all comments with the public. The Office prefers the comments to be submitted in plain text but also accepts comments submitted in searchable ADOBE® portable document format (PDF) or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that accommodates digital scanning into ADOBE® PDF.

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

FOR FURTHER INFORMATION CONTACT: Michael Tierney, Vice Chief Administrative Patent Judge, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose: The proposed rules would amend the rules of practice for IPR, PGR, and CBM proceedings that implemented provisions of the Leahy-Smith America Invents Act (''AIA'') providing for trials before the Office.

The U.S. Supreme Court held in *SAS* that a decision to institute an IPR under 35 U.S.C. 314 may not institute on fewer than all claims challenged in a petition. *See SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348 (2018). The Court held that the Office only has the discretion to institute on all of the claims challenged in the petition or to deny the petition. Previously, the Board exercised discretion to institute an IPR, PGR, or CBM on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted in a petition. For example, the Board exercised discretion to authorize a review to proceed on only those claims and grounds for which the required threshold had been met, thus narrowing the issues for efficiency in conducting a proceeding.

In light of *SAS,* the Office provided guidance that, if the Board institutes a trial under 35 U.S.C. 314 or 324, the Board will institute on all claims and all grounds included in a petition of an IPR, PGR, or CBM. To implement this practice in the regulation, the first proposed change would amend the rules of practice for instituting an IPR, PGR, or CBM to require institution on all challenged claims (and all of the grounds) presented in a petition or on none. Under the amended rule, in all pending IPR, PGR, and CBM proceedings before the Office, the Board would either institute review on all of the challenged claims and grounds of unpatentability presented in the petition or deny the petition.

The second proposed change would amend the rules of practice to conform the rules to certain standard practices before the PTAB in IPR, PGR, and CBM

proceedings. Specifically, in this notice of proposed rulemaking, the Office proposes to amend the rules to set forth the briefing requirements of sur-replies to principal briefs and to provide that a reply may respond to a decision on institution.

Finally, the Office proposes to amend the rules to eliminate the presumption in favor of the petitioner for a genuine issue of material fact created by testimonial evidence submitted with a patent owner's preliminary response when deciding whether to institute an IPR, PGR, or CBM review. As with all other evidentiary questions at the institution phase, the Board will consider the evidence to determine whether the petitioner has met the applicable standard for institution of the proceeding.

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

Background

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and within one year, the Office implemented rules to govern Office practice for AIA trials, including IPR, PGR, CBM, and derivation proceedings pursuant to 35 U.S.C. 135, 316, and 326 and AIA 18(d)(2). *See* Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (Aug. 14, 2012); Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012); and Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (Aug. 14, 2012). Additionally, the Office published a Patent Trial Practice Guide to advise the public on the general framework of the regulations, including the structure and times for taking action in each of the new proceedings. *See* Office Patent Trial Practice Guide, 77 FR 48756 (Aug. 14, 2012). This guide has been periodically updated. *See* Office Patent Trial Practice Guide, August 2018 Update, 83 FR 39989 (Aug. 13, 2018); and Office Patent Trial Practice Guide, July 2019 Update, 84 FR 33925 (July 16, 2019). A consolidated Trial Practice Guide, incorporating updates to the original August 2012 Practice Guide, was recently published in November 2019. *See* Consolidated Trial Practice Guide, 84 FR 64280 (Nov. 21, 2019).

Previously, under 37 CFR 42.108(a) and 42.208(a), the Board exercised the discretion to institute an IPR, PGR, or CBM on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted for each claim presented in a petition. For example, the Board exercised the discretion to authorize a review to proceed on only those claims and grounds for which the required threshold has been met, narrowing the issues for efficiency.

The U.S. Supreme Court held in *SAS,* however, that a decision to institute an IPR review under 35 U.S.C. 314 may not institute on fewer than all claims challenged in a petition. The Court held that the Office only has the discretion to institute on all of the claims challenged in the petition or to deny the petition. The Office posted guidance on the Impact of *SAS* on AIA trial proceedings at *https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial.* In light of *SAS,* the guidance states that, if the Board institutes a trial under 35 U.S.C. 314 or 324, the Board will institute on all claims and all grounds included in a petition of an IPR, PGR, or CBM. The guidance provides that ''the PTAB will institute as to all claims or none,'' and ''[a]t this time, if the PTAB institutes a trial, the PTAB will institute on all challenges raised in the petition.'' *Id.*

Consistent with *SAS* and the Office's guidance, this proposed rulemaking would revise §§ 42.108(a) and 42.208(a) to provide for instituting an IPR, PGR, or CBM on all challenged claims or none. This proposed rulemaking would also revise these rules for instituting a review on all of the grounds of unpatentability for the challenged claims that are presented in a petition. In all pending IPR, PGR, and CBM proceedings before the Office, the Board would either institute on all of the challenged claims and on all grounds of unpatentability asserted for each claim or deny the petition.

In addition, consistent with the Office Patent Trial Practice Guide, August 2018 Update, the Office is proposing to amend §§ 42.23, 42.24, 42.120, and 42.220 to permit (1) replies and patent owner responses to address issues discussed in the institution decision, and (2) sur-replies to principal briefs (*i.e.,* to a reply to a patent owner response or to a reply to an opposition to a motion to amend). 83 FR 39989; the Office Patent Trial Practice Guide, August 2018 Update is available at *https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf; see id. at 14–15.*

As noted in the August 2018 Practice Guide Update, in response to issues arising from *SAS,* the petitioner is permitted in its reply brief to address issues discussed in the institution decision. Similarly, the patent owner is permitted to address the institution decision in its response and sur-reply, if necessary, to respond to the petitioner's reply. However, the sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness. Sur-replies only respond to arguments made in reply briefs, comment on reply declaration testimony, or point to cross-examination testimony. A sur-reply also may address the institution decision if necessary to respond to the petitioner's reply. This sur-reply practice essentially replaces the previous practice of filing observations on cross-examination testimony.

In 2012, the Office also promulgated §§ 42.107(c) and 42.207(c), which initially included a prohibition against a patent owner filing new testimony evidence with its preliminary response. In particular, these rules stated: ''No new testimonial evidence. The preliminary response shall not present new testimony evidence beyond that already of record, except as authorized by the Board.'' 37 CFR 42.107(c) and 42.207(c) (2012).

In April 2016, after receiving comments from the public and carefully reviewing them, the Office promulgated a rule to allow new testimonial evidence to be submitted with a patent owner's preliminary response. Amendments to Rules of Practice for Trials Before the Patent Trial and Appeal Board, 81 FR 18750 (April 1, 2016). The Office also amended the rules to provide a presumption in favor of the petitioner for a genuine issue of material fact created by such testimonial evidence solely for purposes of deciding whether to institute an IPR, PGR, or CBM review. *Id.* at 18755–57.

Stakeholder feedback received in party and amicus briefing as part of the Precedential Opinion Panel (POP) review in *Hulu, LLC* v. *Sound View Innovations, LLC,* Case IPR2018–01039, Paper 15 (PTAB Apr. 3, 2019) (granting POP review), indicated that the rule has caused some confusion at the institution stage for AIA proceedings. For example, certain stakeholders have indicated that the presumption in favor of the petitioner for genuine issues of material fact created by patent owner testimonial evidence also creates a presumption in favor of the petitioner for questions relating to whether a document is a printed publication. Additionally, the Office has concerns that the presumption in favor of the petitioner may be viewed as discouraging patent

owners from filing testimonial evidence with their preliminary responses, as some patent owners believe that such testimony will not be given any weight at the time of institution.

Section 314(a) of 35 U.S.C. provides that ''[t]he Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.'' 35 U.S.C. 314(a). Thus, the statute provides that a petitioner is required to present evidence and arguments sufficient to show that it is reasonably likely that it will prevail in showing the unpatentability of the challenged claims. *Hulu, LLC* v. *Sound View Innovations LLC,* Case IPR2018–01039, Paper 29 at 12–13 (PTAB Dec. 20, 2019) (citing 35 U.S.C. 312(a)(3), 314(a)). For a post-grant review proceeding, the standard for institution is whether it is ''more likely than not'' that the petitioner would prevail at trial. *See* 35 U.S.C. 324(a). In determining whether the information presented in the petition meets the standard for institution, the PTAB considers the totality of the evidence currently in the record. *See Hulu,* Paper 29 at 3, 19.

In this notice of proposed rulemaking, the Office proposes to amend the rules of practice to eliminate the presumption in favor of the petitioner for a genuine issue of material fact created by testimonial evidence submitted with a patent owner's preliminary response when deciding whether to institute an IPR, PGR, or CBM review. Thus, consistent with the statutory framework, any testimonial evidence submitted with a patent owner's preliminary response will be taken into account as part of the totality of the evidence. As part of the Office's continuing efforts to improve AIA proceedings, the Office requests input from the public on the proposed rule changes in this notice of proposed rulemaking and on how the Office should implement the changes if adopted. For example, as to the implementation, the Office may apply any rule changes, if adopted, to all pending IPR, PGR, and CBM proceedings in which a patent owner's preliminary response is filed on or after the effective date.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, part 42, is proposed to be amended as follows:

Section 42.23

Section 42.23 is proposed to be amended to permit patent owners to file sur-replies to principal briefs (*i.e.,* to a reply to a patent owner response or to a reply to an opposition to a motion to amend). In particular, the title and § 42.23(a) are proposed to be amended to add ''sur-replies'' so that the rule would be amended as follows: ''42.23 Oppositions, replies, and sur-replies. (a) Oppositions, replies, and sur-replies . . . and, if the paper to which the opposition, reply, or sur-reply . . .''

Paragraph (b) of § 42.23 is proposed to be amended to permit petitioners to address issues discussed in the institution decision in the reply briefs. Specifically, § 42.23(b) is proposed to be amended to replace the second sentence with: ''A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution.'' Paragraph (b) of § 42.23 is further proposed to be amended to address the content of a sur-reply by adding the following third sentence: ''A sur-reply may only respond to arguments raised in the corresponding reply.''

Section 42.24

The title and § 42.24(c) are proposed to be amended to provide for word count limit for sur-replies so that they would be amended as follows: ''§ 42.24 Type-volume or page limits for petitions, motions, oppositions, replies, and sur-replies'' and ''(c) *Replies and Sur-replies.* The following word counts or page limits for replies and sur-replies apply . . .''

Paragraph (c) of § 42.24 is also proposed to be amended to add a new paragraph (4) that would limit sur-replies to patent owner responses to petitions to 5,600 words.

Sections 42.108 and 42.208

Each of §§ 42.108(a) and 42.208(a) is proposed to be amended to state that when instituting *inter partes* review or post-grant review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.

Each of §§ 42.108(b) and 42.208(b) is proposed to be amended to state that at any time prior to institution of *inter partes* review or post-grant review, the Board may deny all grounds for unpatentability for all of the challenged claims. Denial of all grounds is a Board decision not to institute *inter partes* or post-grant review.

The second sentence in each of §§ 42.108(c) and 42.208(c) is proposed to be amended to delete the phrase ''but a genuine issue of material fact created by such testimonial evidence will be viewed in the light most favorable to the petitioner solely for purposes of deciding whether to institute [a] review.'' Therefore, the second sentence in each of §§ 42.108(c) and 42.208(c) would state: ''The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence.''

Sections 42.120 and 42.220

The first sentence of each of §§ 42.108(a) and 42.208(a) is proposed to be replaced with the following: ''(a) *Scope.* A patent owner may file a response to the petition or decision on institution.''

Rulemaking Considerations

A. Administrative Procedure Act (APA): This proposed rule would revise the rules relating to Office trial practice for IPR, PGR, and CBM proceedings. The changes being proposed in this notice of proposed rulemaking would not change the substantive criteria of patentability. These proposed changes involve rules of agency procedure and interpretation. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'') (citation and internal quotation marks omitted); *Bachow Commc'ns, Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive requirements for reviewing claims.); *Nat'l Org. of Veterans' Advocates, Inc.* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); and *JEM Broadcasting Co.* v. *F.C.C.,* 22 F.3d 320, 328 (DC Cir. 1994) (Rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits.'').

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Perez,* 135 S. Ct. 1199, 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d

1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(3)(A)).

The Office, nevertheless, is publishing this proposed rule for comment to seek the benefit of the public's views on the Office's proposed changes as set forth herein.

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

The changes proposed in this document are to revise certain trial practice procedures before the Board in light of the Supreme Court's ruling in *SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348 (2018), that a decision to institute an IPR under 35 U.S.C. 314 may not institute on fewer than all claims challenged in a petition. In accordance with that ruling, the Office proposes changes to the rules of practice for instituting review on all challenged claims or none in *inter partes* review (''IPR''), post-grant review (''PGR''), and the transitional program for covered business method patents (''CBM'') proceedings before the Patent Trial and Appeal Board (''PTAB'' or ''Board''). The Office also proposes changes to the rules of practice for instituting a review on all grounds of unpatentability for the challenged claims that are asserted in a petition. Additionally, the Office proposes changes to the rules to conform to the current standard practice of providing sur-replies to principal briefs and providing that a patent owner response and reply may respond to a decision on institution. The Office further proposes a change to eliminate the presumption that a genuine issue of material fact created by the patent owner's testimonial evidence filed with a preliminary response will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute a review. These changes are procedural in nature, and any requirements resulting from these proposed changes are of minimal or no additional burden to those practicing before the Board.

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

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

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

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This proposed rule is not expected to be an Executive Order 13771 (Jan. 30, 2017) regulatory action because this proposed rule is not significant under Executive Order 12866 (Sept. 30, 1993).

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

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

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

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

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

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

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

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

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking does not involve an information collection requirement that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). This rulemaking does not add any additional information requirements or fees for parties before the Board. Therefore, the Office is not resubmitting information collection packages to OMB for its review and approval because the revisions in this rulemaking do not materially change the information collections approved under OMB control number 0651–0069.

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

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

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

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

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

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–129, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 2. Revise § 42.23 to read as follows:

§ 42.23 Oppositions, replies, and sur-replies.

(a) Oppositions, replies, and sur-replies must comply with the content requirements for motions and, if the paper to which the opposition, reply, or sur-reply is responding contains a statement of material fact, must include a listing of facts that are admitted, denied, or cannot be admitted or denied. Any material fact not specifically denied may be considered admitted.

(b) All arguments for the relief requested in a motion must be made in the motion. A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution. A sur-reply may only respond to arguments raised in the corresponding reply.

■ 3. Amend § 42.24 by revising the section heading and paragraph (c) introductory text and adding paragraph (c)(4) to read as follows:

§ 42.24 Type-volume or page limits for petitions, motions, oppositions, replies, and sur-replies.

* * * * *

(c) *Replies and sur-replies.* The following word counts or page limits for replies and sur-replies apply and include any statement of facts in support of the reply. The word counts or page limits do not include a table of contents; a table of authorities; a listing of facts that are admitted, denied, or cannot be admitted or denied; a certificate of service or word count; or an appendix of exhibits.

* * * * *

(4) *Sur-replies to replies to patent owner responses to petitions:* 5,600 words.

* * * * *

■ 4. Revise § 42.108 to read as follows:

§ 42.108 Institution of inter partes review.

(a) When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.

(b) At any time prior to a decision on institution of *inter partes* review, the Board may deny all grounds for unpatentability for all of the challenged claims. Denial of all grounds is a Board decision not to institute *inter partes* review.

(c) *Inter partes* review shall not be instituted unless the Board decides that the information presented in the petition demonstrates that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

■ 5. Amend § 42.120 by revising paragraph (a) to read as follows:

§ 42.120 Patent owner response.

(a) *Scope.* A patent owner may file a response to the petition or decision on institution. A patent owner response is filed as an opposition and is subject to the page limits provided in § 42.24.

* * * * *

■ 6. Amend § 42.208 by revising paragraphs (a), (b), and (c) to read as follows:

§ 42.208 Institution of post-grant review.

(a) When instituting post-grant review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.

(b) At any time prior to institution of post-grant review, the Board may deny all grounds for unpatentability for all of the challenged claims. Denial of all grounds is a Board decision not to institute post-grant review.

(c) Post-grant review shall not be instituted unless the Board decides that the information presented in the petition demonstrates that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

* * * * *

■ 7. Amend § 42.220 by revising paragraph (a) to read as follows:

§ 42.220 Patent owner response.

(a) *Scope.* A patent owner may file a response to the petition or decision on institution. A patent owner response is filed as an opposition and is subject to the page limits provided in § 42.24.

* * * * *

Andrei Iancu,

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

[FR Doc. 2020–10131 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200519–0142; RTID 0648–XW023]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; 2020–2021 Annual Specifications and Management Measures for Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2020, through June 30, 2021. The proposed action would prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest would be allowed only in the live bait fishery, minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine would be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The proposed annual catch limit for the 2020–2021 Pacific sardine fishing year is 4,288 metric tons. This proposed rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by June 11, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0061, by the following method:

- *Electronic Submissions:* Submit all public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0061,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

A copy of the draft report ''Assessment of Pacific Sardine Resource in 2020 for U.S.A. Management in 2020–2021'' is available at: *https://www.pcouncil.org/documents/2020/03/agenda-item-d-3-attachment-1-stock-assessment-report-executive-summary-assessment-of-the-pacific-sardine-resource-in-2019-for-u-s-management-in-2019-20-full-document-electronic-only.pdf/,* and may be obtained from the West Coast Region (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lynn Massey, West Coast Region, NMFS, (562) 436–2462, *lynn.massey@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

During public meetings each year, NMFS' Southwest Fisheries Science Center (SWFSC) presents the estimated biomass for Pacific sardine to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC). The Team, Subpanel, and SSC review the biomass and the status of the fishery, and recommend applicable catch limits and additional management measure. Following Council review and public comment, the Council adopts a biomass estimate and recommends catch limits and any in-season accountability measures to NMFS. NMFS publishes annual specifications in the **Federal Register** to establish these catch limits and management measures for each Pacific sardine fishing year. This rule proposes the Council's recommended catch limits for the 2020–2021 fishing year, as well as management measures to ensure that harvest does not exceed those limits, and adoption of an OFL and ABC that take into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine.

Recommended Catch Limits

According to the FMP, the catch limit for the primary directed fishery is determined using the FMP-specified HG formula. The HG formula in the CPS FMP is HG = [(Biomass-CUTOFF) * FRACTION * DISTRIBUTION] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above. For the 2020–2021 management season, this is 28,276 metric tons (mt).

2. *CUTOFF.* This is the biomass level below which no HG is set. The FMP established this level at 150,000 mt.

3. *DISTRIBUTION.* The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent.

4. *FRACTION.* The temperature-varying harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

As described above, the Pacific sardine HG control rule, the primary mechanism for setting the primary directed fishery catch limit, includes a CUTOFF parameter, which has been set as a biomass level of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Since this year's biomass estimate is below that value, the formula results in an HG of zero, and no Pacific sardine are available for the primary directed fishery during the 2020–2021 fishing season. This would be the sixth consecutive year that the primary directed fishery is closed.

Last fishing year (2019–2020), the estimated biomass of Pacific sardine dropped below its 50,000-mt minimum stock size threshold (MSST), which triggered an overfished determination process. NMFS accordingly declared the stock overfished on June 26, 2019 and notified the Council on July 9, 2019. NMFS is working with the Council to develop a rebuilding plan for sardine within two years of the date NMFS notified the Council that the stock was declared overfished.

At the April 2020 Council meeting, the Council's SSC approved, and the Council adopted, the SWFSC's ''Assessment of the Pacific Sardine Resource in 2020 for U.S. Management in 2020–2021'' (see **ADDRESSES**). The resulting Pacific sardine biomass estimate of 28,276 mt was adopted as the best scientific information available for setting harvest specifications. Based on recommendations from its SSC and other advisory bodies, as well as the OFL and ABC control rules in the CPS FMP, the Council recommended, and NMFS is proposing: an OFL of 5,525 mt; an ABC of 4,288 mt; an annual catch limit (ACL) of 4,288 mt; and a prohibition on commercial Pacific sardine catch, unless it is harvested as part of the live bait, tribal, or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities. The Council also recommended an annual catch target (ACT) of 4,000 mt for the 2020–2021 fishing year. In conjunction with setting an ACT, the Council also recommended inseason and other management measures to ensure harvest opportunity under the ACT throughout the year (see below).

Recommended Management Measures

The proposed annual harvest limits and management measures were developed in the context of the fact that NMFS declared the Pacific sardine stock overfished in July 2019. Since the biomass remains below the 50,000 mt MSST, the FMP requires that incidental catch of Pacific sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight (instead of a maximum of 40 percent allowed when below the CUTOFF but above the MSST).

The following are the proposed management measures and inseason accountability measures for the Pacific sardine 2020–2021 fishing year:

(1) If landings in the live bait fishery reach 2,500 mt, then a 1-mt per trip limit of sardine would apply to the live bait fishery.

(2) A 20-percent incidental per landing by weight catch allowance would apply to other CPS primary directed fisheries (*e.g.,* Pacific mackerel).

(3) If the ACT of 4,000 mt is attained, then a 1-mt per trip limit of sardine would apply to all CPS fisheries (*i.e.,* (1) and (2) would no longer apply).

(4) An incidental per landing allowance of 2 mt of sardine would apply to non-CPS fisheries.

All sources of catch including any EFP set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries, and minor directed fishing, will be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** to announce when catch reaches the incidental limits as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS would make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

In previous fishing years, the Quinault Indian Nation has requested, and NMFS has approved, a set-aside for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the 2020–2021 fishing year, the Quinault Indian Nation has not requested a tribal set-aside and therefore none is proposed.

At the April 2020 meeting, although Council review and approval was removed from the Council's agenda, the Council expressed support for three EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. This action accounts for NMFS' approval of up to 1,145 mt of the ACL to be harvested under EFPs.

Classification

This action must be effective by July 1, 2020, otherwise the fishery will open without any catch limits or restrictions in place. In order to ensure that these harvest specifications are effective in time for the start of the July 1 fishing year, NMFS will solicit public comments on this proposed rule for 15 days rather than the standard 30 days. A 15-day comment period has been the practice since the 2015–2016 fishing year when the primary directed fishery for sardine was first closed. NMFS received the recommendations from the Council that form the basis for this rule only last month. The subject of this proposed rule—the establishment of the reference points—is considered a routine action, because they are calculated annually based on the framework control rules in the FMP. Additionally, the Council provides an opportunity for public comment each year at its April meeting before adopting the recommended harvest specifications and management measures for the proceeding fishing year.

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from review under Executive Order 12866.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The purpose of this proposed rule is to conserve the Pacific sardine stock by preventing overfishing, while still allowing harvest opportunity among differing fishery sectors. This will be accomplished by implementing the 2020–2021 annual specifications for Pacific sardine in the U.S. EEZ off the West coast. The small entities that would be affected by the proposed action are the vessels that would be expected to harvest Pacific sardine as part of the West Coast CPS small purse seine fleet if the fishery were open, as well as fishermen targeting other CPS, sardine for live bait, or sardine in the minor directed fishery. In 2014, the last year that a directed fishery for Pacific sardine was allowed, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 vessels in the Federal CPS limited entry fishery off California (south of 39° N. lat.); and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2014 for those vessels was well below the threshold level of $11

million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL, and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG is the level typically used to manage the primary directed sardine fishery and is the harvest level NMFS typically uses for profitability analysis each year. As stated above, the CPS FMP dictates that when the estimated biomass drops below a certain level (150,000 mt), the HG is zero. Therefore, for the purposes of profitability analysis, this action is essentially proposing an HG of zero for the 2020–2021 Pacific sardine fishing season (July 1, 2020, through June 30, 2021). The estimated biomass used for management during the preceding fishing year (2019–2020) was also below 150,000 mt. Therefore, NMFS did not implement an HG for the 2019–2020 fishing year, thereby prohibiting the primary directed Pacific sardine fishery. Since there is again no directed fishing for the 2020–2021 fishing year, this proposed rule will not change the potential profitability compared to the previous fishing year. Additionally, while the proposed 2020–2021 ACL is slightly lower compared to previous years, it is still expected to account for the various fishery sector needs (*i.e.,* live bait, incidental catch in other CPS fisheries, and minor directed fisheries).

The revenue derived from harvesting Pacific sardine is typically only one of the sources of fishing revenue for the commercial vessels that participate in this fishery. As a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular, squid, making Pacific sardine only one component of a multi-species CPS fishery. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available. The purpose of the incidental catch limits proposed in this action are to ensure the vessels impacted by a prohibition on directly harvesting sardine can still access these other profitable fisheries while still minimizing Pacific sardine harvest.

CPS vessels typically rely on multiple species for profitability because abundance of Pacific sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality. Variability in ocean conditions and season results in variability in the timing and location of CPS harvest throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time. Therefore, as abundance levels and markets fluctuate, the CPS fishery as a whole has relied on a group of species for its annual revenues.

Therefore the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 20, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2020–11322 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 102
Wednesday, May 27, 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

May 21, 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. Comments regarding these information collections are best assured of having their full effect if received by June 26, 2020. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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.

Agricultural Marketing Service

Title: Specified Commodities Imported into the United States Exempt from Import Requirements, 7 CFR part 944, 980, and 999.

OMB Control Number: 0581–0167.

Summary of Collection: Section 608e of the Agricultural Marketing Agreement Act of 1937(AMAA), as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic Federal marketing orders, the same or comparable regulations must be used for imported commodities. Import regulations apply only during those periods when domestic marketing order regulations are in effect. No person may import products for processing or other exempt purposes unless an executed Importers Exempt Commodity Form (SC–6) accompanies the shipment. Both the shipper and receiver are required to register in the Compliance and Enforcement Management System (CEMS) to electronically file an SC–6 certificate to notify the Marketing Order and Agreement Division (MOAD) of the exemption activity. MOAD provides information on its website about the commodities imported under section 8e of the Act and directions to the CEMS portal. The Civil Penalty Stipulation Agreement (SC–7) is a ''volunteer'' form that provides the Agricultural Marketing Service (AMS) with an additional tool to obtain resolution of certain cases without the cost of going to a hearing.

Need and Use of the Information: The importers wishing to import commodities will use the electronic or paper version of form SC–6, ''Importer's Exempt Commodity.'' The information collected includes information on the imported product (type of product and lot identification), the importer's contact information, the U.S. Customs entry number, inspection date, and intended use (processing, charity, livestock/animal feed). In a situation where a party is alleged to have violated the importation regulations, AMS can use SC–7, ''Civil Penalty Stipulation Agreement'' form to settle the matter in exchange for the payment of a fine. AMS utilizes the information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than afforded to domestic goods destined for such exempt outlets. If the information is not collected, AMS would have no way of maintaining a safe and legal import program for fruits, vegetables, and specialty crops, as this is the only method of securing compliance with section 8e of the Act.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 79.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 581.

Agricultural Marketing Service

Title: Vegetable and Specialty Crops.

OMB Control Number: 0581–0178.

Summary of Collection: The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674; Act) was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The Orders and Agreements become effective only after public hearings are held in accordance with formal rulemaking procedures specified by the Act.

The vegetable, and specialty crops marketing order programs provide an opportunity for producers in specified production areas to work together to solve marketing problems that cannot be solved individually.

Need and Use of the Information: Various forms are used to collect information necessary to effectively carry out the requirements of the Act and the Order/Agreement. This includes forms covering the selection process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing orders. Orders and Agreements can authorize the issuance of grade, size, quality, maturity, inspection requirements, pack and container requirements, and pooling and volume regulations. Information collected is used to formulate market policy, track current inventory and statistical data for market development programs, ensure compliance, and verify eligibility, monitor and record grower's information. If this information were not collected, it would eliminate data needed to keep the industry and the

Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for profit; Farms; Individuals or households.

Number of Respondents: 15,481.

Frequency of Responses: Reporting: On occasion, Quarterly, Biennially, Weekly, Semi-annually, Monthly, Annually and Recordkeeping.

Total Burden Hours: 21,655.

Agricultural Marketing Service

Title: Organic Handler Market Promotion Assessment Exemption under Federal Marketing Orders.

OMB Control Number: 0581–0216.

Summary of Collection: Marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops in specified production areas to work together to solve marketing problems that cannot be solved individually. Under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674), marketing orders may authorize production and marketing research, including paid advertising, to promote various commodities, which is paid for by assessments that are levied on the handlers who are regulated by the Orders.

Section 10004 of the 2014 Farm Bill expanded the organic assessment exemption originally established by the FAIR Act. The 2014 Farm Bill allows all organic handlers to apply for an exemption from assessments on products certified as ''organic'' or ''100 percent organic,'' regardless of whether the handler also markets conventional or non-organic products. At the same time, the 2014 Farm bill reduced the per response time to complete the form from 30 minutes to 15 minutes.

Need and Use of the Information: Handlers submit the completed SC–649 form to the appropriate committee, board or council once a year to apply for an assessment exemption to a certain percentage. The information gathered on this form is necessary to assist the committees, boards and councils to determine an applicant's eligibility assessment exemption and to verify compliance.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 210.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 53.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–11339 Filed 5–26–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2020–0018]

Notice of Request for Renewal of an Approved Information Collection (In-Home Food Safety Behaviors and Consumer Education: Web-Based Survey)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request renewal of the approved information for an exploratory Web-based survey of consumers to evaluate food safety education and communication activities and to inform the development of food safety communication products. There are no changes to the existing information collection. The approval for this information collection will expire on October 31, 2020.

DATES: Submit comments on or before July 27, 2020.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2020–0018. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: In-Home Food Safety Behaviors and Consumer Education: Web-Based Survey.

OMB Number: 0583–0178.

Expiration Date of Approval: 10/31/2020.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS's Office of Public Affairs and Consumer Education (OPACE) develops consumer education programs concerning the safe handling, preparation, and storage of meat, poultry, and processed egg products, so as to improve consumer food handling behaviors and minimize the incidence of foodborne illness. OPACE shares its food safety messages through various outlets: The *Food Safe Families* campaign, a cooperative effort of USDA, Food and Drug Administration, and Centers for Disease Control and Prevention; Ask USDA; the Meat and Poultry Hotline, an interactive knowledge management system consumers can use to get answers from USDA employees via phone, chat, email and a frequently asked question database; the FSIS website; social media; and public events. These messages are focused on the four core food safety behaviors: Clean, separate, cook, and chill.

By testing planned and tailoring existing communication programs and materials, FSIS can help to ensure that it is effectively communicating with the public to improve consumer food safety practices. As part of ongoing activities by OPACE to develop and evaluate its public health education and communication activities, FSIS is

requesting renewal of the approved information collection to conduct exploratory Web-based surveys of consumers. Findings from these surveys will provide information about how FSIS communication programs and materials affect consumer understanding of recommended safe food handling practices, as well as insight into how to effectively inform consumers about recommended practices. The findings will be used to enhance communication programs and materials developed to improve consumers' food safety behaviors and help prevent foodborne illness. Additionally, this research will provide useful information for tracking progress toward the goals outlined in the FSIS Fiscal Years 2017–2021 Strategic Plan.

FSIS has contracted with RTI International to conduct two iterations of a web-based survey. The first survey was conducted in Fiscal Year (FY) 2019 and the second survey will be conducted in FY 2021. Each iteration of the exploratory survey is designed to collect information from 2,400 randomly selected English-speaking adult members of a probability-based Web-enabled research panel maintained by a subcontractor.

The survey is designed to be representative of the U.S. adult population. This representation is achieved through address-based sampling (ABS), where every U.S. adult with an address (including those who do not have a landline phone number) has an equal probability of being selected for participation on the panel. A random sample of individuals will be selected from the panel for participation in the survey. A pilot will be conducted before the survey to test the survey instrument and procedures.

The first iteration of the survey collected information on consumer use of and response to the Meat and Poultry Hotline, consumer awareness of The Food Safe Families campaign, and consumer behaviors for preparing raw meat and poultry products. The second iteration of the survey will pilot a food safety literacy measure on consumers' awareness and understanding of recommended food safety practices and gather nationally representative data on updates to FSIS' recall templates used to communicate life-saving public health information to the public and the media.

Estimate of Burden: The total estimated burden for each iteration of the survey is 978.2 hours, for a total burden of 1,956.4 hours. To achieve 80 completed surveys during the pretest, 146 randomly selected panel members will be invited via email to take the survey. To achieve 2,400 completed surveys during the full-scale study, 4,400 randomly selected panel members will be invited via email to take the survey. Therefore, a total of 4,546 (146 + 4,400) potential panel members will be invited to participate in both the pretest and the full-scale study for each iteration of the survey. The invitation email for the pretest and the full-scale survey is expected to take 2 minutes (0.03333 hour). Each survey is expected to take 20 minutes (0.33333 hours) to complete.

ESTIMATED ANNUAL REPORTING BURDEN FOR THE FY 2019 WEB-BASED CONSUMER SURVEY

Study component	Estimated number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Pretest Invitation	146	1	146	0.03333 (2 min.)	4.87
Pretest [1]	80	1	80	0.33333 (20 min.)	26.67
Survey Invitation	4,400	1	4,400	0.03333 (2 min.)	146.67
Survey [1]	2,400	1	2,400	0.33333 (20 min.)	800
Total	4,546				978.2

[1] A subset of the people who received the invitation.

ESTIMATED ANNUAL REPORTING BURDEN FOR THE FY 2021 WEB-BASED CONSUMER SURVEY

Study component	Estimated number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Pretest Invitation	146	1	146	0.03333 (2 min.)	4.87
Pretest [1]	80	1	80	0.033333 (20 min.)	26.67
Survey Invitation	4,400	1	4,400	0.03333 (2 min.)	146.67
Survey [1]	2,400	1	2,400	0.033333 (20 min.)	800
Total	4,546				978.2

[1] A subset of the people who received the invitation.

Respondents: Consumers.

Estimated No. of Respondents: 9,092.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Burden on Respondents: 1,956.4 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), Washington, DC 20253.

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

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Paul Kiecker,

Administrator.

[FR Doc. 2020–11269 Filed 5–26–20; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a meeting of the New Mexico Advisory Committee will be held at 2:00 p.m. Mountain Time on Tuesday, June 16, 2020. The purpose of the meeting is for the Committee to hear testimony on wage theft and subminimum wages in New Mexico.

DATES: The meeting will be held on Tuesday, June 16, 2020 at 2:00 p.m. Mountain Time.

Public Call Information: Dial: 888–318–7452, Conference ID: 6816683.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–318–7452, conference ID number: 6816683. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may also be emailed to Brooke Peery at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Panelist Discussion
III. Committee Q&A
IV. Public Comment
V. Adjournment

Dated: May 20, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–11291 Filed 5–26–20; 8:45 am]

BILLING CODE P

COMMISISON ON CIVIL RIGHTS

Notice of Public Meetings of the Oklahoma Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Oklahoma Advisory Committee (Committee) will hold a meeting on Monday, June 15, 2020 at 2:00 p.m. Central Time. For the purpose of discussing potential project topics.

DATES: The meeting will take place on Monday, June 15, 2020 at 2:00 p.m. Central Time.

Public Call Information:

Dial: 888–394–8218,
Conference ID: 7031317.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, DFO, at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Oklahoma Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Discuss on Potential Project Prompts
IV. Public Comment
VI. Adjournment

Dated: May 20, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–11295 Filed 5–26–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Wyoming Advisory Committee (Committee) to the Commission will be held at 2:00 p.m. (MDT) Tuesday, June 16, 2020. The purpose of the meeting is for the committee to review their report on hate crimes.

DATES: Tuesday, June 16, 2020 at 2:00 p.m. MDT

Public Call Information:
Dial: 800–367–2403
Conference ID: 7782673

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or (202) 681–0857

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 7782673. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzliAAA.*

Please click on ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Discuss Report
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: May 20, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–11294 Filed 5–26–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on light-walled rectangular pipe and tube from Mexico to correct a ministerial error.

DATES: Applicable May 27, 2020.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt or John Conniff, 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) 482–7851 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2020, the Department of Commerce (Commerce) published its *Final Results* of the 2017–2018 administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Mexico.[1] On April 30, 2020, Maquilacero S.A. de C.V. (Maquilacero), one of the respondents in this administrative review, timely submitted comments alleging a ministerial error in Commerce's *Final Results.*[2] Commerce is issuing this notice to correct the ministerial error raised by Maquilacero.

Commerce is also issuing this notice to correct an inadvertent error in the *Final Results* related to Hylsa S.A. de C.V. (Hylsa), a non-examined respondent in this administrative review. Specifically, Commerce granted a non-examined rate to Hylsa as well as to Ternium Mexico S.A. de C.V. (Ternium); however, Commerce failed to take into account the completion of a changed circumstances review on the antidumping duty order on light-walled rectangular pipe and tube from Mexico.[3] In the changed circumstances review, Commerce determined that Ternium is the successor-in-interest to Hylsa.[4] As such, effective August 18, 2009, Hylsa is entitled to Ternium's antidumping duty cash deposit rate with respect to entries of subject merchandise, and only Ternium should have been assigned a non-examined rate in the *Final Results.*

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [5] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review. . . .''

Ministerial Error

Commerce committed an inadvertent, unintentional error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) with respect to an adjustment to Maquilacero's total cost of manufacturing. Specifically, when reallocating certain costs for Maquilacero's non-prime merchandise to its prime merchandise, we inadvertently relied upon a production quantity that included out-of-scope merchandise, and therefore overstated the adjustment to Maquilacero's total cost of manufacturing for prime, in-scope merchandise. Accordingly, Commerce determines that, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), it made a ministerial error in the *Final Results.* Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of the final weighted-average dumping margin assigned to Maquilacero, which changes from 3.12 percent to 2.82 percent.[6] Furthermore, we are revising the review-specific weighted-average dumping margin applicable to the companies not selected for individual examination in this administrative review, which is based, in part, on Maquilacero's weighted-average dumping margin.

Amended Final Results of the Review

As a result of correcting the ministerial error and the inadvertent error described above, Commerce determines that, for the period of August 1, 2017 through July 31, 2018, the following weighted-average dumping margins exist:

Producer and/or exporter	Weighted-average dumping margin (percent)
Aceros Cuatro Caminos S.A. de C.V	3.17
Arco Metal S.A. de C.V	3.17
Galvak, S.A. de C.V	3.17
Grupo Estructuras y Perfiles	3.17
Industrias Monterrey S.A. de C.V	3.17
International de Aceros, S.A. de C.V	3.17
Maquilacero S.A. de C.V	2.82
Nacional de Acero S.A. de C.V	3.17
PEASA-Productos Especializados de Acero	3.17
Perfiles LM, S.A. de C.V.[7]	3.17
Productos Laminados de Monterrey S.A. de C.V	3.17
Regiomontana de Perfiles y Tubos S.A. de C.V	[8] 3.40
Talleres Acero Rey S.A. de C.V	3.17
Ternium Mexico S.A. de C.V	3.17
Tuberia Laguna, S.A. de C.V	3.17
Tuberias Aspe	3.17
Tuberias y Derivados S.A de C.V	3.17

Disclosure

We intend to disclose the calculation performed for these amended final results in accordance with 19 CFR 351.224(b).

Antidumping Duty Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of the administrative review. In accordance with 19 CFR 351.212(b)(1), Maquilacero reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales for each importer to the total entered value of the sales for each importer for which entered value was reported. Where an importer-specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the weighted-average dumping margin determined in these amended final results. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the

[1] *See Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018,* 85 FR 21829 (April 20, 2020) (*Final Results*).

[2] *See* Maquilacero's Letter, ''Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Ministerial Error Comments for the Final Results,'' dated April 30, 2020.

[3] *See Final Results of Antidumping Duty Changed Circumstances Review: Light-Walled Rectangular Pipe and Tube from Mexico,* 74 FR 41680 (August 18, 2009).

[4] *Id.*

[5] *See* 19 CFR 351.224(f).

[6] *See* Memorandum, ''Ministerial Error Memorandum for the Final Results of the 2017–2018 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico,'' dated concurrently with this notice.

[7] *See Light-Walled Rectangular Pipe and Tube from Mexico: Initiation and Expedited Preliminary Results of Changed Circumstances Review,* 82 FR 54322 (November 17, 2017), unchanged in *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Changed Circumstances Review,* 83 FR 13475 (March 29, 2018) (determining that Perfiles LM, S.A. de C.V. is the successor-in-interest to Perfiles y Herrajes).

[8] The weighted-average dumping margin for Regiomontana de Perfiles y Tubos S.A. de C.V.'s (Regiopytsa), another mandatory respondent in this review, is unchanged from the *Final Results.*

amended final results of this review and for future deposits of estimated duties, where applicable.[9]

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise that entered, or withdrawn from warehouse, for consumption on or after April 20, 2020, the date of publication of the *Final Results* of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 3.76 percent established in the amended final determination of the less-than-fair-value investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

The amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: May 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–11324 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See* section 751(a)(2)(C) of the Act.

[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–873]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Notice of Court Decision Not in Harmony With Final Determination of Sales at Less Than Fair Value; Notice of Amended Final Determination Pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order, in Part

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

SUMMARY: On April 30, 2020, the United States Court of International Trade (the CIT) sustained the final results of redetermination pertaining to the less-than-fair-value (LTFV) investigation of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final determination in the LTFV investigation, and that Commerce is amending the final determination and resulting antidumping duty (AD) order with respect to the dumping margin assigned to Goodluck India Limited (Goodluck). We are also revoking the AD order, in part, with respect to Goodluck.

DATES: Applicable May 10, 2020.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4047.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 2018, Commerce published its *Final Determination* in the LTFV investigation of cold-drawn mechanical tubing from India.[1] In the *Final Determination,* Commerce applied a rate based on adverse facts available to Goodluck after finding that the company failed to accurately report product ''control numbers'' in its home market sales and cost of production databases.[2] Although Goodluck attempted to submit new databases at the start of verification of Goodluck's questionnaire responses, Commerce declined to accept the revised information, determining that such a revision did not constitute a ''minor correction.'' [3] On June 11, 2018, Commerce published its AD order on cold-drawn mechanical tubing from India.[4]

On August 13, 2019, the CIT remanded the *Final Determination* to Commerce and instructed Commerce to consider the revised databases provided

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Determination of Sales at Less than Fair Value,* 83 FR 16296 (April 16, 2018) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See* IDM at Comments 1 and 2.

[3] *Id.* at Comment 1.

[4] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland: Antidumping Duty Orders;* and *Amended Final Determinations of Sales at Less Than Fair Value for the People's Republic of China and Switzerland,* 83 FR 26962 (June 11, 2018) (*AD Order*).

by Goodluck.[5] On remand, and under respectful protest, Commerce issued its final results of redetermination in accordance with the Court's order.[6] In calculating an AD margin for Goodluck, Commerce relied on the corrections provided by Goodluck. On April 30, 2020, the CIT sustained Commerce's Final Remand Redetermination.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's April 30, 2020 judgment sustaining the Final Remand Redetermination constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Final Determination* with respect to Goodluck.[10] Goodluck's revised dumping margin is as follows:

Producer and exporter	Weighted-average dumping margin (percent)
Goodluck India Limited	0.00

Partial Exclusion from Antidumping Duty Order

Pursuant to section 735(a)(4) of the Act, Commerce ''shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.'' [11] Furthermore, section 735(c)(2) of the Act states that ''the investigation shall be terminated upon publication of that negative determination'' and Commerce shall ''terminate the suspension of liquidation'' and ''release any bond or other security, and refund any cash deposit.'' [12] As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Goodluck, Commerce is hereby excluding merchandise produced and exported by Goodluck from the *AD Order.* Accordingly, Commerce will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries from Goodluck. Pursuant to *Timken,* the suspension of liquidation must continue during the pendency of the appeals process. Additionally, we will instruct CBP to suspend liquidation of all unliquidated entries from Goodluck at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption on or after May 10, 2020, which is ten days after the CIT's final decision, in accordance with section 516A of the Act.[13] In the event the CIT's ruling is not appealed, or if appealed and upheld by the CAFC, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate entries produced and exported by Goodluck without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e) of the Act.

Dated: May 19, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–11325 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Goodluck India Limited* v. *United States,* Court No. 18–00162, Slip Op. 19–110 (CIT August 13, 2019) (*Remand Order*).

[6] *See* Final Results of Redetermination Pursuant to Court Remand, *Goodluck India Limited* v. *United States,* Court No. 18–00162, Slip Op. 19–110 (CIT August 13, 2019), dated December 23, 2019 (Final Remand Redetermination).

[7] *See Goodluck India Limited* v. *United States,* Court No. 18–00162, Slip Op. 20–57 (CIT April 30, 2020).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[10] For purposes of this notice, the all-others rate for the *AD Order* will not be amended. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. As discussed above, Goodluck's margin has been changed from a rate determined entirely under section 776 of the Act to zero. Therefore, Tube Products of India, Ltd. a unit of Tube Investments of India Limited (collectively, TPI) remains the only respondent in the underlying investigation for which Commerce calculated a company-specific rate which is not zero, *de minimis* or based entirely on facts available. As a result, pursuant to section 735(c)(5)(A) of the Act, the weighted-average dumping margin calculated for TPI continues to be the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration. *See Final Determination,* 83 FR at 16296–97; *AD Order,* 83 FR at 26964.

[11] Section 733(b)(3) of the Act defines *de minimis* dumping margin as ''less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.''

[12] *See* sections 735(c)(2)(A) and (B) of the Act.

[13] *See, e.g., Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037, 78038 (December 29, 2014); *High Pressure Steel Cylinders From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review,* 82 FR 46758, 46760 (October 6, 2017).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 200429–0124]

Profile of Responsible Use of Positioning, Navigation, and Timing Services

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Request for information.

SUMMARY: The National Institute of Standards and Technology (NIST) is seeking information about public and private sector use of positioning, navigation, and timing (PNT) services, and standards, practices, and technologies used to manage cybersecurity risks, to systems, networks, and assets dependent on PNT services. Executive Order 13905, Strengthening National Resilience Through Responsible Use of Positioning, Navigation, and Timing Services, was issued on February 12, 2020 and seeks to protect the national and economic security of the United States from disruptions to PNT services that are vital to the functioning of technology and infrastructure, including the electrical power grid, communications infrastructure and mobile devices, all modes of transportation, precision agriculture, weather forecasting, and emergency response.

Under Executive Order 13905, the Secretary of Commerce, in coordination with the heads of the Sector Specific Agencies and in consultation, as appropriate, with the private sector, is directed to develop and make available, to at least the appropriate agencies and private sector users, PNT profiles. Responses to this Request for Information (RFI) will inform NIST's

development of a PNT profile, using the NIST Framework for Improving Critical Infrastructure Cybersecurity (NIST Cybersecurity Framework), that will enable the public and private sectors to identify systems, networks, and assets dependent on PNT services; identify appropriate PNT services; detect the disruption and manipulation of PNT services; and manage the associated cybersecurity risks to the systems, networks, and assets dependent on PNT services.

DATES: Comments must be received by 5:00 p.m. Eastern time on July 13, 2020. Written comments in response to the RFI should be submitted according to the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections below. Submissions received after that date may not be considered.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Electronic submission:* Submit electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov* and enter NIST–2020–0002 in the search field,

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

- *Email:* Comments in electronic form may also be sent to *pnt-eo@list.nist.gov* in any of the following formats: HTML; ASCII; Word; RTF; or PDF.

Please submit comments only and include your name, organization's name (if any), and cite ''Profile of Responsible Use of PNT Services'' in all correspondence. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish relevant comments publicly, unedited and in their entirety. All relevant comments received in response to the RFI will be made publicly available at *https://www.nist.gov/itl/pnt.* Personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Jim McCarthy, National Institute of Standards and Technology, email *James.McCarthy@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at (301) 975–2762.

SUPPLEMENTARY INFORMATION: As stated in Executive Order 13905, Strengthening National Resilience Through Responsible Use of Positioning, Navigation, and Timing Services,[1] the national and economic security of the United States depends on the reliable and efficient functioning of critical infrastructure. Since the United States made the Global Positioning System available worldwide, positioning, navigation, and timing (PNT) services provided by space-based systems have become a largely invisible utility for technology and infrastructure, including the electrical power grid, communications infrastructure and mobile devices, all modes of transportation, precision agriculture, weather forecasting, and emergency response. Due to the widespread adoption of PNT services, the disruption or manipulation of these services has the potential to adversely affect the national and economic security of the United States. To strengthen national resilience, the Federal Government must foster the responsible use of PNT services by critical infrastructure owners and operators.

Under Executive Order 13905, the Secretary of Commerce, in coordination with the heads of the Sector Specific Agencies and in consultation, as appropriate, with the private sector, is directed to develop and make available, to at least the appropriate agencies and private sector users, PNT profiles. NIST will leverage the Cybersecurity Framework [2] to develop a foundational PNT profile [3] to help organizations identify systems, networks, and assets dependent on PNT services; [4] identify appropriate PNT services; detect the disruption and manipulation of PNT services; and manage the associated cybersecurity risks to the systems, networks, and assets dependent on PNT services. This profile will be developed using an open and collaborative process involving public and private sector stakeholders to ensure critical infrastructure owners and operators, government agencies, and others can inform the responsible use of PNT services and effectively adopt, refine, and implement the profile.

This RFI outlines the information NIST is seeking from the public to inform the development of a profile of PNT services that will strengthen national resilience of U.S. critical infrastructure and other industries that rely on PNT services.

Request for Information

The following questions cover the major areas about which NIST seeks comment. They are not intended to limit the topics that may be addressed. Responses may include any topic believed to have implications for the development of a PNT profile, regardless of whether the topic is included in this document.

All relevant responses that comply with the requirements listed in the **DATES** and **ADDRESSES** sections of this RFI will be considered.

When addressing the topics below, commenters may address the practices of their organization or a group of organizations with which they are familiar. If desired, commenters may provide information about the type, size, and location of the organization(s). Provision of such information is optional and will not affect NIST's full consideration of the comment.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish relevant comments publicly, unedited and in their entirety. All relevant comments received in response to the RFI will be made publicly available at *https://www.nist.gov/itl/pnt.* Personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

NIST is seeking the following information from PNT technology

[1] Exec. Order No. 13905, Strengthening National Resilience Through Responsible Use of Positioning, Navigation, and Timing Services, 85 FR 9359 (Feb. 18, 2020).

[2] *https://www.nist.gov/cyberframework.*

[3] For the purposes of this RFI, NIST is using the definition of ''PNT profile'' as defined in Exec. Order No. 13905. ''PNT profile'' means a description of the responsible use of PNT services—aligned to standards, guidelines, and sector-specific requirements—selected for a particular system to address the potential disruption or manipulation of PNT services.

[4] For the purposes of this RFI, NIST is using the definition of ''PNT services'' as defined in Exec. Order No. 13905. ''PNT services'' means any system, network, or capability that provides a reference to calculate or augment the calculation of longitude, latitude, altitude, or transmission of time or frequency data, or any combination thereof.

vendors, users of PNT services and other key stakeholders for the purpose of gathering information to foster the responsible use of PNT services:

1. Describe any public or private sector need for and/or dependency on the use of positioning, navigation, and timing, or any combination of these, services.
2. Identify and describe any impacts to public or private sector operations if PNT services are disrupted or manipulated.
3. Identify any standards, guidance, industry practices and sector specific requirements referenced in association with managing public or private sector cybersecurity risk to PNT services.
4. Identify and describe any processes or procedures employed by the public or private sector to manage cybersecurity risks to PNT services.
5. Identify and describe any approaches or technologies employed by the public or private sector to detect disruption or manipulation of PNT services.
6. Identify any processes or procedures employed in the public or private sector to manage the risk that disruption or manipulation to PNT services pose.
7. Identify and describe any approaches, practices, and/or technologies used by the public or private sector to recover or respond to PNT disruptions.
8. Any other comments or suggestions related to the responsible use of PNT services.

Authority: Exec. Order No. 13905, Strengthening National Resilience Through Responsible Use of Positioning, Navigation, and Timing Services, 85 FR 9359 (Feb. 18, 2020).

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–11282 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NIST MEP Client Impact Survey

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before July 27, 2020.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST at *PRAcomments@doc.gov*. Please reference OMB Control Number 0693–0021 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Megean Blum, NIST MEP, 301–975–3160, *Megean.blum@nist.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored by NIST, the Manufacturing Extension Partnership (MEP) is a national network of locally based manufacturing extension centers working with small manufacturers to assist them improve their productivity, improve profitability and enhance their economic competitiveness. The information collected will provide the MEP with information regarding MEP Center performance regarding the delivery of technology, and business solutions to U.S.-based manufacturers. The collected information will assist in determining the performance of the MEP Centers at both local and national levels, provide information critical to monitoring and reporting on MEP programmatic performance, and assist management in policy decisions. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR parts 290, 291, 292, and H.R. 1274—section 2). The information collected will include MEP Customer inputs regarding their sales, costs, investments, and employment. Customers will take the survey online. Customers will only be surveyed once per year under this collection. Data collected in this survey is confidential.

II. Method of Collection

Information will be collected electronically.

III. Data

OMB Control Number: 0693–0021.

Form Number(s): None.

Type of Review: Revision and extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 13,000.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Burden Hours: 2,600.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–11344 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Form NIST–366A: Request for Personal Radiation Monitoring Services

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 6, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology, U.S. Department of Commerce.

Title: NIST 366–A Form: Request for Personal Radiation Monitoring Services.

OMB Control Number: 0693–XXXX.

Form Number(s): NIST–366A.

Type of Request: Regular submission, information collection.

Number of Respondents: 600.

Average Hours per Response: 15 minutes.

Burden Hours: 150 hours.

Needs and Uses: 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.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: 10 CFR 20.1502 and 10 CFR 20.2106.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–11345 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Wednesday, June 3, 2020.

DATES: The meeting will be held Wednesday, June 3, 2020 from 1 p.m. to 5 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be a virtual meeting via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Manufacturing Extension Partnership, National Institute of Standards and Technology, telephone number 301–975–2785; email: *cheryl.gendron@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69), as amended by the American Innovation and Competitiveness Act, Public Law 114–329 sec. 501 (2017), and codified at 15 U.S.C. 278k(m), in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Hollings Manufacturing Extension Partnership Program (Program) is a unique program consisting of Centers in all 50 states and Puerto Rico with partnerships at the federal, state and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) Advice on the activities, plans and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Wednesday, June 3, 2020, from 1 p.m. to 5 p.m. Eastern Daylight Time. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the MEP National Network™ 2017–2022 Strategic Plan. The final agenda will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than three to five minutes each. Requests must be submitted by email to *cheryl.gendron@nist.gov* and must be received by May 27, 2020 to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda or those who are/were unable to attend the

meeting are invited to submit written statements electronically by email to *cheryl.gendron@nist.gov.*

Admittance Instructions: All participants will be attending via webinar. Please contact Ms. Gendron at 301–975–2785 or *cheryl.gendron@nist.gov* for detailed instructions on how to join the webinar. All requests must be received by 5 p.m. Eastern Daylight Time, Thursday, May 28, 2020.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–11281 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 18, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration.

Title: West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program.

OMB Control Number: 0648–0785.

Form Number(s): None.

Type of Request: Regular submission (Revision and extension to an existing information collection).

Number of Respondents: 174.

Average Hours per Response:

EM service providers: Application (application form, EM service plan, submission of EM units)—5 hours; application renewals (biennial)—1 hour; EM service provider appeal—4 hours; EM service plan changes—2 hours; EM system certification—30 minutes; reports (technical assistance—20 minutes, harassment and intimidation—1 hour, compliance reports—20 minutes, catch reports—15 minutes, feedback to vessel—10 minutes, data storage—15 minutes); debrief of EM staff—2 hours 45 minutes.

Vessel owners: Initial application—30 minutes; final application (updated application, EM system certification, tentative fishing plan, vessel monitoring plan)—8 hours 40 minutes; changes to vessel monitoring plan—1 hour; appeal—4 hours; annual EM authorization renewal—30 minutes.

Vessel operators: One-time online EM training provided by NMFS 1 hour 30 minutes; federal discard logbook for each landing; hard drive submission—10 minutes.

Total Annual Burden Hours: 5,120.

Needs and Uses: The National Marine Fisheries Service (NMFS) published a final rule on June 28, 2019 (84 FR 31146), to implement an electronic monitoring (EM) program for two sectors of the limited entry trawl fishery, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (FMP). The action allows catcher vessels in the Pacific whiting fishery and fixed gear vessels in the shorebased Individual Fishing Quota (IFQ) fishery to use EM in place of observers to meet the requirements of the Trawl Rationalization Program for 100-percent at-sea observer coverage. This action is necessary to increase operational flexibility and reduce monitoring costs for vessels in the trawl fishery by providing an alternative to observers.

Under this collection, some catcher vessels will have the option to use EM in place of observers to reduce total fleet monitoring costs to levels sustainable for the fleet and agency and meet the requirements for 100-pecent observer coverage at-sea. In place of an observer documenting discards onboard, captains would report estimates of their own discards on a logbook and submit them to NMFS. NMFS would use the discards reported on the logbook to debit allocations in the Vessel Accounting System (VAS) and North Pacific Database Program (NorPac). They would also install and carry and EM system to capture fishing activities at-sea. Following the trip, an analyst would review the video and report estimates of discards of allocated species to NMFS to use to audit the validity of the logbook estimates. The EM data would also be used to monitor compliance with the requirements of the catch share program. In this way, logbooks and EM systems would be used in tandem in place of observers to meet the objectives of 100-percent at-sea monitoring of the catch share program.

Vessel operators would be required to submit a logbook reporting their discards of IFQ species. NMFS would use the logbook data to debit discards of IFQ species from IFQs and cooperative allocations, and use the EM data to audit the logbook data. EM data would also be used to monitor compliance with the requirements of the catch share program. Vessel operators would be required to submit a logbook reporting their discards of IFQ species.

New requirements being added to this collection include:

EM Service Providers will be required to submit catch reports and feedback reports, and store EM data and other records.

Vessel Owners will be required to obtain services from an NMFS-permitted EM service provider to analyze and store EM data, and report it to NMFS.

Affected Public: Business or other for-profit organizations.

Frequency: Annual and periodic.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 660.603(b)(1) and 660.604(b)(1) in the final rule 0648–BF52.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0785.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–11350 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR092]

Marine Mammals; File No. 23188

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Institute of Marine Sciences, University of California at Santa Cruz (Responsible Party: Daniel Costa, Ph.D.) has applied in due form for a permit to conduct research on northern elephant seals (*Mirounga angustirostris*).

DATES: Written, telefaxed, or email comments must be received on or before June 26, 2020.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23188 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Shasta McClenahan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests authorization to continue a long-term research program started in 1968 to study northern elephant seal population growth and status, reproductive strategies, behavioral and physiological adaptations for diving and fasting, general physiology and metabolism, and sensory physiology. Up to 4,210 northern elephant seals may be captured and handled for research and up to 32,110 individuals may be harassed during research. Five unintentional mortalities related to research and up to 10 directed mortalities for euthanasia of moribund or orphaned pups, are requested annually. Research methods include behavioral observations, marking, flipper tagging, capture and sampling, active and passive acoustics, attachment of instrumentats for tracking, translocation studies, short-term captive holding for laboratory studies, use of hormone challenges and standard clinical tracer techniques for physiology studies. Research would include all age and sex classes of northern elephant seals over the entire calendar year. Proposed research locations include haul-out sites from California to Washington, but primarily Año Nuevo. Incidental harassment of northern elephant seals, California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and Steller sea lions (*Eumetopias jubatus*) of the Eastern Distinct Population Segment is requested. The duration of the requested permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 20, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–11270 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA179]

South Atlantic 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 South Atlantic Fishery Management Council (Council) will hold meetings of the following: Information and Education Committee; Dolphin Wahoo Committee; Snapper Grouper Committee; Southeast Data, Assessment and Review (SEDAR) Committee; Citizen Science Committee; Executive Committee; and Mackerel Cobia Committee. The meeting week will also include a formal public comment session and meeting of the Full Council (partially Closed Session). Due to public health concerns associated with COVID–19 and current travel restrictions, the meeting originally planned for Key West, FL will be held via webinar.

DATES: The Council meeting will be held from 10 a.m. on Monday, June 8, 2020, until 12 p.m. on Thursday, June 11, 2020.

ADDRESSES: *Meeting address:* The meeting will be held via webinar. Webinar registration is required. Details are included in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Webinar registration links for each meeting day will also be available from the Council's website.

Public comment: Written comments may be directed to John Carmichael, Executive Director, South Atlantic Fishery Management Council (see *Council address*) or electronically via the Council's website at *http://safmc.net/safmc-meetings/council-meetings/.* Comments received by close of business the Monday before the meeting (6/1/20) will be compiled, posted to the website as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the website. For written comments received after the Monday before the meeting (after 6/1/20), individuals submitting a comment must use the Council's online form available from the website. Comments will automatically be posted to the website and available for Council consideration. Comments received prior to 9 a.m. on Thursday, June 11, 2020 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Council Session (Closed)—Monday, June 8, 2020, 10 a.m. Until 10:45 a.m.

The Council will meet in full session and receive an overview of the process for conducting the meeting via webinar. The Council will also review applicants for the Council's Scientific and Statistical Committee (SSC), and the Socio-Economic Panel (SEP) and make appointments as necessary. A legal briefing on litigation will also be held if needed.

Information and Education Committee, Monday, June 8, 2020, 11 a.m. Until 12 p.m.

1. The Committee will receive a report from the Information and Education Advisory Panel.

2. The Committee will receive an update on the Best Fishing Practices outreach campaign, review the draft Best Practices web page, receive a briefing on upcoming outreach activities and provide direction to staff.

Dolphin Wahoo Committee, Monday, June 8, 2020, 1:30 p.m. Until 4:30 p.m.

1. The Committee will receive catch level recommendations from the SSC for dolphin and wahoo and take action as necessary. The Committee will also receive an update on the Biological Opinion (BiOp) for the Highly Migratory Species longline fishery.

2. The Committee will receive an overview of draft Amendment 10 to the Dolphin Wahoo Fishery Management Plan (FMP) with actions that currently address: Revisions to recreational data and catch level recommendations, redefining Optimum Yield in the dolphin fishery, modifications to accountability measures, and other management revisions to the dolphin and wahoo fisheries. The Committee will review the draft Amendment and provide direction to staff.

3. The Committee will receive an overview of draft Amendment 12 to the Dolphin Wahoo FMP with measures to add bullet mackerel and frigate mackerel as Ecosystem Component species to the Dolphin Wahoo FMP and provide guidance to staff.

4. The Committee will receive an update from staff on the Dolphin Wahoo Participatory Workshops and also provide recommendations for Mid-Atlantic Fishery Management Council representation on the Dolphin Wahoo Advisory Panel.

Snapper Grouper Committee, Tuesday, June 9, 2020, 9 a.m. Until 4:30 p.m.

1. The Committee will receive updates from NOAA Fisheries the status of amendments under formal Secretarial review, including Regulatory Amendment 33 to the Snapper Grouper FMP and the 2020 Red Snapper Season.

2. The Committee will review impacts of COVID–19 on the snapper grouper fishery and discuss potential management responses.

3. The Committee will receive reports on the greater amberjack stock assessment from NOAA Fisheries Southeast Fisheries Science Center (SEFSC) and from the SSC, and discuss and determine the Acceptable Biological Catch (ABC) and management response.

4. The Committee will receive an overview of Regulatory Amendment 34 to the Snapper Grouper Fishery Management Plan (FMP) addressing proposed Special Management Zone (SMZ) designation for artificial reefs in federal waters off North Carolina and South Carolina, review public hearing comments, make edits to the Amendment as appropriate and provide recommendations for final Secretarial approval.

5. The Committee will receive reports on the red porgy stock assessment from NOAA Fisheries SEFSC and from the SSC, and discuss and determine the ABC and management response.

SEDAR Committee, Wednesday, June 10, 2020, 9 a.m. Until 10 a.m.

The Committee will receive an update on SEDAR stock assessment activities, a report from the SEDAR Steering Committee, and approve Terms of Reference for upcoming stock assessments.

Citizen Science Committee, Wednesday, June 10, 2020, 10 a.m. Until 12 p.m.

1. The Committee will provide guidance on the Citizen Science Program Evaluation including program goals, objectives, strategies, and indicators, and discuss the program evaluation plan.

2. The Committee will also receive programmatic and project updates.

Executive Committee, Wednesday, June 10, 2020, 1:30 p.m. Until 2:30 p.m.

1. The Committee will review the Council Priorities and workplan and provide revisions as needed.

2. The Committee will receive an update on the Council Coordination Committee Meeting.

3. The Committee will also review and provide recommendations on policies relative to: Internal research funding and selection process; staff performance evaluation process; and sexual harassment prevention training.

Mackerel Cobia Committee, Wednesday, June 10, 2020, 2:30 p.m. Until 3:45 p.m.

1. The Committee will receive an update on the current status of amendments under formal Secretarial review.

2. The Committee will receive reports on the king mackerel stock assessment from NOAA Fisheries SEFSC and from the SSC, and discuss and determine the ABC and management response.

3. The Committee will review impacts of COVID–19 on the mackerel cobia fishery and discuss potential management responses.

Formal Public Comment, Wednesday, June 10, 2020, 4 p.m.—Public comment will be accepted via webinar on items on the Council meeting agenda scheduled to be approved for Secretarial Review: Regulatory Amendment 34 to the Snapper Grouper FMP (SMZ designations for artificial reefs off NC and SC). Public comment will also be accepted on all other agenda items. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

Council Session: Thursday, June 11, 2020, 9 a.m. Until 12 p.m.

The Full Council will begin with the Call to Order, adoption of the agenda, and approval of minutes.

The Council will receive updates from staff regarding allocation discussions by the Council's Socio-Economic Panel and a recently released report from the U.S. Government Accountability Office providing recommendations for documented processes for allocation reviews. The Council will discuss and provide direction to staff.

The Council will receive a staff report on the impacts of COVID–19 on the Council office operations, reports from state agency representatives on COVID–19 impacts, and an update on the status of the CARES Act relative to COVID–19 relief funds. The Council will discuss impacts, consider any necessary response including emergency action, and take action as appropriate.

The Council will receive an update on the Joint Council Workgroup on Section 102 of the Modern Fish Act and provide guidance to the South Atlantic Fishery Management Council representatives on the workgroup.

NOAA Fisheries Southeast Regional Office staff will provide an update on the status of the For-Hire Electronic Reporting Amendment.

The Council will review any Exempted Fishing Permits received as needed and provide recommendations.

The Council will receive reports from the following committees: Information and Education; Dolphin Wahoo; Snapper Grouper; SEDAR; Citizen Science; Mackerel Cobia; and Executive; and review the SSC Selection Recommendations. The Council will take action as appropriate.

The Council will receive agency and liaison reports, discuss other business and upcoming meetings, and take action as necessary.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–11394 Filed 5–26–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before June 26, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0049, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx*.

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496, email: *jchachkin@cftc.gov;* Steven Haidar, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5611, email: *shaidar@cftc.gov;* or Melissa D'Arcy, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5086, email: *mdarcy@cftc.gov;* and refer to OMB Control No. 3038–0049.

SUPPLEMENTARY INFORMATION:

Title: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038–0049). This is a request for an extension of a currently approved information collection.

Abstract: This collection covers the information requirements for voluntary requests for, and the issuance of, interpretative, no-action, and exemptive letters submitted to Commission staff pursuant to the provisions of section 140.99 of the Commission's regulations,[2] and related requests for confidential treatment pursuant to section 140.98(b)[3] of the Commission's regulations.

The collection requirements described herein are voluntary. They apply to parties that choose to request a benefit from Commission staff in the form of the regulatory action described in section 140.99. Such benefits may include, for example, relief from some or all of the burdens associated with other collections of information, relief from regulatory obligations that do not constitute collections of information, interpretations, or extensions of time for compliance with certain Commission regulations. It is likely that persons who would opt to request action under section 140.99 will have determined that the sought relief substantially outweighs the information collection burdens.

This information collection is necessary, and would be used, to assist Commission staff in understanding the type of relief that is being requested and the basis for the request. It is also

[1] 17 CFR 145.9.

[2] 17 CFR 140.99. An archive containing CFTC staff letters may be found at *http://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm.*

[3] 17 CFR 140.98(b).

necessary, and would be used, to provide staff with a sufficient basis for determining whether: (1) Granting the relief would be necessary or appropriate under the facts and circumstances presented by the requestor; (2) the relief provided should be conditional and/or time-limited; and (3) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. In some cases, the requested relief might be granted upon the requirement that those who seek the benefits of that relief fulfill certain conditions that are necessary to ensure that the relief granted by Commission staff is appropriate. Once again, it is likely that those who would comply with these conditions will have determined that the sought relief outweighs the compliance burden. This information collection also is necessary to provide a mechanism whereby persons requesting interpretative, no-action, and exemptive letters may seek temporary confidential treatment of their request and the Commission staff response thereto and the grounds upon which such confidential treatment is sought.

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. On March 18, 2020, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 85 FR 15436 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice. Accordingly, the Commission believes that the burden estimate described in the 60-Day Notice is appropriate.

Burden Statement: The Commission is revising its estimate of the burden for this collection for persons registered with the Commission (such as commodity pool operators, commodity trading advisors, derivatives clearing organizations, designated contract markets, futures commission merchants, introducing brokers, swap dealers, and swap execution facilities), persons seeking an exemption from registration, persons whose registration with the Commission is pending, trade associations and their members, eligible contract participants, and other persons seeking relief from discrete regulatory requirements.

The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 68.

Estimated Average Burden Hours per Respondent: 40.

Estimated Total Annual Burden Hours: 2,720.

Frequency of Collection: Occasional.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May, 20, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–11296 Filed 5–26–20; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m. EDT, Thursday, May 28, 2020.

PLACE: Conference call.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- *Proposed Rule:* Amendments to Regulation 3.10(c)(3)—Providing an Exemption from Registration for Foreign Persons Acting as Commodity Pool Operators on Behalf of Offshore Commodity Pools; and
- *Interim Final Rule:* Amendments to Regulation 23.161—Extending the Compliance Schedule for Initial Margin Requirements for Uncleared Swaps in Response to the COVID–19 Pandemic.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* Instructions for public access to the live audio feed of the meeting will also be posted on the Commission's website. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: May 21, 2020.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2020–11409 Filed 5–22–20; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Virtual 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 Uniform Formulary Beneficiary Advisory Panel will take place.

DATES: Open to the public Wednesday, June 24, 2020, from 1:00 p.m. to 2:00 p.m. (Eastern Daylight Time).

ADDRESSES: The address of the open meeting will be online. The phone number for the remote access is: CONUS: 888–469–2037; OCONUS: 1–517–308–9287; PARTICIPANT CODE: 8227323. These numbers and the dial-in instructions will also be posted on the Uniform Formulary Beneficiary Advisory Panel website at: *https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/Operations/Pharmacy-Division/Beneficiary-Advisory-Panel.*

FOR FURTHER INFORMATION CONTACT: Colonel Paul J. Hoerner, USAF, 703–681–2890 (Voice), None (Facsimile), *dha.ncr.j-6.mbx.baprequests@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *http://www.health.mil/About-MHS/Other-MHS-Organizations/Beneficiary-Advisory-Panel.* 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.

The Panel will review and comment on recommendations made to the Director, Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Purpose of the Meeting: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel will take place.

Agenda:

1. Sign-In
2. Welcome and Opening Remarks

3. Newly Approved Drugs Review
4. Pertinent Utilization Management Issues
5. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165, and the subject to availability of phone lines, this meeting is open to the public. Access is limited and will be provided only to the first 220 people dialing in. There will be 220 lines total: 200 domestic and 20 international, including leader lines.

Written Statements: Pursuant to 41 CFR 102–3.10, and section 10(a)(3) of FACA, interested persons or organizations may submit written statements to the Uniform Formulary Beneficiary Advisory Panel about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the Uniform Formulary Beneficiary Advisory Panel's Designated Federal Officer (DFO). The DFO's contact information can be found in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written comments or statements must be received by the Uniform Formulary Beneficiary Advisory Panel's DFO at least five (5) business days prior to the meeting so they may be made available to the Uniform Formulary Beneficiary Advisory Panel for its consideration prior to the meeting. The DFO will review all submitted written statements and provide copies to all Uniform Formulary Beneficiary Advisory Panel members.

Dated: May 21, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–11336 Filed 5–26–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board; 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 Reserve Forces Policy Board (RFPB) will take place.

DATES: The RFPB will hold an open to the public meeting on Wednesday, June 3, 2020 from 8:55 a.m. to 12:10 p.m.

ADDRESSES: The RFPB meeting will be online using Microsoft Teams CVR and Teleconference line. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Alexander Sabol, (703) 681–0577 (Voice), 703–681–0002 (Facsimile), *alexander.j.sabol.civ@mail.mil* (Email). Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Website: *http://rfpb.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website and the **Federal Register**.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Reserve Forces Policy Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its meeting of June 3, 2020. 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 purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

Agenda: The RFPB will hold an online open to the public meeting on Wednesday, June 3, 2020 from 8:55 a.m. to 12:10 p.m. The meeting will consist of remarks to the RFPB from the following invited speakers: Under Secretary of Defense for Personnel and Readiness will discuss the goals of the Under Secretary of Defense for Personnel and Readiness, the Department's response to the coronavirus disease 2019 (COVID–19), and potential changes to future policy necessitated by the response; the Deputy Commander, United States Northern Command (USNORTHCOM) will discuss the Reserve Components' role in USNORTHCOM's response to COVID 19 and recommended force structure/policy changes for future domestic response operations; the Navy Emergency Preparedness Liaison Officer (EPLO) for USNORTHCOM will discuss the role of EPLOs in COVID 19 response operations and speak to actions at the tactical level, focusing on lessons learned and recommendations for future disaster response efforts; the New York State Commissioner of the Division of Homeland Security and Emergency Services will discuss New York's perspective on the effectiveness of the partnership of the State, FEMA, and Department of Defense in COVID 19 response efforts, and provide recommendations to enhance future collaboration between entities; the Deputy Assistant Secretary Defense for Reserve Integration will discuss the impact of COVID 19 on the Reserve Components' readiness, discussing policies that hindered readiness, comparing best practices, and providing recommended future policy changes to preserve and enhance readiness during periods of distributed operations; and the Subcommittee on Supporting and Sustaining Reserve Component Personnel will discuss the Board's review of and make suggestions for the Department's New Administration Transition Book that will provide recommendations on strategies to enhance the future capabilities and effectiveness of the Reserve Components and Department as a whole, to include potential rebalancing of Active/Reserve future force structure.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open online to the public from 8:55 a.m. to 12:10 p.m. Persons desiring to participate in the meeting online or by phone are required to submit their name, organization, email and telephone contact information to COL Christopher Warner at *christopher.w.warner3.mil@mail.mil* not later than Friday, May 29, 2020. Specific instructions, both for online or teleconference participation in the meeting, will be provided by reply email. The meeting agenda will be available prior to the meeting on the Board's website at: *http://rfpb.defense.gov/.*

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit written statements to the RFPB about its approved agenda or at any time on the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer (DFO) at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting,

then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The DFO will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that since the RFPB operates in accordance with the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's website.

Dated: May 21, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–11327 Filed 5–26–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE); Meeting

AGENCY: U.S. Department of Education.

ACTION: Notice meeting.

SUMMARY: Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify members of the public of an upcoming NACIE closed teleconference meeting. This notice is being published less than 15 days prior to the date of the meeting due to delays in making arrangements for a virtual closed meeting due to the COVID–19 impact on the capability to have face-to-face Council meetings.

DATES: The NACIE closed teleconference meeting will be held on May 27, 2020, 3:00 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Angela Hernandez Marshall, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202. Telephone: 202–205–1909, Email: *Angela.Hernandez-Marshall@ed.gov*.

SUPPLEMENTARY INFORMATION: *Statutory Authority and Function:* NACIE is authorized by Section 6141 of the Elementary and Secondary Education Act of 1965. NACIE is established within the U.S. Department of Education to advise the Secretary of Education (Secretary) and the Secretary of Interior on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or that may benefit Indian children or adults, including any program established under Title VI, Part A of the Elementary and Secondary Education Act. In addition, NACIE advises the White House Initiative on American Indian and Alaska Native Education, in accordance with Section 5(a) of Executive Order 13592. NACIE submits to the Congress each year a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

Meeting Agenda: The purpose of the meeting is to convene NACIE members, per its authorizing legislation and the provisions of FACA, to deliberate and vote on the recommendation from NACIE's OIE Director Hiring subcommittee. In turn, NACIE shall prepare its recommendation to the Secretary for filling the OIE Director position. The discussions during this meeting will pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

Public Comment: Members of the public interested in submitting written comments may do so via email to *Anglea.Hernandez-Marshall@ed.gov.* Please note, written comments should pertain to the work of NACIE and/or the Office of Indian Education.

Access to Records of the Meeting: The Department will post the official closed meeting report of this meeting on the OESE website at: *https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/* 21 days after the meeting. Pursuant to the FACA, the public may also inspect NACIE records at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5:00 p.m. Eastern Time. Please email *Wanda.Lee@ed.gov* or by calling Wanda Lee at (202) 453–7262 to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* 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 Adobe 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.

Authority: § 6141 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by Every Student Succeeds Act (ESSA) (20 U.S.C. 7471).

Frank T. Brogan,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2020–11266 Filed 5–26–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0072]

Agency Information Collection Activities; Comment Request; CARES Act, Recipient's Funding Certification and Agreement (Student Aid)

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0072. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the

docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Gaby Watts, 202–453–7195.

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: CARES Act, Recipient's Funding Certification and Agreement (Student Aid).

OMB Control Number: 1801–0005.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 5,705.

Total Estimated Number of Annual Burden Hours: 5,705.

Abstract: Section 18004(a)(1) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary of Education to allocate formula grant funds to participating institutions of higher educations (IHEs). Section 18004(c) of the CARES Act requires the IHEs to use no less than fifty percent of the funds received to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance such as food, housing, course materials, technology, health care, and child care). This information collection request includes the certification and agreement that must be submitted by an IHE in order to request student aid funds allocated under the CARES Act and outlines associated reporting requirements.

This information collection request was previously approved as an emergency clearance in order to comply with the requirements of the CARES Act and expedite the release of funds to IHEs and students with pressing financial needs due to the pandemic. The Department of Education is now requesting an extension of that emergency clearance under normal clearance procedures.

Dated: May 21, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–11355 Filed 5–26–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0073]

Agency Information Collection Activities; Comment Request; CARES Act, Recipient's Funding Certification and Agreement (Institutional Aid)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0073. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Gaby Watts, 202–453–7195.

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: CARES Act, Recipient's Funding Certification and Agreement (Institutional Aid).

OMB Control Number: 1840–0842.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 5,705.

Total Estimated Number of Annual Burden Hours: 2,853.

Abstract: Section 18004(a)(1) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary of Education to allocate formula grant funds to participating institutions of higher educations (IHEs). Section 18004(c) of the CARES Act allows the IHEs to use up to one-half of the total funds received to cover any costs associated with the significant changes to the delivery of instruction due to the coronavirus (with specific exceptions). This information collection request includes the certification and agreement that must be submitted by an IHE in order to request institutional aid funds allocated under the CARES Act.

This information collection request was previously approved as an emergency clearance in order to comply with the requirements of the CARES Act and expedite the release of funds to IHEs and students with pressing financial needs due to the pandemic. The Department of Education is now requesting an extension of that emergency clearance under normal clearance procedures.

Dated: May 21, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–11354 Filed 5–26–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0049]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 26, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

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: Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms.

OMB Control Number: 1845–0059.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 8,700.

Total Estimated Number of Annual Burden Hours: 2,871.

Abstract: The Teacher Loan Forgiveness (TLF) Application serves as the means by which an eligible Direct Loan or FFEL program borrower who has completed five consecutive years of qualifying teaching service applies for forgiveness of up to $5,000 or up to $17,500 of his or her eligible loans. Eligible special education teachers and secondary school math or science teachers may receive a maximum of $17,500 in loan forgiveness. Other teachers may receive a maximum of $5,000 in loan forgiveness. Borrowers who are working toward loan forgiveness may use the TLF Forbearance Request to request a forbearance during some or all of their required five consecutive years of teaching service. A prospective TLF applicant may receive a forbearance during some or all of the five-year teaching period only if the projected balance on the borrower's eligible loans at the end of the five-year period (if the borrower made monthly loan payments during that period) would be less than the maximum forgiveness amount for which the borrower qualifies.

Dated: May 21, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–11309 Filed 5–26–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0047]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 26, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of

this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Todd Stephenson, 202–205–1645.

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: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children.

OMB Control Number: 1810–0060.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,812.

Total Estimated Number of Annual Burden Hours: 4,061.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions. The U.S. Department of Education is required to use these data to calculate allocations under parts A and D of Title I of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act.

Dated: May 21, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–11337 Filed 5–26–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0074]

Agency Information Collection Activities; Comment Request; Governor's Emergency Education Relief Fund Application

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0074. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, 202–453–6136.

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: Governor's Emergency Education Relief Fund Application.

OMB Control Number: 1810–0741.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 26.

Abstract: The Governor's Emergency Education Relief Fund awards grants to Governors (states) for the purpose of providing local educational agencies (LEAs), institutions of higher education (IHEs), and other education related entities with emergency assistance as a result of the coronavirus pandemic. The Department will award these grants—to States (governor's offices) based on a formula stipulated in the legislation. (1) 60% on the basis of the State's relative population of individuals aged 5 through 24. (2) 40% on the basis of the State's relative number of children counted under section 1124(c) of the

Elementary and Secondary Education Act of 1965 (ESEA). This is a request for regular approval of an information collection.

Dated: May 21, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–11352 Filed 5–26–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA submitted an information collection request for a three-year extension, with no changes, as required by the Paperwork Reduction Act of 1995 to the Coal Markets Reporting System, OMB Control Number 1905–0167. The Coal Markets Reporting System (CMRS) consists of 5 surveys including, Form EIA–3 Quarterly Survey of Non-Electric Sector Coal Data, Form EIA–7A Annual Survey of Coal Production and Preparation, Form EIA–8A Annual Survey of Coal Stocks and Coal Exports, Form EIA–6 Emergency Coal Supply Survey (Standby), and Form EIA–20 Emergency Weekly Coal Monitoring Survey for Coal Burning Power Producers (Standby). The CMRS collects data on coal production, preparation, distribution, foreign trade, consumption, prices, quality, and stocks.

DATES: Comments on this information collection must be received no later than June 26, 2020. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Ms. Sara Hoff at (202) 586–1242, or by email at *Coal2020@eia.gov.* The forms are available online at: *https://www.eia.gov/survey/#coal.*

SUPPLEMENTARY INFORMATION: This information collection request contains

(1) *OMB No.:* 1905–0167;

(2) *Information Collection Request Title:* Coal Markets Reporting System;

(3) *Type of Request:* Three-year extension without changes;

(4) *Purpose:* The CMRS program collects, evaluates, assembles, analyzes, and disseminates information on coal resource reserves, production, demand, technology, and related economic and statistical information. Aggregates of this collection are used to support public policy analyses of the coal industry, economic modeling, forecasting, coal supply and demand studies, and in guiding research and development programs. This information is used to assess the adequacy of coal resources to meet near and long term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

(5) *Annual Estimated Number of Respondents:* 1,164.

- Form EIA–3 will consist of 397 respondents;
- Form EIA–7A will consist of 692 respondents;
- Form EIA–8A will consist of 48 respondents;
- Form EIA–6 (standby) will consist of 15 respondents;
- Form EIA–20 (standby) will consist of 12 respondents;

(6) *Annual Estimated Number of Responses:* 2,598.

(7) *Annual Estimated Number of Burden Hours:* 4,417.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of the burden hours is estimated to be $353,978.38 (4,417 burden hours times $80.14 per hour). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: 42 U.S.C. 7135, 15 U.S.C. 772(b), and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on May 21, 2020.

Thomas Leckey,

Assistant Administrator, Office of Energy Statistics, U.S. Energy Information Administration.

[FR Doc. 2020–11316 Filed 5–26–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–167–000.

Applicants: Wheatridge Wind Energy, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generation Status of Wheatridge Wind Energy, LLC.

Filed Date: 5/20/20.

Accession Number: 20200520–5093.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: EG20–168–000.

Applicants: Wheatridge Wind II, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wheatridge Wind II, LLC.

Filed Date: 5/20/20.

Accession Number: 20200520–5094.

Comments Due: 5 p.m. ET 6/10/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1852–037.

Applicants: Florida Power & Light Company.

Description: Notification of Change in Status of Florida Power & Light Company.

Filed Date: 5/19/20.

Accession Number: 20200519–5155.

Comments Due: 5 p.m. ET 6/9/20.

Docket Numbers: ER19–1864–004.

Applicants: Public Service Company of Colorado.

Description: Compliance filing: OATT_Att N–LGIP–Order Compl–Errata_ER19–1864 to be effective 12/5/2019.

Filed Date: 5/19/20.

Accession Number: 20200519–5010.

Comments Due: 5 p.m. ET 6/9/20.

Docket Numbers: ER20–954–002.

Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: Compliance filing: AEP submits Compliance Filing in ER20–954 re: ILDSA, SA No. 1336 to be effective 4/4/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5082.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1333–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: PSC–BHS1–Evras–PLGIA–572–0.0.0–

DeficiencyLtr_ER20–1333 to be effective 3/19/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5122.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1395–000.

Applicants: ND OTM LLC.

Description: Supplement to March 26, 2020 ND OTM LLC tariff filing (Asset Appendix).

Filed Date: 5/20/20.

Accession Number: 20200520–5095.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1487–001.

Applicants: Frontier Windpower II, LLC.

Description: Tariff Amendment: Amendment to Application for Market-Based Rate Authority to be effective 6/2/2020.

Filed Date: 5/19/20.

Accession Number: 20200519–5147.

Comments Due: 5 p.m. ET 5/29/20.

Docket Numbers: ER20–1854–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to ER20–1854–000 Re: AC2–138/AD2–044 WMPA 4869 to be effective 2/22/2019.

Filed Date: 5/20/20.

Accession Number: 20200520–5098.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1855–000.

Applicants: NSTAR Electric Company.

Description: § 205(d) Rate Filing: Preliminary Engineering and Design Agreement with Mayflower Wind Energy LLC to be effective 5/19/2020.

Filed Date: 5/19/20.

Accession Number: 20200519–5145.

Comments Due: 5 p.m. ET 6/9/20.

Docket Numbers: ER20–1856–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–05–19 Certificate of Concurrence for UFA among Atlas Solar LLC, SCE & CAISO to be effective 4/14/2020.

Filed Date: 5/19/20.

Accession Number: 20200519–5151.

Comments Due: 5 p.m. ET 6/9/20.

Docket Numbers: ER20–1857–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Concurrence of EPE to APS Service Agreement No. 376 to be effective 12/9/2019.

Filed Date: 5/19/20.

Accession Number: 20200519–5154.

Comments Due: 5 p.m. ET 6/9/20.

Docket Numbers: ER20–1858–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–05–20_SA 3496 ATC-Shullsburg Wind Farm GIA (J819) to be effective 5/6/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5020.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1859–000.

Applicants: Tampa Electric Company.

Description: Motion for Waiver of Open Access Transmission Tariff Provision, et al. of Tampa Electric Company.

Filed Date: 5/19/20.

Accession Number: 20200519–5178.

Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: ER20–1860–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Helena Wind Interconnection Agreement to be effective 5/5/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5058.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1861–000.

Applicants: PJM Interconnection, L.L.C., Delaware Municipal Electric Corporation, Inc.

Description: § 205(d) Rate Filing: Revised SA No. 2978, NITSA Among PJM and Delaware Municipal Electric Corp. to be effective 5/1/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5064.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1862–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Tariff Rev Related to Enhancements & Clean-Up Changes Under the Billing Policy to be effective 7/27/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5068.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1863–000.

Applicants: Ingenco Wholesale Power, L.L.C.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 6/1/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5086.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: ER20–1864–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: Filing to Revise Depreciation Rates in Service Agreement Nos. 20 and 23 to be effective 7/1/2020.

Filed Date: 5/20/20.

Accession Number: 20200520–5126.

Comments Due: 5 p.m. ET 6/10/20.

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: May 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11334 Filed 5–26–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM16–17–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes; Notice of Extension of Time

On May 6, 2020, the Edison Electric Institute (EEI) submitted a motion requesting that the Commission extend the effective date of Order No. 860 and the deployment of the market-based rate database (MBR Database) by four months to February 1, 2021 and the due date for initial baseline submission until June 1, 2021.

EEI asserts that good cause exists to grant the extension because the disruption caused by the COVID–19 pandemic creates challenges in meeting the implementation schedule established in Order No. 860.

Upon consideration, notice is hereby given that the effective date of Order No. 860 is extended to and including six months to April 1, 2021, and the deadline for baseline submissions is extended to and including August 2, 2021. Further, other implementation dates in Order No. 860 are extended as shown in the attached appendix.

Dated: May 20, 2020.

Kimberly D. Bose,

Secretary.

Appendix

[1] *Data Collection for Analytics & Surveillance and Market-Based Rate Purposes,* Order No. 860, 168 FERC 61,039 (2019), *order on reh'g,* Order No. 860–A, 170 FERC 61,129 (2020).

Activity	Order No. 860 schedule	Revised, six-month extension schedule
Testing period for the MBR Database	Through Sept. 30, 2020	Through Mar. 31, 2021.
Effective date of Order No. 860	Oct. 1, 2020	Apr. 1, 2021.
"Go-live" date of MBR Database	Oct. 1, 2020	Apr. 1, 2021.
Sellers should create needed identifiers (FERC Generated IDs and Asset IDs) in the MBR Portal and prepare their baseline submissions.	Oct. 1, 2020–Dec. 31, 2020	Apr. 1, 2021–June 30, 2021.
Baseline submissions are due	By Feb. 1, 2021	By Aug. 2, 2021.
First change in status filings under new timelines are due	By Feb. 28, 2021	By Aug. 31, 2021.

[FR Doc. 2020–11332 Filed 5–26–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1853–000]

Whitehorn Solar 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 Whitehorn Solar 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 June 9, 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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 the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11330 Filed 5–26–20; 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 Numbers: RP20–874–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Capacity Release Provision to be effective 6/19/2020.

Filed Date: 5/19/20.

Accession Number: 20200519–5013.

Comments Due: 5 p.m. ET 6/1/20.

Docket Numbers: RP20–875–000.

Applicants: ETC Tiger Pipeline, LLC.

Description: § 4(d) Rate Filing: Capacity Release Provision to be effective 6/19/2020.

Filed Date: 5/19/20.

Accession Number: 20200519–5015.

Comments Due: 5 p.m. ET 6/1/20.

Docket Numbers: RP20–877–000.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing REX 2020 Annual Penalty Revenue Reconciliation.

Filed Date: 5/19/20.

Accession Number: 20200519–5133.

Comments Due: 5 p.m. ET 6/1/20.

Docket Numbers: RP20–878–000.

Applicants: Tallgrass Interstate Gas Transmission, LLC.

Description: Compliance filing TIGT 2020 Annual Penalty Revenue Reconciliation.

Filed Date: 5/19/20.

Accession Number: 20200519–5134.

Comments Due: 5 p.m. ET 6/1/20.

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: May 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11331 Filed 5–26–20; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL19–4–000]

Inquiry Regarding the Commission's Policy for Determining Return on Equity

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Policy statement on determining return on equity for natural gas and oil pipelines.

SUMMARY: On March 21, 2019, the Federal Energy Regulatory Commission issued a notice of inquiry seeking information and stakeholder views regarding whether, and if so how, it should modify its policies concerning the determination of the return on equity (ROE) to be used in designing jurisdictional public utility rates and whether any changes to the Commission's policies concerning public utility ROEs should be applied to interstate natural gas and oil pipelines. Concurrently with this Policy Statement, the Commission is issuing Opinion No. 569–A adopting changes to its policies concerning public utility ROEs. The Commission finds that, with certain exceptions to account for the statutory, operational, organizational and competitive differences among the industries, the policy changes adopted in Opinion No. 569–A should be applied to natural gas and oil pipelines. Accordingly, the Commission revises its policy and will determine natural gas and oil pipeline ROEs by averaging the results of the Discounted Cash Flow model and the Capital Asset Pricing Model, but will not use the Risk Premium model. In addition, the Commission clarifies its policies governing the formation of proxy groups and the treatment of outliers in proceedings addressing natural gas and oil pipeline ROEs. Finally, the Commission encourages oil pipelines to file revised FERC Form No. 6, page 700s for 2019 reflecting the revised ROE policy.

DATES: This Policy Statement takes effect May 27, 2020.

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SUPPLEMENTARY INFORMATION:

1. On March 21, 2019, the Commission issued a Notice of Inquiry (NOI) seeking information and stakeholder views to help the Commission explore whether, and if so how, it should modify its policies concerning the determination of the return on equity (ROE) to be used in designing jurisdictional rates charged by public utilities.[1] The Commission also sought comment on whether any changes to its policies concerning public utility ROEs should be applied to interstate natural gas and oil pipelines.[2] On November 21, 2019, the Commission issued Opinion No. 569 [3] establishing a revised methodology for determining just and reasonable base ROEs for public utilities under the Federal Power Act (FPA). Concurrently with the issuance of this Policy Statement, the Commission is issuing Opinion No. 569–A adopting changes to the base ROE methodology established in Opinion No. 569.[4]

2. As explained below, we revise our policy for analyzing interstate natural gas and oil pipeline ROEs to adopt the methodology established for public utilities in Opinion Nos. 569 and 569–A, with certain exceptions to account for the statutory, operational, organizational and competitive differences among the industries. Specifically, we will determine just and reasonable natural gas and oil pipeline ROEs by averaging the results of Discounted Cash Flow model (DCF) and Capital Asset Pricing Model (CAPM) analyses, according equal weight to both models. In contrast to our methodology for public utilities, we retain the existing two-thirds/one-third weighting for the short-term and long-term growth projections in the DCF and will not use the risk premium model discussed in Opinion No. 569 and modified in Opinion No. 569–A (Risk Premium). In addition, we clarify our policies governing the formation of proxy groups and the treatment of outliers in natural gas and oil pipeline proceedings. Finally, as discussed below, we encourage oil pipelines to file updated FERC Form No. 6, page 700 data for 2019 to reflect the revised ROE policy established herein.

I. Background

A. Natural Gas and Oil Pipeline ROE Policy

3. The Supreme Court has stated that ''the return to the equity owner should be commensurate with the return on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'' [5]

4. Since the 1980s, the Commission has determined natural gas and oil pipeline ROEs using the DCF model.[6] The DCF model is based on the premise that ''a stock's price is equal to the present value of the infinite stream of expected dividends discounted at a market rate commensurate with the stock's risk.'' [7] The Commission uses the DCF model to estimate the return necessary for the pipeline to attract capital based upon the range of returns that the market provides investors in a proxy group of publicly traded entities with similar risk profiles. The Commission estimates the required rate of return for each member of the proxy group using the following formula:

$$k = D/P(1+.5g) + g$$

where k is the discount rate (or investors' required return), D is the current dividend, P is the price of stock at the relevant time, and g is the expected growth rate in dividends based upon the weighted averaging of short-term and long-term growth estimates (referred to as the two-step procedure). The Commission multiplies the dividend yield (dividends divided by stock price or D/P) by the expression (1+.5g) to account for the fact that dividends are paid on a quarterly basis. For purposes of the (1+.5g) adjustment, the Commission uses only the short-term growth projection.[8]

5. In the two-step DCF model, the Commission computes the expected growth rate (g) by giving two-thirds weight to a short-term growth projection and one-third weight to a long-term

[1] *Inquiry Regarding the Commission's Policy for Determining Return on Equity,* 166 FERC ¶ 61,207, at P 1 (2019).

[2] *Id.*

[3] *Ass'n of Bus. Advocating Tariff Equity* v. *Midcontinent Indep. Sys. Operator, Inc.,* Opinion No. 569, 169 FERC ¶ 61,129 (2019).

[4] *Ass'n of Bus. Advocating Tariff Equity* v. *Midcontinent Indep. Sys. Operator, Inc.,* Opinion No. 569–A, 171 FERC ¶ 61,154 (2020).

[5] *Fed. Power Comm'n* v. *Hope Nat. Gas Co.,* 320 U.S. 591, 603 (1944) (citing *Missouri ex rel. Sw. Bell Tel. Co.* v. *Pub. Serv. Comm'n of Mo.,* 262 U.S. 276, 291 (1923) (Brandeis, J., concurring)).

[6] *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity,* 123 FERC ¶ 61,048, at P 3 (2008) (2008 Policy Statement).

[7] *Canadian Ass'n of Petroleum Producers* v. *FERC,* 254 F.3d 289, 293 (D.C. Cir. 2001) (*CAPP* v. *FERC*).

[8] *Seaway Crude Pipeline Co. LLC,* Opinion No. 546, 154 FERC ¶ 61,070, at PP 198–200 (2016).

growth projection.[9] For the short-term growth projection, the Commission uses security analysts' five-year forecasts for each company in the proxy group, as published by the Institutional Brokers Estimated System (IBES).[10] The long-term growth projection is based on forecasts, drawn from three different sources,[11] of long-term growth of the economy as a whole as reflected in the Gross Domestic Product (GDP).[12] For proxy group members that are master limited partnerships (MLPs), the Commission adjusts the long-term growth projection to equal 50% of GDP.[13]

6. Because most natural gas and oil pipelines are wholly owned subsidiaries and their common stocks are not publicly traded, the Commission must use a proxy group of publicly traded firms with corresponding risks to set a range of reasonable returns.[14] The firms in the proxy group must be comparable to the pipeline whose ROE is being determined, or, in other words, the proxy group must be ''risk-appropriate.'' [15] The range of the proxy group's returns produces the zone of reasonableness in which the pipeline's ROE may be set based on specific risks. Absent unusual circumstances showing that the pipeline faces anomalously high or low risks, the Commission sets the pipeline's cost-of-service nominal ROE at the median of the zone of reasonableness.[16]

B. Other Financial Models

7. In the NOI, the Commission sought comment on other financial models the Commission has considered when determining ROE for public utilities, including the CAPM, Risk Premium model, and an expected earnings analysis (Expected Earnings).[17]

1. CAPM

8. Investors use CAPM analysis as a measure of the cost of equity relative to risk.[18] The CAPM is based on the theory that the market-required rate of return for a security is equal to the ''risk-free rate'' plus a risk premium associated with that security. The CAPM estimates cost of equity by adding the risk-free rate to the ''market-risk premium'' multiplied by ''beta.'' The formula for the CAPM is as follows:

$R = r_f + \beta_a(r_m - r_f)$

r_f = risk free rate (such as yield on 30-year U.S. Treasury bonds)

r_m = expected market return

β_a = beta, which measures the volatility of the security compared to the rest of the market.

The risk-free rate is represented by a proxy, typically the yield on 30-year U.S. Treasury bonds. The market-risk premium is calculated by subtracting the risk-free rate from the ''expected return,'' which, in a forward-looking CAPM analysis, is based on a DCF analysis of a large segment of the market, such as the dividend paying companies in the S&P 500.[19] Betas measure the volatility of a particular stock relative to the market and are published by several commercial sources.[20] An entity may also seek to apply a size premium adjustment to the CAPM zone of reasonableness to account for the difference in size between itself and the dividend paying companies in the S&P 500.[21]

2. Risk Premium

9. Risk premium methodologies are ''based on the simple idea that since investors in stocks take greater risk than investors in bonds, the former expect to earn a return on a stock investment that reflects a 'premium' over and above the return they expect to earn on a bond investment.'' [22] This difference reflects the greater risk of a stock investment.[23] The risk premium return is calculated as follows:

$R = I + RP$

where I represents current applicable bond yield and RP represents the risk premium, which consists of the difference between (a) applicable annual common equity premiums and (b) applicable bond yields.

10. Although there are multiple approaches to determining an entity's equity risk premium (*RP*), the Risk Premium model addressed in Opinion Nos. 569 and 569–A ''examin[es] the risk premiums implied in the returns on equity allowed by regulatory commissions for utilities over some past period relative to the contemporaneous level of the long-term U.S. Treasury bond yield.'' [24] This approach develops the equity risk premium using Commission-allowed ROEs for public utilities minus the long-term bond yield.

3. Expected Earnings

11. A comparable earnings analysis is a method of calculating the earnings an investor expects to receive on the book value of a particular stock.[25] The analysis can be either backward-looking using the company's historical earnings on book value, as reflected on the company's accounting statements, or forward-looking using estimates of earnings on book value, as reflected in analysts' earnings forecasts for the company. The latter approach is often referred to as an ''Expected Earnings analysis.'' The Expected Earnings analysis provides an accounting-based approach that uses investment analyst estimates of return (net earnings) on book value (the equity portion of a company's overall capital, excluding long-term debt).[26] Algebraically, Expected Earnings can be expressed as follows:

$R = E/B$

E = Earnings during Current Year

B = Book Value at the End of the Prior Year

[9] 2008 Policy Statement, 123 FERC ¶ 61,048 at P 6.

[10] *Id.*

[11] The three sources used by the Commission are Global Insight: *Long-Term Macro Forecast—Baseline* (*U.S. Economy 30-Year Focus*); Energy Information Agency, *Annual Energy Outlook*; and the Social Security Administration.

[12] 2008 Policy Statement, 123 FERC ¶ 61,048 at P 6 (citing *Nw. Pipeline Co.,* Opinion No. 396–B, 79 FERC ¶ 61,309, at 62,383 (1997); *Williston Basin Interstate Pipeline Co.,* 79 FERC ¶ 61,311, at 62,389 (1997), *aff'd, Williston Basin Interstate Pipeline Co.* v. *FERC,* 165 F.3d 54, 57 (D.C. Cir. 1999)).

[13] *Id.* P 96.

[14] *Petal Gas Storage, L.L.C.* v. *FERC,* 496 F.3d 695, 697 (D.C. Cir. 2007) (explaining that the purpose of a DCF proxy group is to ''provide market-determined stock and dividend figures from public companies comparable to a target company for which those figures are unavailable. Market-determined stock figures reflect a company's risk level and when combined with dividend values, permit calculation of the 'risk-adjusted expected rate of return sufficient to attract investors.' '' (quoting *CAPP* v. *FERC,* 254 F.3d at 293)).

[15] *Id.* at 699; *see also Portland Nat. Gas Transmission Sys.,* Opinion No. 524, 142 FERC ¶ 61,197, at P 302 (2013), *reh'g denied,* Opinion No. 524–A, 150 FERC ¶ 61,107 (2015).

[16] *El Paso Nat. Gas Co.,* Opinion No. 528, 145 FERC ¶ 61,040, at P 592 (2013), *order on reh'g,* Opinion No. 528–A, 154 FERC ¶ 61,120 (2016), *order on compliance & reh'g,* Opinion No. 528–B, 163 FERC ¶ 61,079 (2018) (citing *Transcontinental Gas Pipe Line Corp.,* Opinion No. 414–A, 84 FERC ¶ 61,084 (1998), *reh'g denied,* Opinion No. 414–B, 85 FERC ¶ 61,323 (1998), *aff'd, CAPP* v. *FERC,* 254 F.3d 289).

[17] NOI, 166 FERC ¶ 61,207 at PP 35, 38.

[18] Opinion No. 569, 169 FERC ¶ 61,129 at P 229.

[19] *Id.*

[20] NOI, 166 FERC ¶ 61,207 at P 14.

[21] *See* Opinion No. 569, 169 FERC ¶ 61,129 at P 298; *see also Coakley* v. *Bangor Hydro-Elec. Co.,* Opinion No. 531–B, 150 FERC ¶ 61,165, at P 117 (2015) (citing Roger A. Morin, New Regulatory Finance, 187 (Public Utilities Reports, Inc. 2006) (Morin) (finding that use of a size premium adjustment is ''a generally accepted approach to CAPM analyses'')).

[22] Opinion No. 569, 169 FERC ¶ 61,129 at P 304 (quoting *Coakley* v. *Bangor Hydro-Elec. Co.,* Opinion No. 531, 147 FERC ¶ 61,234, at P 147 (2014)).

[23] *Ass'n of Bus. Advocating Tariff Equity* v. *Midcontinent Indep. Sys. Operator, Inc.,* 165 FERC ¶ 61,118, at P 36 (2018) (MISO Briefing Order).

[24] Opinion No. 569, 169 FERC ¶ 61,129 at P 305.

[25] *Id.* P 172.

[26] Opinion No. 569, 169 FERC ¶ 61,129 at P 172.

C. Public Utility ROE Proceedings Following Emera Maine v. FERC

1. Briefing Orders and Trailblazer

12. Following the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Emera Maine* v. *FERC,*[27] the Commission issued two briefing orders [28] in the fall of 2018 proposing a new methodology for analyzing public utility ROEs under FPA section 206.[29] The Commission preliminarily found that ''in light of current investor behavior and capital market conditions, relying on the DCF methodology alone will not produce a just and reasonable ROE.'' [30] The Commission found that investors appear to base their decisions on numerous financial models [31] and may give greater weight to models other than the DCF in estimating the expected returns from a utility investment.[32] As such, the Commission proposed to determine ROE for public utilities by averaging the results of DCF, CAPM, Expected Earnings, and Risk Premium analyses, giving equal weight to each analysis. The Commission established paper hearings and directed the parties in those proceedings to file briefs in response.

13. On February 21, 2019, while the paper hearings were pending, the Commission found in *Trailblazer Pipeline Company LLC* that ''investor reliance upon multiple methodologies presumably applies to investments in natural gas pipelines'' as well as public utilities.[33] The Commission therefore permitted parties in that natural gas pipeline cost-of-service rate proceeding to address the four alternative financial models at hearing.[34]

2. Opinion No. 569

14. On November 21, 2019, the Commission issued Opinion No. 569 adopting the proposal from the Briefing Orders, with several revisions.[35] The Commission explained that it would use the DCF model and CAPM in its ROE analyses under FPA section 206 [36] and give equal weight to both models.[37] However, contrary to the proposal in the Briefing Orders, the Commission declined to use either the Expected Earnings analysis or Risk Premium model.[38] The Commission also made findings as to the DCF model and the CAPM and adopted specific low and high-end outlier tests.

3. Opinion No. 569–A

15. In Opinion No. 569–A, the Commission modified the methodology established in Opinion No. 569 in several respects. First, as to the DCF model, the Commission reduced the weighting of the long-term growth projection from one-third to 20% and modified the high-end outlier test adopted in Opinion No. 569.[39] Second, as to the CAPM, the Commission clarified that it will modify the high-end outlier test adopted in Opinion No. 569 [40] and that it will consider, based on evidence provided in future proceedings, use of *Value Line* data, instead of IBES data, as the source of the short-term growth projection in the DCF component of the CAPM.[41] Third, the Commission adopted a modified version of the Risk Premium model.[42] The Commission explained that it would afford equal weighting to the DCF, CAPM, and Risk Premium analyses and denied requests for rehearing of its decision to exclude Expected Earnings.[43]

D. NOI

16. In the NOI, the Commission requested comment on whether uniform application of the Commission's base ROE policy across the electric, natural gas pipeline, and oil pipeline industries is appropriate and advisable [44] and whether the Commission, if it departed from its sole use of a two-step DCF methodology for public utilities, should also use its new method or methods to determine natural gas and oil pipeline ROEs.[45] The Commission also sought comment on its guidelines for proxy group formation, including proxy group screening criteria and appropriate high and low-end outlier tests.[46]

17. Numerous entities and individuals submitted comments in response to the NOI. Below, we discuss the comments that are relevant to the revised policy for natural gas and oil pipeline ROE methodologies that we adopt herein.

II. Discussion

18. Upon review of the comments and based on the Commission's findings in Opinion Nos. 569 and 569–A, we revise our policy for determining natural gas and oil pipeline ROEs. Under this revised policy, we will (1) determine ROE by averaging the results of DCF and CAPM analyses while retaining the existing two-thirds/one-third weighting of the short and long-term growth projections in the DCF; (2) give equal weight to the DCF and CAPM analyses; (3) consider using *Value Line* data as the source of the short-term growth projection in the CAPM; (4) consider proposals to include Canadian companies in pipeline proxy groups while continuing to apply our proxy group criteria flexibly until sufficient proxy group members are obtained; (5) exclude Risk Premium and Expected Earnings analyses; and (6) continue to address outliers in pipeline proxy groups on a case-by-case basis and refrain from applying specific outlier tests.

19. We are not persuaded to adopt any additional policy changes at this time and will address all other issues concerning the determination of natural gas and oil pipeline ROEs as they arise in future proceedings.

A. Revised Policy for Determining Natural Gas and Oil Pipeline ROEs

1. Use of the DCF and CAPM

a. Background

20. In the Briefing Orders, the Commission preliminarily found that since it began relying primarily on the DCF model to determine ROE in the 1980s, investors have increasingly used a diverse set of data sources and models to inform their investment decisions.[47] Because investors consider more than one financial model when making investment decisions, the Commission reasoned that relying on multiple models makes it more likely that the Commission's decision will accurately reflect how investors are making their

[27] 854 F.3d 9 (D.C. Cir. 2017).

[28] MISO Briefing Order, 165 FERC ¶ 61,118; *Coakley* v. *Bangor Hydro-Elec. Co.,* 165 FERC ¶ 61,030 (2018) (*Coakley* Briefing Order, and together with MISO Briefing Order, Briefing Orders).

[29] 16 U.S.C. 824e (2018).

[30] *Coakley* Briefing Order, 165 FERC ¶ 61,030 at P 32; MISO Briefing Order, 165 FERC ¶ 61,118 at P 34.

[31] *Coakley* Briefing Order, 165 FERC ¶ 61,030 at P 40; MISO Briefing Order, 165 FERC ¶ 61,118 at P 42.

[32] *Coakley* Briefing Order, 165 FERC ¶ 61,030 at P 35; MISO Briefing Order, 165 FERC ¶ 61,118 at P 37.

[33] 166 FERC ¶ 61,141, at P 48 (2019).

[34] Thereafter, participants in natural gas pipeline rate proceedings in Docket Nos. RP19–352–000, RP19–1353–000, RP19–1523–000, and RP20–131–000 filed testimony applying the alternative models.

[35] Opinion No. 569, 169 FERC ¶ 61,129 at P 18.

[36] *Id.* PP 1, 18.

[37] *Id.* PP 276, 425.

[38] *Id.* PP 18, 31, 200, 340.

[39] Opinion No. 569–A, 171 FERC ¶ 61,154 at PP 57, 154.

[40] *Id.* P 154.

[41] *Id.* P 78.

[42] *Id.* PP 104–114.

[43] *Id.* P 141.

[44] NOI, 166 FERC ¶ 61,207 at P 29.

[45] *Id.* P 32.

[46] *Id.* P 34.

[47] *Coakley* Briefing Order, 165 FERC ¶ 61,030 at P 40; MISO Briefing Order, 165 FERC ¶ 61,118 at P 42.

investment decisions.[48] The Commission later determined in *Trailblazer* that investor reliance on multiple methodologies presumably applies to investments in natural gas pipelines as well as public utilities.[49]

21. The Commission departed from sole reliance on the DCF model for public utilities in Opinion No. 569, finding that investors have varying preferences as to which of the various methods for determining cost of equity they may use to inform their investment decisions and that the DCF and CAPM are among the primary methods that investors use for this purpose.[50] Thus, the Commission concluded that expanding its methodology for determining public utility ROEs to use the CAPM in addition to the DCF model will make it more likely that its decisions will accurately reflect how investors make their investment decisions and produce cost-of-equity estimates that more accurately reflect what ROE a utility must offer to attract capital.[51] The Commission further explained that using the CAPM will also mitigate the model risk that the DCF model may perform poorly in certain circumstances.[52]

b. NOI Comments

22. Commenters are divided on whether the Commission should expand its methodology for determining natural gas and oil pipeline ROEs to consider multiple models. Commenters representing natural gas and oil pipeline shipper interests [53] urge the Commission to continue relying solely on the DCF model to determine pipeline ROEs.[54] These commenters contend that the DCF model is a standardized approach that promotes predictability for pipelines and shippers and assert that there is no reason to consider additional models.[55]

23. In contrast, natural gas and oil pipelines and trade associations [56] argue that it would be reasonable to consider other models in addition to the DCF, subject to modifications in recognition of the unique risks and regulatory framework applicable to the natural gas and oil pipeline industries.[57] Generally, these entities contend that the Commission's findings that investors rely upon multiple financial models in making investment decisions also apply to investors in pipelines.[58]

c. Commission Determination

24. Based on the Commission's findings in Opinion No. 569, we revise our methodology for determining natural gas and oil pipeline ROEs to rely on multiple financial models, rather than relying solely on the DCF model. Specifically, we will determine pipeline ROEs using the DCF model and CAPM, but in contrast to our methodology for public utilities, we will not use the Risk Premium model.

25. As an initial matter, we note that the D.C. Circuit has repeatedly observed that the Commission is not required to rely upon the DCF model alone or even at all.[59] As such, the Commission may ''change its past practices,'' such as relying exclusively on the DCF model, ''with advances in knowledge in its given field or as its relevant experience and expertise expands,'' provided that it supplies ''a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.'' [60]

26. In *Hope,* the Supreme Court held that ''the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'' [61] Thus, a key consideration in determining just and reasonable utility ROEs is determining what ROE an entity must offer in order to attract capital, *i.e.,* induce investors to invest in the entity in light of its risk profile.[62] As the Commission stated in Opinion No. 414–B,[63] ''the cost of common equity to a regulated enterprise depends upon what the market expects not upon precisely what is going to happen.'' [64] Thus, in determining what ROE to award a utility, we must look to how investors analyze and compare their investment opportunities.

27. We find that the rationale set forth in the Briefing Orders and Opinion No. 569 for relying on CAPM in addition to the DCF applies equally to natural gas and oil pipelines. In those proceedings, the Commission found that investors employ various methods for determining cost of equity and that the DCF and CAPM are among the primary methods investors use for this purpose.[65] In addition, the Commission found in Opinion No. 569 that both record evidence and academic literature [66] indicated that CAPM is

[48] *See Coakley* Briefing Order, 165 FERC ¶ 61,030 at PP 36, 44; MISO Briefing Order, 165 FERC ¶ 61,118 at PP 38, 46.

[49] *Trailblazer,* 166 FERC ¶ 61,141 at P 48.

[50] Opinion No. 569, 169 FERC ¶ 61,129 at PP 34, 171.

[51] *Id.* PP 31, 34, 452.

[52] *Id.* PP 39, 171.

[53] These commenters include: Airlines for America; Liquids Shippers Group; Natural Gas Supply Association (NGSA); American Public Gas Association (APGA); Process Gas Consumers Group and American Forest & Paper Association (PGC/AF&PA); and the Canadian Association of Petroleum Producers (CAPP).

[54] Airlines for America Initial Comments at 5–7; Liquids Shippers Group Initial Comments at 12–17, 22–25; NGSA Initial Comments at 3–6, 25, 27; APGA Comments at 3; PGC/AF&PA Joint Comments at 1–2, 6–8; *see also* CAPP Initial Comments at 27–28 (lauding the DCF as superior and stating that investors most likely view the CAPM as a supplementary model).

[55] Airlines for America Initial Comments at 1–2, 5–7; Liquids Shippers Group Initial Comments at 12–17; NGSA Initial Comments at 3–4, 10, 25; PGC/AF&PA Joint Comments at 6–8.

[56] These commenters include: Association of Oil Pipe Lines (AOPL); Interstate Natural Gas Association of America (INGAA); Magellan Midstream Partners, L.P., Plains Pipeline L.P.; SFPP, L.P. and Calnev Pipe Line LLC; and Tallgrass Energy, LP.

[57] AOPL Initial Comments at 3, 8–9, 11–12; INGAA Initial Comments at 40–41; Magellan Initial Comments at 8–13; Plains Comments at 3–4; SFPP-Calnev Comments at 3–4; Tallgrass Initial Comments at 1, 11.

[58] *E.g.,* AOPL Initial Comments at 4, 11; Tallgrass Initial Comments at 2.

[59] *E.g., Tenn. Gas Pipeline Co.* v. *FERC,* 926 F.2d 1206, 1211 (D.C. Cir. 1991) (explaining that the Commission is free to reject the DCF, provided that it adequately explains its reasons for doing so); *NEPCO Mun. Rate Comm.* v. *FERC,* 668 F.2d 1327, 1345 (D.C. Cir. 1981) (''FERC is not bound 'to the service of any single formula or combination of formulas.' '' (quoting *FPC* v. *Nat. Gas Pipeline Co. of Am.,* 315 U.S. 575, 586 (1942))).

[60] Opinion No. 569, 169 FERC ¶ 61,129 at P 32 (quoting *Nuclear Energy Inst., Inc.* v. *EPA,* 373 F.3d 1251, 1296 (D.C. Cir. 2004) (per curiam)) (internal citations and quotation marks omitted).

[61] *Hope,* 320 U.S. at 603; *see also CAPP* v. *FERC,* 254 F.3d at 293 (''In order to attract capital, a utility must offer a risk-adjusted expected rate of return sufficient to attract investors.'').

[62] *See Bluefield Waterworks & Improvement Co.* v. *Pub. Serv. Comm'n of W. Va.,* 262 U.S. 679, 692–93 (1923) (discussing factors an investor considers in making investment decisions).

[63] *Transcontinental Gas Pipe Line Corp.,* Opinion No. 414–B, 85 FERC ¶ 61,323 (1998).

[64] Opinion No. 414–B, 85 FERC at 62,268; *see also Kern River Gas Transmission Co.,* Opinion No. 486–B, 126 FERC ¶ 61,034, at P 120 (2009), *order on reh'g and compliance,* Opinion No. 486–C, 129 FERC ¶ 61,240 (2009).

[65] Opinion No. 569, 169 FERC ¶ 61,129 at PP 34, 236; *Coakley* Briefing Order, 165 FERC ¶ 61,030 at P 35; MISO Briefing Order, 165 FERC ¶ 61,118 at P 37.

[66] *See, e.g.,* Jonathan B. Berk and Jules H. van Binsbergen, *Assessing Asset Pricing Models Using Revealed Preference,* 119(1) Journal of Financial Economics 1, 2 (2016) (''We find that the CAPM is the closest model to the model that investors use to make their capital allocation decisions . . . investors appear to be using the CAPM to make their investment decisions.''); Brad M. Barber, et al., *Which Factors Matter to Investors? Evidence from Mutual Fund Flows,* 29(10) The Review of Financial Studies 2600, 2639 (2016) (''[W]hen we ran a horse race between six asset-pricing models, the CAPM is able to best explain variation in flows across mutual funds.''); *id.* at 2624 (''[T]he CAPM does the best job of predicting fund-flow relations.''); *see also* John R. Graham and Campbell R. Harvey, *The Theory and Practice of Corporate Finance: Evidence from the Field,* 60(2) Journal of Financial Economics 187, 201 (2001) (explaining that ''the CAPM is by far the

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widely used by investors.[67] These findings apply to investors generally, and we do not see, nor do the NOI comments identify, any basis for distinguishing between investors in public utilities and investors in natural gas and oil pipelines in this context. We therefore find that investors in pipelines, like investors in public utilities, consider multiple models for measuring cost of equity, including the DCF model and CAPM, in making investment decisions.[68]

28. Accordingly, under the rationale set forth in Opinion No. 569, we will expand our methodology for determining natural gas and oil pipeline ROEs and will consider the CAPM in addition to the DCF model.[69] We conclude that as with public utilities, expanding the methodology we use to determine ROE for natural gas and oil pipelines to include the CAPM in addition to the DCF model will better reflect how investors in those industries measure cost of equity while tending to reduce the model risk associated with relying on the DCF model alone. This should result in our ROE analyses producing cost-of-equity estimates for natural gas and oil pipelines that more accurately reflect what ROE a pipeline must offer in order to attract capital.

2. DCF

29. We decline to adopt any changes to the two-step DCF model that we apply to natural gas and oil pipelines under our existing policy. We will therefore continue to base the long-term growth projection on forecasts of long-term growth of GDP, adjust the long-term growth projection of MLPs to equal 50% of GDP consistent with the 2008 Policy Statement,[70] and use only the short-term growth projection for purposes of the (1+.5g) adjustment to dividend yield. As discussed below, in contrast to our revised base ROE methodology for public utilities as adopted in Opinion No. 569–A, we will retain the existing two-thirds/one-third weighting for the short and long-term growth projections.

a. NOI Comments

30. Commenters that address the weighting of the growth projections in the DCF model are divided on whether the Commission should retain the existing weighting, with AOPL and NGSA not proposing any adjustments[71] and CAPP and INGAA proposing alternative weighting schemes. CAPP contends that the Commission should accord the growth projections equal weighting.[72] INGAA, on the other hand, proposes to increase the weighting of the short-term projection to four-fifths and reduce the weighting of the long-term projection to one-fifth.[73]

b. Commission Determination

31. The D.C. Circuit has recognized that the Commission has discretion regarding its growth projection weighting choices.[74] Although the Commission is reducing the weighting of the long-term growth projection in public utility proceedings to one-fifth, we find that distinctions between public utilities and natural gas and oil pipelines support exercising this discretion to continue affording one-third weighting to the long-term growth projections in our analyses of pipeline ROEs.

32. The Commission adopted the existing two-thirds/one-third weighting scheme in Opinion No. 414–A.[75] As explained in Opinion No. 569–A, reducing the weighting of the long-term growth projection in DCF analyses of public utilities is appropriate because the short-term growth projections of public utilities have declined relative to GDP since the issuance of Opinion No. 414–A.[76] As a result, investors may reasonably consider current public utility short-term growth projections to be more sustainable than when the Commission adopted the existing weighting policy in 1998. It is therefore reasonable to afford greater weight to the short-term growth projection and lesser weight to the long-term growth projection in determining cost of equity for public utilities.[77]

33. This reasoning does not apply with equal force to natural gas and oil pipelines. Although the short-term growth projections of natural gas and oil pipelines are lower than in 1998, they have not declined to the same extent as those of public utilities.[78] As such, investors could reasonably view pipelines' short-term growth projections as less sustainable than the projections of public utilities. Moreover, the shale gas revolution has caused the natural gas and oil pipeline industries to become more dynamic and less mature, which could undermine the reliability of pipelines' short-term growth projections.

34. For these reasons, we exercise our discretion to maintain our existing weighting scheme and will continue to accord two-thirds weighting to the short-term growth projection and one-third weighting to the long-term growth projection in natural gas and oil pipeline proceedings.

3. CAPM

35. We now turn to how we will apply the CAPM to natural gas and oil pipelines. As discussed below, with regard to the calculation of the market risk premium and the use of *Value Line* adjusted betas in pipeline proceedings, we adopt the policy established in Opinion No. 569.

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most popular method of estimating the cost of equity capital.'').

[67] Opinion No. 569, 169 FERC ¶ 61,129 at P 236.

[68] *See Trailblazer,* 166 FERC ¶ 61,141 at P 48 (citing *Coakley* Briefing Order, 165 FERC ¶ 61,030 at PP 34–36). We note that with the exception of commenters supporting sole reliance on the DCF model, commenters generally do not oppose use of the CAPM for natural gas and oil pipelines. *See* CAPP Initial Comments at 28; INGAA Initial Comments at 41 (supporting use of DCF, CAPM, and Expected Earnings); AOPL Initial Comments at 8–9 (endorsing use of the proposed four-model methodology, which includes CAPM, as a reasonable approach for oil pipelines); Plains Comments at 4 (same); SFPP-Calnev Comments at 4 (same).

[69] Opinion No. 569, 169 FERC ¶ 61,129 at P 236.

[70] The Commission adopted the 50% long-term growth rate adjustment for MLPs in the 2008 Policy Statement in part because MLPs have limited investment opportunities and face pressure to maintain a high payout ratio. *See* 2008 Policy Statement, 123 FERC ¶ 61,048 at PP 95–96. Commenters state that MLPs no longer face the same pressure to maintain a high payout ratio and often now generate growth internally through retained earnings, which will cause their growth rates to increase. *See, e.g.,* INGAA Initial Comments at 58–59. While the Commission continues to favor the 50% long-term growth adjustment for MLPs, parties may present empirical evidence for an alternative adjustment in cost-of-service rate proceedings. Natural gas and oil pipelines that are MLPs may not use alternative adjustments to support their annual forms.

[71] AOPL Initial Comments at 41; NGSA Initial Comments at 32–33; *see also* Magellan Initial Comments at 23–24 (supporting two-thirds/one-third weighting should Commission retain existing two-step DCF).

[72] CAPP Initial Comments at 40.

[73] INGAA Initial Comments at 55.

[74] *See CAPP* v. *FERC,* 254 F.3d at 297 (holding that the Commission did not abuse its discretion in reducing the weighting of the long-term growth projection from one-half to one-third).

[75] Opinion No. 414–A, 84 FERC ¶ 61,084 (1998).

[76] In Opinion No. 414–A, the short-term growth projections of the proxy group members averaged 11.33%, almost twice the long-term GDP growth projection of 5.45%. *See id.* at app. A. As explained in Opinion No. 569–A, the average short-term growth projections for the proxy group in one of the public utility proceedings addressed therein had declined to 5.03%, as compared to a long-term GDP growth projection in that proceeding of 4.39%. Opinion No. 569–A, 171 FERC ¶ 61,154 at P 57.

[77] Opinion No. 569–A, 171 FERC ¶ 61,154 at PP 57–58.

[78] For example, using data from February 2020, the short-term growth projections of a hypothetical natural gas pipeline proxy group consisting of Enbridge Inc., TC Energy, National Fuel Gas Company, Kinder Morgan Inc., and Williams Companies, Inc., average 5.92% relative to a GDP growth projection of 4.22%. By comparison, in one of the public utility proceedings addressed in Opinion No. 569–A, the short-term growth projections of the proxy group averaged 5.03% relative to a projected growth in GDP of 4.39%. *Id.* P 57.

a. Calculation of Market Risk Premium

36. As described above, the CAPM market risk premium is calculated by subtracting the risk-free rate, which is typically represented by a proxy such as the yield on 30-year U.S. Treasury bonds, from the expected market return. The expected market return can be estimated either using a backward-looking approach based upon realized market returns during a historical period, a forward-looking approach applying the DCF model to a representative market index, such as the S&P 500, or a survey of academic and investment professionals.[79]

i. Background

37. In Opinion No. 569, the Commission adopted the use of the 30-year U.S. Treasury average historical bond yield over a six-month period as the risk-free rate.[80] The Commission explained that the six-month period should correspond as closely as possible to the six-month financial study period used to produce the DCF study in the applicable proceeding.[81] For the expected market return, the Commission adopted a forward-looking approach based upon a one-step DCF analysis of the dividend paying members of the S&P 500.[82] The Commission rejected proposals to use a two-step DCF analysis for this purpose, finding that the rationale for incorporating a long-term growth projection in conducting a two-step DCF analysis of a specific group of utilities does not apply when conducting a DCF study of the companies in the S&P 500 because (i) the S&P 500 is regularly updated to ensure that it only includes companies with high market capitalization and remains representative of the industries in the economy of the United States and (ii) the dividend paying members of the S&P 500 constitute a large portfolio of stocks and therefore include companies at all stages of growth.[83] Furthermore, the Commission found that S&P 500 companies with growth rates that are negative or in excess of 20% should be excluded from the CAPM analysis [84] and approved the use of a size premium adjustment in the CAPM analysis.[85] The Commission affirmed these conclusions on rehearing.[86]

ii. NOI Comments

38. INGAA, CAPP, and NGSA address how the Commission should determine the CAPM market risk premium in pipeline proceedings. Regarding the risk-free rate, INGAA states that although the Commission could use either the 20-year or 30-year U.S. Treasury bond rate, it supports using the 20-year rate.[87] As to the expected market return, INGAA supports using a one-step DCF analysis of dividend paying companies in the S&P 500.[88] CAPP and NGSA, by contrast, support using a two-step DCF analysis that uses both short-term and long-term growth rates.[89]

iii. Commission Determination

39. We adopt the policy established in Opinion No. 569. Thus, in determining the CAPM market risk premium for natural gas and oil pipelines, we will (1) use, as the risk-free rate, the 30-year U.S. Treasury average historical bond yield over a six-month period corresponding as closely as possible to the six-month financial study period used to produce the DCF study in the applicable proceeding, (2) estimate the expected market return using a forward-looking approach based on a one-step DCF analysis of all dividend paying companies in the S&P 500,[90] and (3) exclude S&P 500 companies with growth rates that are negative or in excess of 20%.

40. First, as the Commission recognized in Opinion No. 531–B, 30-year U.S. Treasury bond yields are a generally accepted proxy for the risk-free rate in a CAPM analysis.[91] We are not persuaded to adopt INGAA's proposal to use the 20-year U.S. Treasury bond yield for this purpose. The Commission determined in Opinion No. 569 that factors supporting the use of the 30-year U.S. Treasury average historical bond yield over a six-month period outweigh factors supporting the use of the 20-year U.S. Treasury yield, including any potential benefit that may come from using a data set covering a longer period.[92] We affirm that conclusion here.

41. Second, we will determine the expected market return using a one-step DCF analysis of the dividend paying members of the S&P 500. As explained in Opinion No. 569, using a DCF analysis of the dividend paying members of the S&P 500 is a well-recognized method of estimating the expected market return for purposes of the CAPM,[93] and we find that this method is likewise reasonable for purposes of applying the CAPM to natural gas and oil pipelines. We also find that the reasons set forth in Opinion No. 569 for using a one-step DCF analysis, instead of a two-step analysis, in estimating the expected market return are equally valid in the context of natural gas and oil pipelines.[94] Accordingly, for the reasons stated in Opinion No. 569,[95] we will use a one-step DCF analysis of the dividend paying companies in the S&P 500 as the expected market return in applying the CAPM under our revised ROE methodology for natural gas and oil pipelines.

42. Third, consistent with Opinion No. 569, we will screen from the CAPM analysis of natural gas and oil pipelines S&P 500 companies with growth rates that are negative or in excess of 20%. The Commission has explained that such low or high growth rates are highly unsustainable and unrepresentative of the growth rates of public utilities.[96] We find that these growth rates are likewise not representative of sustainable growth rates for companies in pipeline proxy groups. We will therefore apply this growth rate screen as part of the CAPM analysis in natural gas and oil pipeline proceedings.

b. Betas and Size Premium

i. Background

43. The Commission found in Opinion Nos. 569 and 569–A that *Value Line* adjusted betas are reasonable for use in the CAPM analysis for public utilities.[97] The Commission explained that there was substantial evidence that investors rely on *Value Line* betas and

[79] Opinion No. 569, 169 FERC ¶ 61,129 at P 239 (citing Morin at 155–162).

[80] *Id.* P 237.

[81] *Id.* PP 237–238.

[82] *Id.* P 260. Because the rationale for including a long-term growth estimate in the DCF analysis of a specific utility does not apply to the DCF analysis of a broad, representative market index with a wide variety of companies that is regularly updated, the Commission held that the DCF analysis of the dividend paying members of the S&P 500 should be a one-step DCF analysis that uses only short-term growth projections. *Id.* PP 261–266.

[83] *Id.* PP 263–265.

[84] *Id.* PP 267–268.

[85] *Id.* PP 296–303.

[86] Opinion No. 569–A, 171 FERC ¶ 61,154 at PP 75–77, 85.

[87] INGAA Initial Comments at 61. INGAA states that unlike 30-year bonds, which were not issued for a period of time, 20-year bond yields are available back to 1926 and will therefore allow the use of a full historical data set covering a longer period. *Id.*

[88] *Id.* (citing *Ass'n of Bus. Advocating Tariff Equity* v. *Midcontinent Indep. Sys. Operator, Inc.,* Opinion No. 551, 156 FERC ¶ 61,234, at PP 166–168 (2016)).

[89] CAPP Initial Comments at 41; NGSA Initial Comments at 33.

[90] The appropriate data source for the short-term growth projection in the DCF component of the CAPM is addressed *infra.*

[91] Opinion No. 531–B, 150 FERC ¶ 61,165 at P 114 (citing Morin at 151–152).

[92] Opinion No. 569, 169 FERC ¶ 61,129 at P 237.

[93] *Id.* P 260.

[94] *Id.* PP 262–266.

[95] *See id.* PP 260–276.

[96] *Id.* P 268.

[97] *Id.* P 297; Opinion No. 569–A, 171 FERC ¶ 61,154 at PP 75–76.

observed that Dr. Morin supports the use of adjusted betas in the CAPM.

44. Moreover, the Commission also accepted the use of a size premium adjustment derived using Duff & Phelps raw betas based on a regression of the monthly returns on the stock index that are in excess of a 30-year U.S. Treasury yield over the period of 1926 through the most recent period.[98] The Commission affirmed that the use of such an adjustment was ''a generally accepted approach to CAPM analyses'' and determined that application of size premium adjustments based on the New York Stock Exchange (NYSE) to dividend paying members of the S&P 500 is acceptable.[99] The Commission acknowledged that there is imperfect correspondence between the size premia being developed with different betas, but concluded that the size premium adjustments improve the accuracy of CAPM results and cause the CAPM to better correspond to the cost-of-capital estimates used by investors.[100] The Commission also found that sufficient academic literature exists to indicate that many investors rely on size premia.[101]

ii. NOI Comments

45. A variety of commenters, including AOPL, INGAA, Magellan, CAPP, and NGSA, support use of *Value Line* adjusted betas in applying the CAPM.[102] INGAA adds that although *Value Line* betas, which are based on five years of historical data, may be appropriate in most cases, it is possible that using betas based on five years of data may not reflect more recent events that have substantially changed the risk characteristics of the natural gas pipeline industry. INGAA therefore states that in such circumstances, the Commission should consider beta estimates calculated over shorter periods.[103]

iii. Commission Determination

46. We adopt the reasoning in Opinion Nos. 569 and 569–A and find reasonable the use of *Value Line* adjusted betas in the CAPM analysis as applied to natural gas and oil pipelines. As the Commission has explained, there is substantial evidence indicating that investors rely on *Value Line* betas in making their investment decisions, and this finding presumably applies equally to investors in natural gas and oil pipelines. Although we recognize that the distinct risks facing interstate natural gas and oil pipelines may in some cases bear upon whether an alternative beta source would be more appropriate, we will address such issues as they arise in specific proceedings.

47. Likewise, we find reasonable the use of the size premium adjustment based on the NYSE, as discussed in Opinion Nos. 531–B [104] and 569.[105] The use of such adjustments is ''a generally accepted approach to CAPM analyses'' that improves the accuracy of the CAPM results and causes such results to better correspond to the cost-of-capital estimates that investors use in making investment decisions.[106] As such, we find that use of these adjustments will improve the accuracy of cost-of-equity estimates for natural gas and oil pipelines under our revised ROE methodology.

4. Weighting of Models

a. Background

48. In Opinion No. 569, the Commission held that it would give equal weight to the DCF model and CAPM in analyzing ROE for public utilities.[107] The Commission found that the evidence indicated that neither model was conclusively superior to the other and reasoned that giving each model equal weight will reduce the model risk associated with any particular model more than giving one model greater weight than the other.[108] After expanding its public utility base ROE methodology in Opinion No. 569–A to include the Risk Premium model, the Commission held that it would accord equal weight to all three models.[109]

b. NOI Comments

49. Commenters propose various approaches to weighting the models used to determine ROE. CAPP states that the Commission should give the DCF model at least 50% weighting while giving the remaining weight to any other models the Commission decides to use.[110] The Maryland OPC states that if the Commission uses multiple models, it should accord the DCF model the majority of the weighting while giving the other models a minority weighting.[111] INGAA and Tallgrass oppose equal weighting and assert that the Commission should adopt a flexible weighting approach that allows it to exclude or give appropriate weight to any model in light of prevailing financial conditions and the facts and circumstances of each case.[112] The New York State Public Service Commission (NYPSC) submits that the Commission should give two-thirds weighting to the DCF model and one-third weighting to the CAPM.[113]

c. Commission Determination

50. We adopt the rationale of Opinion Nos. 569 and 569–A and will give equal weight to the DCF model and CAPM in determining natural gas and oil pipeline ROEs. As stated in Opinion No. 569, we find that neither the DCF model nor the CAPM is conclusively superior and that giving both models equal weight will mitigate the risks associated with the potential errors or flaws in any one model. The comments proposing alternative weighting schemes do not refute these concerns and are therefore unpersuasive.

5. Data Sources

a. Background

51. The Commission has historically preferred IBES data as the source of the short-term growth projection in the DCF model.[114] By contrast, because less precision was required of the CAPM when the Commission used it only to corroborate the results of the DCF analysis, the Commission allowed parties to average IBES and *Value Line* growth projections in the DCF component of the CAPM.[115]

52. In Opinion 569, the Commission affirmed that it would use IBES projections as the sole source of the short-term growth projections in the DCF model.[116] The Commission also required the sole use of IBES projections for the DCF component of the CAPM, explaining that because it would be weighting the CAPM equally with the

[98] Opinion No. 569, 169 FERC ¶ 61,129 at PP 279, 296.

[99] *Id.* P 296 (quoting Opinion No. 531–B, 150 FERC ¶ 61,165 at P 117).

[100] *Id.* P 298.

[101] *Id.* PP 299–300.

[102] AOPL Initial Comments at 42; INGAA Initial Comments at 62; Magellan Initial Comments at 27; CAPP Initial Comments at 42; NGSA Comments at 34; *see also* Maryland Office of People's Counsel (Maryland OPC) Initial Comments at 21–22 (''Value Line is the most detailed and most trusted investment source currently available in the industry. The Value Line beta is calculated over a long-term time period that dampens volatility and, as such, is the most representative source now available in the marketplace.'').

[103] INGAA Initial Comments at 62.

[104] Opinion No. 531–B, 150 FERC ¶ 61,165 at P 117.

[105] Opinion No. 569, 169 FERC ¶ 61,129 at P 296.

[106] *Id.* PP 296–297 (quoting Opinion No. 531–B, 150 FERC ¶ 61,165 at P 117).

[107] *Id.* PP 425, 427.

[108] *Id.* P 426.

[109] Opinion No. 569–A, 171 FERC ¶ 61,154 at P 141.

[110] CAPP Initial Comments at 30.

[111] Maryland OPC Initial Comments at 12.

[112] INGAA Initial Comments at 8–9; Tallgrass Initial Comments at 12.

[113] NYPSC Initial Comments at 18.

[114] *E.g., Nw. Pipeline Corp.,* 92 FERC ¶ 61,287, at 62,001–02 (2000) (quoting Opinion No. 396–B, 79 FERC at 62,385).

[115] Opinion No. 551, 156 FERC ¶ 61,234 at P 169.

[116] Opinion No. 569, 169 FERC ¶ 61,129 at P 120.

DCF model in setting just and reasonable ROEs, the CAPM must be implemented with the same degree of precision as the DCF model.[117] The Commission explained that IBES data was preferable to *Value Line* data because unlike *Value Line* projections, which represent the estimates of a single analyst at a single institution, IBES projections generally represent consensus growth estimates by a number of analysts from different firms.[118] In addition, the Commission noted that IBES growth projections are generally timelier than the *Value Line* projections because IBES updates its database on a daily basis as participating analysts revise their forecasts, whereas *Value Line* publishes its projections on a rolling quarterly basis.[119]

53. In Opinion No 569–A, the Commission affirmed its preference for IBES data for the short-term growth projection in the DCF model but granted rehearing of its decision to require sole use of IBES data for the DCF component of the CAPM.[120] Acknowledging its concerns about *Value Line* data as discussed in Opinion No. 569, the Commission nonetheless concluded that use of these estimates will bring value to its revised ROE methodology. The Commission found that although *Value Line* estimates come from a single analyst, they include the input of multiple analysts because they are vetted through internal processes including review by a committee composed of peer analysts. Similarly, the Commission found that there is value in including *Value Line* estimates because they are updated on a more predictable basis than IBES estimates. The Commission therefore concluded that IBES and *Value Line* growth estimates both have advantages and that it is appropriate to consider both data sources in determining public utility ROEs. In light of the Commission's longstanding use of IBES data in the DCF model, the Commission determined that it was appropriate to consider using *Value Line* in the newly adopted CAPM.

b. NOI Comments

54. Commenters are divided on the data source the Commission should use for the short-term growth projection in pipeline proceedings. AOPL states that the Commission should allow oil pipelines to use *Value Line* projections because they do not overlap with or duplicate IBES projections.[121] INGAA likewise supports use of *Value Line* growth estimates to supplement the IBES three to five-year growth projections.[122] In contrast, Magellan, NGSA, and CAPP support the sole use of IBES growth forecasts, with CAPP asserting that *Value Line* is inferior to IBES because it reflects the estimate of a single analyst.[123]

c. Commission Determination

55. With regard to the short-term growth projections in our DCF and CAPM analyses of natural gas and oil pipelines, we adopt the policy set forth in Opinion No. 569–A. Therefore, in natural gas and oil pipeline proceedings we will (1) continue to prefer use of IBES three to five-year growth projections as the short-term growth projection in the two-step DCF analysis and (2) allow participants to propose using *Value Line* growth projections as the source of the short-term growth projection in the one-step DCF analysis embedded within the CAPM.

56. We reiterate our belief that both IBES and *Value Line* growth estimates have advantages and that it is appropriate to include both data sources in determining ROEs. As in public utility proceedings, it is beneficial to diversify the data sources used in our revised natural gas and oil pipeline ROE methodology because doing so may better reflect the data sources that investors consider and mitigate the effect of any unusual data in either source. Although we have not previously used *Value Line* growth estimates in determining natural gas and oil pipeline ROEs, we believe that including these estimates in our methodology will bring value to our analysis because they are updated on a more predictable basis than IBES estimates and reflect the consensus growth estimates of multiple analysts. By contrast, IBES projections are updated on an irregular basis as analysts revise their forecasts.

57. Consistent with our policy for public utilities, we consider using *Value Line* growth estimates in our revised natural gas and oil pipeline ROE methodology in the CAPM while continuing our longstanding use of IBES three to five-year growth estimates as the source of the short-term growth projection in the DCF. As discussed in Opinion No. 569–A, because we are newly adopting the CAPM, we find that it is appropriate to consider using a new data source within the CAPM.

6. Proxy Group Construction

a. Background

58. As discussed above, the companies included in a proxy group must be comparable in risk to the pipeline whose rate is being determined. To ensure that companies included in pipeline proxy groups are risk-appropriate, the Commission has required that each proxy group company satisfy three criteria: (1) The company's stock must be publicly traded; (2) the company must be recognized as a natural gas or oil pipeline company and its stock must be recognized and tracked by an investment information service such as *Value Line;* and (3) pipeline operations must constitute a high proportion of the company's business.[124] In determining whether a company's pipeline operations constitute a high proportion of its business, the Commission has historically applied a 50% standard requiring that the pipeline business account for, on average, at least 50% of the company's assets or operating income over the most recent three-year period.[125] Furthermore, in addition to the foregoing criteria, the Commission has declined to include Canadian companies in pipeline proxy groups.[126]

59. The Commission has explained that proxy groups ''should consist of at least four, and preferably at least five members'' [127] and that pipeline proxy groups should only exceed five members if each additional member satisfies the 50% standard.[128] At the same time, the Commission has also explained that although ''adding more members to the proxy group results in greater statistical accuracy, this is true

[117] *Id.* P 276.

[118] *Id.* P 125.

[119] *Id.* P 128.

[120] Opinion No. 569–A, 171 FERC ¶ 61,154 at PP 78–83.

[121] AOPL Initial Comments at 38.

[122] INGAA Initial Comments, Attachment A at 28–33 (Affidavit of Dr. Michael J. Vilbert).

[123] Magellan Initial Comments at 20; NGSA Initial Comments at 29–30; CAPP Initial Comments at 36–37, 39.

[124] 2008 Policy Statement, 123 FERC ¶ 61,048 at P 8.

[125] Opinion No. 486–B, 126 FERC ¶ 61,034 at PP 8, 59.

[126] For example, in Opinion No. 486–B, the Commission excluded TransCanada Corporation from the proxy group in a natural gas pipeline proceeding based in part on the fact that its Canadian pipeline ''was subject to a significantly different regulatory structure that renders it less comparable to domestic pipelines regulated by the Commission.'' *Id.* P 60. The Commission again affirmed the exclusion of TransCanada Corporation in Opinion No. 528, finding that it was ''subject to the vagaries of Canadian regulation and Canadian capital markets, thereby making it difficult to establish comparable risk.'' Opinion No. 528, 145 FERC ¶ 61,040 at P 626.

[127] Opinion No. 486–B, 126 FERC ¶ 61,034 at P 104.

[128] *See Portland Nat. Gas Transmission Sys.,* Opinion No. 510, 134 FERC ¶ 61,129, at P 215 (2011) (declining to include company that failed 50% standard because proxy group had more than five members).

only if the additional members are appropriately included in the proxy group as representative firms.'' [129]

60. The number of companies satisfying the Commission's historical proxy group criteria in pipeline proceedings has declined in recent years, resulting in inadequately sized proxy groups. Consolidation in the natural gas and oil pipeline industries has resulted in the absorption of many natural gas and oil pipeline companies into larger, diversified energy companies that own a variety of energy-related assets in addition to interstate pipelines. In addition, major companies in the oil pipeline industry have recently acquired natural gas pipeline assets.[130] The proliferation of these diversified energy companies has reduced the number of companies satisfying the 50% standard. Recent acquisitions of pipeline companies by private equity firms have further reduced the number of eligible natural gas and oil pipeline proxy group members by converting those pipeline companies from publicly traded to privately held entities.

61. To address the problem of the shrinking natural gas and oil pipeline proxy groups, the Commission has relaxed the 50% standard when necessary to construct a proxy group of five members.[131] The Commission has emphasized, however, that it will only include firms not satisfying the 50% standard until five proxy group members are obtained.[132]

b. NOI Comments

62. Commenters recognize the ongoing difficulties in forming pipeline proxy groups of sufficient size and support the Commission's policy of relaxing the 50% standard when necessary to obtain five proxy group members.[133] AOPL, INGAA, and Tallgrass assert that the Commission should not apply the 50% standard as a rigid screen and continue to allow the inclusion of companies that do not satisfy the 50% standard but are nonetheless significantly involved in jurisdictional natural gas and oil pipeline operations.[134] NGSA and PGC/AF&PA likewise support continued flexibility in the construction of pipeline proxy groups.[135]

63. Other commenters urge the Commission to adopt more drastic changes to its proxy group formation policies. For example, Magellan states that the Commission should allow the inclusion of risk-appropriate non-energy companies in natural gas and oil pipeline proxy groups [136] while APGA recommends permitting the inclusion of natural gas distributors.[137] INGAA proposes several additional changes to the Commission's natural gas pipeline proxy group policy,[138] including allowing for the inclusion of risk-comparable Canadian companies with significant U.S. interstate natural gas pipeline assets in natural gas pipeline proxy groups.[139] NGSA also supports this proposal.[140] Moreover, INGAA and Tallgrass propose using the financial metric ''beta'' to assist in determining whether potential proxy group members are comparable in risk to the pipeline at issue.[141]

c. Commission Determination

64. Based on our review of our current policy and upon consideration of the comments to the NOI, we will maintain a flexible approach to forming natural gas and oil pipeline proxy groups and continue to relax the 50% standard when necessary to obtain a proxy group of five members. In addition, we clarify that in light of continuing difficulties in forming sufficiently sized natural gas and oil pipeline proxy groups, we will consider proposals to include otherwise-eligible Canadian entities.[142] We recognize that difficulties in forming a proxy group of sufficient size may be enhanced under current market conditions, including those resulting from the COVID–19 pandemic. In light of these conditions, the Commission will consider adjustments to our ROE policies where necessary.[143]

65. As discussed above, the problem of the shrinking pipeline proxy groups persists due to, among other issues, the consolidation of pure play natural gas and oil pipelines into diversified energy companies and acquisitions of pipeline companies by private firms. These developments have reduced the number of publicly traded companies eligible for inclusion in a proxy group under the Commission's historical criteria, making it difficult for the Commission to develop an adequate sample of representative firms to estimate a pipeline's required cost of equity. As such, we will continue to apply the 50% standard flexibly, based on the record evidence and in accordance with the Commission's past practice, when necessary to construct a proxy group of at least five members.

66. In addition, we find that the NOI comments advance credible reasons why it may be appropriate to permit the inclusion of Canadian entities in natural gas and oil pipeline proxy groups. Extending proxy group eligibility to such entities could alleviate the shrinking proxy group problem by adding new potential proxy group members. As explained above, the Commission has previously excluded companies from pipeline proxy groups based on concerns that the fact that such entities are subject to Canadian regulation and Canadian capital markets makes it difficult to establish whether

[129] Opinion No. 486–B, 126 FERC ¶ 61,034 at P 104.

[130] Examples of such transactions include Enbridge Inc.'s acquisition of Spectra Energy Corp., TC Energy Corporation's acquisition of Columbia Pipeline Group, Inc., and IFM Investors' acquisition of Buckeye Partners LP.

[131] *E.g.,* Opinion No. 528, 145 FERC ¶ 61,040 at P 635; Opinion No. 486–B, 126 FERC ¶ 61,034 at PP 67–75, 94–96 (including two firms not satisfying the 50% standard in natural gas pipeline proxy group after application of the Commission's traditional criteria resulted in a proxy group of only three members); *Williston Basin Interstate Pipeline Co.,* 104 FERC ¶ 61,036, at PP 35–37, 43 (2003), *order on reh'g and compliance,* 107 FERC ¶ 61,164 (2004).

[132] Opinion No. 528–A, 154 FERC ¶ 61,120 at P 236 (''[W]e will relax the [50 percent] standard only if necessary to establish a proxy group consisting of at least five members''); Opinion No. 510, 134 FERC ¶ 61,129 at P 167 (''[I]n order to achieve a proxy group of at least five firms, a diversified natural gas company not satisfying the historical [50 percent] standard could be included in the proxy group, but only if there is a convincing showing that an investor would view that firm as having comparable risk to a pipeline.'').

[133] *E.g.,* CAPP Initial Comments at 19; AOPL Initial Comments at 35; NGSA Initial Comments at 11.

[134] *See* AOPL Initial Comments at 15, 17–18, 35; INGAA Initial Comments at 24, 29–30; Tallgrass Initial Comments at 9.

[135] NGSA Initial Comments at 11, 17; PGC/AF&PA Joint Comments at 9–10.

[136] Magellan Initial Comments at 15; *see also* NextEra Transmission, LLC Initial Comments at 5–6. Most commenters oppose including non-energy companies in pipeline proxy groups. *E.g.,* AOPL Initial Comments at 32; Tallgrass Initial Comments at 9; CAPP Initial Comments at 21; NGSA Initial Comments at 19; PGC/AF&PA Joint Comments at 10.

[137] APGA Comments at 10.

[138] INGAA Initial Comments at 24–25, 29–37, 40; INGAA Reply Comments at 6–12.

[139] INGAA Initial Comments at 30.

[140] NGSA Initial Comments at 11.

[141] INGAA Initial Comments at 24–25, 34–35; Tallgrass Initial Comments at 6–7.

[142] While the Commission has preferred screens and methods for selecting companies that will compose a proxy group, parties may continue to propose alternative screens and methods in cost-of-service rate proceedings.

[143] *See, e.g., SFPP, L.P.,* Opinion No. 511, 134 FERC ¶ 61,121, at P 209 (2011) (departing from the Commission's general policy to determine ROE using the most recent data in the record and determining nominal ROE using earlier data where the most recent data reflected the collapse of the stock market in late 2008 and thus was not representative of the pipeline's long-term equity cost of capital), *order on reh'g,* Opinion No. 511–B, 150 FERC ¶ 61,096 (2015) *remanded on other grounds sub nom. United Airlines, Inc.* v. *FERC,* 827 F.3d 122 (D.C. Cir. 2016), *order on remand and compliance filing,* Opinion No. 511–C, 162 FERC ¶ 61,228, at PP 46–53 (2018); *see also Trunkline Gas Co.,* Opinion No. 441, 90 FERC ¶ 61,017, at 61,049 (2000) (''The Commission seeks to find the most representative figures on which to base rates.'').

they are comparable in risk to Commission-regulated pipelines.[144] We note, however, that considerations underlying those decisions may have changed since the Commission established that policy.[145] Therefore, in future natural gas and oil pipeline proceedings, we will consider proposals to include in the proxy group risk-appropriate Canadian entities that otherwise satisfy the Commission's proxy group eligibility requirements.

B. Excluded Financial Models

1. Risk Premium

a. Background

67. In Opinion No. 569, the Commission excluded the Risk Premium model from its revised ROE methodology for public utilities.[146] The Commission found that the Risk Premium model is largely redundant with the CAPM because, although they rely on different data sources to determine the risk premium, both models use indirect measures (*i.e.,* past Commission orders in the Risk Premium model and S&P 500 data in the CAPM) to ascertain the risk premium that investors require over the risk-free rate of return.[147] The Commission also found that the Risk Premium model is likely to provide a less accurate current cost-of-equity estimate than the DCF model or CAPM because whereas those models apply a market-based method to primary data, the Risk Premium model relies on previous ROE determinations whose resulting ROE may not necessarily be directly determined by a market-based method.[148]

68. In Opinion No. 569–A, the Commission granted rehearing and adopted a modified Risk Premium model for use in ROE analyses under FPA section 206. Unlike the Risk Premium model discussed in Opinion No. 569, the modified Risk Premium model excludes problematic cases from the analysis, such as those where an entity joined a Regional Transmission Organization (RTO), and the Commission, without reexamination, allowed adoption of the existing RTO-wide ROE. The Commission explained that, as modified, the Risk Premium model adds benefits to the ROE analysis through model diversity and reduced volatility that outweigh the disadvantages identified in Opinion No. 569.[149]

b. NOI Comments

69. INGAA, AOPL, NGSA, and CAPP assert that the Risk Premium model cannot be applied to natural gas and oil pipelines in light of the lack of stated allowed ROEs from settlements or Commission decisions in pipeline proceedings. Because the Risk Premium model relies upon Commission-allowed ROEs to estimate the equity risk premium, these commenters state that it would be difficult, if not impossible, to apply this model in pipeline cases.[150]

c. Commission Determination

70. We will not use the Risk Premium model in our revised ROE methodology. As commenters observe, there is insufficient data to apply the Risk Premium models considered in Opinion Nos. 569 and 569–A to natural gas or oil pipelines. That model relies upon stated ROEs approved in past Commission orders, such as orders on settlements, to ascertain the risk premium that investors require. In recent years, however, natural gas and oil pipeline cost-of-service rate proceedings have frequently resulted in ''black box'' settlements instead of a fully litigated Commission decision. Unlike public utility proceedings, where ROE may be addressed on a standalone basis as a component of formula rates, settlements in pipeline proceedings typically do not enumerate a stated ROE.

71. Consequently, for natural gas and oil pipelines, there is insufficient data to estimate cost of equity using the Risk Premium models discussed in Opinion Nos. 569 and 569–A. In light of this lack of data, we will not use these models in determining pipeline ROEs. While we do not adopt the Risk Premium model in our revised methodology here for the reasons discussed above, we do not necessarily foreclose its use in future proceedings if parties can demonstrate that the concerns discussed above have been addressed.

2. Expected Earnings

a. Background

72. In Opinion No. 569, the Commission excluded the Expected Earnings model from its revised base ROE methodology for public utilities because the record did not support departing from the Commission's traditional use of market-based approaches to determine base ROE.[151] The Commission also found that the record did not demonstrate that investors rely on Expected Earnings when making investment decisions.[152]

73. The Commission explained that in determining a just and reasonable ROE under *Hope*, it must analyze the returns that are earned on ''investments in other enterprises having corresponding risks.'' [153] In contrast to market-based models, the accounting-based Expected Earnings model uses estimates of return on an entity's book value to estimate the earnings an investor expects to receive on the book value of a particular stock.[154] As investors cannot invest in an enterprise at book value, the Commission concluded that the expected return on a utility's book value does not reflect ''returns on investments in other enterprises'' because in most circumstances book value does not reflect the value of any investment that is available to an investor in the market.[155] The Commission thus found that return on book value is not indicative of what return an investor requires to invest in the utility's equity or what return an investor receives on the equity investment.[156]

74. On rehearing, the Commission affirmed the exclusion of the Expected Earnings model in those proceedings for the reasons stated in Opinion No. 569.[157] The Commission found, moreover, that the Expected Earnings model does not accurately measure the returns that investors require to invest in public utilities because the current market values of utility stocks

[144] Opinion No. 528, 145 FERC ¶ 61,040 at P 626; Opinion No. 486–B, 126 FERC ¶ 61,034 at P 60.

[145] For instance, a 2009 rate case decision by the National Energy Board of Canada (NEB) may be instructive. National Energy Board of Canada, RH–1–2008 Reasons for Decision, Trans Québec & Maritimes Pipelines Inc., March 2009, available at *http://www.regie-energie.qc.ca/audiences/3690-09/RepDDRGM_3690-09/B-29_GM_Reasons-Decision-RH-1-2008_3690_30juin09.pdf* (*Trans Québec*). In that decision, the NEB revised its ratemaking policy by adopting an after-tax weighted average cost-of-capital approach to determining pipeline cost of capital. *Id.* at 18–19. The NEB also accepted evidence that the Canadian and U.S. financial markets are integrated and, as a result, Canadian pipelines and U.S. pipelines compete for capital. *Id.* at 66–68 (finding that ''Canadian and U.S. pipelines operate in what the Board views as an integrated North American natural gas market.''). The NEB also found that although the risks facing U.S. and Canadian pipelines are not identical, those risks ''are not so different as to make them inappropriate comparators'' and in fact share ''many similarities.'' *Id.* at 68. As such, the NEB found that U.S. pipelines ''have the potential to act as a useful proxy'' for use in determining the appropriate ROE for Canadian pipelines. *Id.* at 67.

[146] Opinion No. 569, 169 FERC ¶ 61,129 at P 340.

[147] *Id.* P 341.

[148] *Id.* P 342.

[149] Opinion No. 569–A, 171 FERC ¶ 61,154 at PP 104–114.

[150] INGAA Initial Comments at 41–42; AOPL Initial Comments at 12, 27–28; NGSA Initial Comments at 10–11, 24; CAPP Initial Comments at 11–12.

[151] Opinion No. 569, 169 FERC ¶ 61,129 at PP 200–201.

[152] *Id.* PP 212–218.

[153] *Id.* P 201 (quoting *Hope*, 320 U.S. at 603).

[154] *Id.* P 172.

[155] *Id.* P 201.

[156] *Id.* PP 202, 211.

[157] Opinion No. 569–A, 171 FERC ¶ 61,154 at PP 125–131.

substantially exceed utilities' book value. As a result, a utility's expected earnings on its book value will inevitably exceed the return that investors require in order to purchase the utility's higher-value stock.[158]

b. NOI Comments

75. Commenters that support expanding the Commission's pipeline ROE methodology to consider models in addition to the DCF [159] do not oppose using the Expected Earnings model. INGAA supports use of the Expected Earnings model to determine natural gas pipeline ROEs,[160] and AOPL states that the Expected Earnings model can be applied to oil pipelines if the Commission adopts an appropriate approach to outliers.[161] Among the commenters that oppose applying the Expected Earnings model to natural gas and oil pipelines, NGSA criticizes the Expected Earnings model for ignoring capital markets [162] while CAPP asserts that the Expected Earnings model appears to be confined to academic uses and, in any event, there is likely an insufficient number of pipelines to implement the Expected Earnings model.[163]

c. Commission Determination

76. We will not use the Expected Earnings model to determine ROE for natural gas and oil pipelines for the reasons stated in Opinion No. 569. We conclude that the findings underlying the Commission's decision to exclude the Expected Earnings model from our analysis of public utility ROEs also support excluding that model from our analysis of natural gas and oil pipeline ROEs.

77. As discussed above, the Commission must ensure that the ''return to the equity owner'' is ''commensurate with returns on investments in other enterprises having corresponding risks.'' [164] As with public utilities, under the market-based approach the Commission performs this analysis by setting a pipeline's ROE to equal the estimated return that investors would require in order to purchase stock in the pipeline at its current market price. However, the return on book value measured under the Expected Earnings model does not permit such an analysis. Like investors in utilities, investors in natural gas and oil pipelines cannot invest at the pipeline's book value and must instead pay the prevailing market price. As such, the expected return on the pipeline's book value does not reflect the value of an investment that is available to an investor in the market and thus does not reflect the ''returns on investments in other enterprises having corresponding risks'' that we must analyze under *Hope*.[165] Likewise, the return on a pipeline's book value does not reflect ''the return to the equity owner'' that we must consider under *Hope* because the return that an investor requires to invest in the pipeline's equity and the return an investor receives on the equity investment are determined based on the current market price the investor must pay in order to invest in the pipeline's equity.[166]

78. Accordingly, based on the record in this proceeding, we conclude that at this time relying on the Expected Earnings model to determine pipeline ROEs would not satisfy the requirements of *Hope*. We will therefore exclude the Expected Earnings model from our revised methodology for determining natural gas and oil pipeline ROEs. While we do not adopt the Expected Earnings model in our revised methodology here for the reasons discussed above, we do not necessarily foreclose its use in future proceedings if parties can demonstrate that the concerns discussed above have been addressed.

C. Outlier Tests

1. Background

79. Generally, the Commission has not applied a specific low-end or high-end outlier test in natural gas and oil pipeline proceedings. Rather, the Commission has used a fact-specific analysis to select proxy group members. In constructing pipeline proxy groups, the Commission excludes anomalous and illogical proxy group returns that do not provide meaningful indicia of the return a pipeline requires to attract capital.[167]

80. Conversely, the Commission has applied specific outlier screens to public utilities. Prior to Opinion No. 569, the Commission excluded as low-end outliers companies whose ROEs failed to exceed the average 10-year bond-yield by approximately 100 basis points on the ground that investors generally cannot be expected to purchase a common stock if debt, which has less risk than a common stock, yields essentially the same expected return.[168] In the Briefing Orders, the Commission proposed to treat as high-end outliers any proxy company whose cost of equity estimated under the model in question is more than 150% of the median result of all of the potential proxy group members in that model before any high-end or low-end outlier test is applied.[169]

81. In Opinion No. 569, the Commission adopted a revised low-end outlier test that eliminates proxy group ROE results that are less than the yields of generic corporate Baa bond plus 20% of the CAPM risk premium.[170] The Commission explained that it was necessary to include a risk premium in the low-end outlier test to account for the fact that declining bond yields have caused the ROE that investors would consider to yield ''essentially the same expected return as a bond'' to increase.[171] The Commission concluded that the 20% risk premium was reasonable because it is sufficiently large to account for the additional risks of equities over bonds, but not so large as to inappropriately exclude proxy group members whose ROE is distinguishable from debt.[172]

82. In addition, Opinion No. 569 adopted the high-end outlier test proposed in the Briefing Orders.[173] The Commission reasoned that because the Commission will continue to use the midpoint as the measure of central tendency for region-wide public utility ROEs, a high-end outlier test was necessary to eliminate proxy group members whose ROEs are unreasonably high.[174]

83. The Commission explained that both the low-end and high-end outlier tests would be subject to a natural-break analysis, which determines whether

[158] *Id.* P 127.

[159] As noted above, several commenters, including Airlines for America, Liquids Shippers Group, NGSA, APGA, and PGC/AF&PA assert that the Commission should continue relying solely on the DCF model in analyzing pipeline ROEs.

[160] INGAA Initial Comments at 8, 41, 63; INGAA Reply Comments at 1–2.

[161] AOPL Initial Comments at 28l; *see also* Plains Initial Comments at 4; Magellan Initial Comments at 12–13, 28–29 (stating that Expected Earnings should be used only in conjunction with other models such as the DCF, CAPM, and Risk Premium).

[162] NGSA Initial Comments at 34.

[163] CAPP Initial Comments at 13, 27.

[164] *Hope*, 320 U.S. at 603.

[165] *See* Opinion No. 569, 169 FERC ¶ 61,129 at P 201.

[166] *See id.* P 202.

[167] *See* Opinion No. 546, 154 FERC ¶ 61,070 at P 196; 2008 Policy Statement, 123 FERC ¶ 61,048 at P 79 (''[T]he Commission will continue to exclude an MLP from the proxy groups if its growth projection is illogical or anomalous.'').

[168] Opinion No. 569, 169 FERC ¶ 61,129 at P 379 (citing *Pioneer Transmission, LLC,* 126 FERC ¶ 61,281, at P 94 (2009), *reh'g denied,* 130 FERC ¶ 61,044 (2010); *S. Cal. Edison Co.,* 131 FERC ¶ 61,020, at PP 54–56 (2010)).

[169] MISO Briefing Order, 165 FERC ¶ 61,118 at P 54; *Coakley* Briefing Order, 165 FERC ¶ 61,030 at P 53.

[170] Opinion No. 569, 169 FERC ¶ 61,129 at P 387.

[171] *Id.*

[172] *Id.* P 388.

[173] *Id.* P 375.

[174] *Id.*

proxy group companies screened as outliers, or those almost screened as outliers, truly reflect non-representative data and should thus be removed from the proxy group.[175] The Commission noted that the natural break analysis provides the Commission with flexibility to reach a reasonable result based on the particular array of ROEs presented in a particular case.[176]

84. In Opinion No. 569–A, the Commission denied requests for rehearing as to the low-end outlier test. The Commission rejected challenges to the threshold based on 20% of the CAPM risk premium and similarly rejected claims that the low-end outlier test is inconsistent with Commission precedent.[177]

85. Moreover, the Commission modified the high-end outlier test adopted in Opinion No. 569 to increase the exclusion threshold to 200% of the median result of all the potential proxy group members in the model in question before any high or low-end outlier test is applied. The Commission recognized that a high-end outlier test with a bright-line threshold could inappropriately exclude rational ROEs that are not anomalous for the subject utility and found that increasing the threshold to 200% will reduce the risk that such rational results are inappropriately excluded.[178]

2. NOI Comments

86. Most commenters agree that the outlier tests proposed in the Briefing Orders are not appropriate for natural gas or oil pipelines.[179] These commenters assert that outlier tests are unnecessary because the Commission sets natural gas and oil pipeline ROEs at the median of the proxy group results, which reduces the distortion that high-end cost of equity estimates may cause when the ROE is set at the midpoint of the proxy group results.[180] CAPP, by contrast, states that the outlier tests proposed in the Briefing Orders would be useful in forming proxy groups.[181] Similarly, although it opposes use of a high-end outlier test, INGAA states that there is theoretical support for applying a low-end outlier test.[182] However, INGAA opposes the proposed low-end outlier test's 20% threshold and proposes two alternative approaches.[183]

3. Commission Determination

87. We decline to adopt specific outlier tests for use in determining natural gas and oil pipeline ROEs. Rather, we will continue to address outliers in pipeline proxy groups on a case-by-case basis in accordance with our policy to remove ''anomalous'' or ''illogical'' cost-of-equity estimates that do not provide meaningful indicia of the returns that a pipeline needs to attract capital from the market.[184]

88. We believe that rigid outlier screens are unnecessary for natural gas and oil pipelines for two reasons. First, as commenters observe, the Commission's use of the proxy group median in setting pipeline ROEs reduces the effect that low and high-end outliers may exert on the ROE result. When the Commission sets an ROE at the midpoint, as it does for RTO-wide ROEs in the public utility context, the ROE is set at the average of the highest and lowest ROEs of the proxy group members.[185] The low and high-end returns are therefore direct inputs into the calculation of the midpoint the Commission uses to determine the ROE. In contrast, when the Commission uses the median to determine the ROE of a pipeline, the presence of an outlier has a much smaller effect.[186]

89. Second, as discussed above, the pool of entities eligible for inclusion in natural gas and oil pipeline proxy groups has declined in recent years and remains small. Adopting rigid outlier screens could further reduce the number of potential proxy group members and make it difficult to form pipeline proxy groups with at least four or five members.

90. We also clarify that we do not anticipate applying a natural break analysis in pipeline ROE proceedings. Unlike in the public utility context, we are concerned that a natural break analysis could exacerbate the difficulties in forming pipeline proxy groups by further reducing the number of potential proxy group members. Moreover, we believe that the natural break analysis is less useful in pipeline proceedings. As explained in Opinion No. 569, the purpose of the natural break analysis is to provide the Commission with flexibility to determine whether a proxy group company ROE is truly an outlier or contains useful information.[187] Because there are so few members of pipeline proxy groups, the natural break analysis is less likely to identify outliers as this typically involves examining the distance between a given proxy group result and the next closest result, and comparing that to the dispersion of other proxy group results.[188]

91. We will continue to apply the general principle that ''anomalous'' or ''illogical'' data should be excluded from the proxy group. Using this approach, the Commission will retain flexibility to determine whether a given proxy group company is truly an outlier or whether it contains useful information in light of the particular array of ROEs presented by the potential proxy group companies.[189]

D. Oil Pipeline Page 700s

92. In light of the impending five-year review of the oil pipeline index, we encourage oil pipelines to file updated FERC Form No. 6, page 700 data for 2019 reflecting the revised ROE methodology established herein. Although the Commission will address this issue further in the five-year review, reflecting the revised methodology in page 700 data for 2019 may help the Commission better estimate industry-wide cost changes for purposes of the five-year review. Pipelines that previously filed Form No. 6 for 2019 and choose to submit updated page 700 data should, in a footnote on the updated page 700, either (a) confirm that their previously filed Form No. 6 was based solely upon the DCF model or (b) provide the real ROE and resulting cost of service based solely upon the DCF model as it was applied to oil pipelines prior to this Policy Statement.

[175] *Id.* P 396. Typically, this involves examining the distance between that proxy group company and the next closest proxy group company and comparing that to the dispersion of other proxy group companies. As explained in Opinion No. 569, the natural break analysis may justify excluding companies whose ROEs are a few basis points above the low-end outlier screen if their ROEs are far lower than other companies in the proxy group, and a similar analysis could apply with regard to high-end outliers. *Id.*

[176] *Id.* P 397.

[177] Opinion No. 569–A, 171 FERC ¶ 61,154 at P 161.

[178] *Id.* P 154.

[179] AOPL Initial Comments at 4, 15–17; INGAA Initial Comments at 10–11, 65–69; Plains Comments at 1–2, 5–6.

[180] AOPL Initial Comments at 16; INGAA Initial Comments at 67; Plains Comments at 5–6; NGSA Comments at 20. Magellan states that it may be unreasonable to apply an outlier test to oil pipelines because removing outlying results could reduce the number of proxy group companies to an unacceptable level. Magellan Initial Comments at 17–18.

[181] CAPP Initial Comments at 21–22.

[182] INGAA Initial Comments at 69.

[183] *Id.*

[184] *E.g.,* Opinion No. 546, 154 FERC ¶ 61,070 at P 196.

[185] *E.g., Midwest Indep. Transmission Sys. Operator, Inc.,* 106 FERC ¶ 61,302, at PP 8–10 (2004).

[186] Although the decision whether to include or remove an outlier may affect which member of the proxy group is the median result, the outlier is not a direct part of the ROE calculation as it is when the Commission uses the midpoint.

[187] Opinion No. 569, 169 FERC ¶ 61,129 at P 395.

[188] *Id.* P 390.

[189] *Id.* P 395.

93. As discussed below, the Paperwork Reduction Act (PRA) [190] requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information directed to ten or more persons. Following OMB approval of this voluntary information collection, the Commission will issue a notice affording pipelines two weeks to file updated page 700 data reflecting the revised ROE methodology.[191] Before that time, pipelines that have not filed Form No. 6 for 2019 (*e.g.,* pipelines that have received an extension of the Form No. 6 filing deadline) should file page 700 data consistent with their previously-granted extensions and such filings should be based upon the DCF model, which was the Commission's oil pipeline ROE methodology as of April 20, 2020, the date such filings were due.[192]

III. Information Collection Statement

94. The PRA requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons.[193] Upon approval of a collection of information, OMB will assign an OMB Control Number and expiration date. The refiling of page 700 of FERC Form No. 6 is being requested on a voluntary basis.

95. The Commission is submitting this voluntary information collection (the one-time re-filing of page 700 of FERC Form No. 6) to OMB for its review and approval under section 3507(d) of the PRA. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

96. *Burden Estimate:* [194] The estimated additional one-time burden and cost [195] for making a voluntary filing to update page 700 of the FERC Form No. 6 consistent with this Policy Statement is detailed in the following table. The first row includes the industry cost of performing cost-of-equity studies to develop an updated ROE estimate for the period ending December 31, 2019. The second row shows the cost of reflecting the updated ROE estimates and revised Annual Cost of Service on page 700 of the FERC Form No. 6.

ESTIMATED ANNUAL CHANGES TO BURDEN DUE TO DOCKET NO. PL19–4 [196]

[Figures may be rounded]

	Number of potential respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost ($) per response	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
Updated ROE Study	244	1	244	187.5 hrs.; $15,000.	45,750 hrs.; $3,660,000.	$15,000
Refile FERC Form No. 6, page 700	244	1	244	0.5 hrs.; $40	122 hrs.; $9,760	40
Total Changes, Due to PL19–4	244	1	244		$3,669,760	15,040

97. This additional one-time burden is expected to be imposed in Year 1.

98. Title: FERC Form No. 6, Annual Report of Oil Pipeline Companies.

Action: Revision to FERC Form No. 6, page 700.

OMB Control No.: 1902–0022.

Respondents: Oil pipelines.

Frequency of Responses: One time.

Necessity of the Information: As established in Order No. 561,[197] oil pipelines may increase their existing transportation rates on an annual basis using an industry-wide index. The Commission reviews the index level every five years.[198] In the five-year review, the Commission establishes the index level based upon a methodology that calculates pipeline cost changes on a per barrel-mile basis based upon FERC Form No. 6, page 700 data.[199] Depending upon the record developed in the 2020 five-year review of the oil pipeline index, the Commission will consider using the updated FERC Form No. 6, page 700 data for 2019 in that proceeding.

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

100. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to *www.reginfo.gov/public/do/PRAMain.* Comments submitted to OMB should be sent within 30 days of publication of this notice in the **Federal Register** and refer to FERC Form No. 6 and OMB Control No. 1902–0022.

[190] 44 U.S.C. 3501–21.

[191] Following OMB approval of this information collection, the Commission will issue a notice specifying the date on which any updated page 700 should be filed.

[192] Upon OMB approval, these pipelines will have the opportunity to file updated page 700 data reflecting the Commission's revised oil pipeline ROE methodology.

[193] OMB's regulations requiring approval of certain collections of information are at 5 CFR 1320.

[194] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[195] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for completing and filing FERC Form No. 6 is comparable to the Commission's skill set and average cost. The FERC 2019 average salary plus benefits for one FERC full-time equivalent (FTE) is $167,091/year or $80.00/hour.

[196] We have conservatively assumed a 100% voluntary response rate.

[197] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985 (1993), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff'd, Ass'n of Oil Pipelines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

[198] *Id.* at 30,941.

[199] *Five-Year Review of the Oil Pipeline Index,* 153 FERC ¶ 61,312, at PP 5, 12 (2015).

IV. Document Availability

101. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020.

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

103. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's 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.*

V. Effective Date

104. This Policy Statement becomes effective May 27, 2020.

By the Commission.

Issued: May 21, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11406 Filed 5–26–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP20–454–000; CP14–518–000]

Golden Pass Pipeline LLC; Notice of Application

Take notice that on May 13, 2020, Golden Pass Pipeline LLC (Golden Pass Pipeline), 811 Louisiana Street, Houston, Texas 77002, filed an application pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's regulations for authority to amend its order issued on December 21, 2016, granting Golden Pass LNG authority to site, construct and operate facilities for the exportation of liquefied natural gas and granting Golden Pass Pipeline authority to expand its existing pipeline system (Compression Relocation and Modification Project). The Compression Relocation and Modification Project consists of the following: (1) Relocation of an authorized compressor station from Milepost 66 to Milepost 69 on the Golden Pass Pipeline system; (2) additional compression at the relocated compressor station, (3) add a meter station near Milepost 69 to support an Interconnect with the proposed interstate pipeline to be constructed and operated by Enable Gulf Run Transmission, LLC, (4) remove any bi-directional piping modification to the Interconnect for Tennessee Gas Pipeline Company, L.L.C. (Tennessee Gas), (5) relocate looping facilities to reflect the relocation of the compressor station and the cancellation of Tennessee Gas as an input source to Golden Pass Pipeline, and (6) minor modifications to existing interconnections at Milepost 66 and Milepost 68, all as more fully described in their application.

Any questions regarding this application should be addressed to Blaine Yamagata, Vice President and General Counsel, Golden Pass LNG, 811 Louisiana Street, Suite 1500, Houston, Texas 77002; or to Kevin M. Sweeney, Law Office of Kevin M. Sweeney, 1625 K Street NW, Washington, DC 20006, by telephone at (202) 609–7709.

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 the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters

will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Standard Time on June 10, 2020.

Dated: May 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11328 Filed 5–26–20; 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 has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–876–000.

Applicants: Shell Energy North America (US), L.P., National Fuel Gas Company.

Description: Joint Petition for Temporary Waivers of Capacity Release Regulations and Policies, et al. of Shell Energy North America (US), L.P., et al. under RP20–876.

Filed Date: 5/18/20.

Accession Number: 20200518–5198.

Comments Due: 5 p.m. ET 6/1/20.

Docket Numbers: RP20–879–000.

Applicants: Antero Resources Corporation, MU Marketing LLC.

Description: Joint Petition for Temporary Waivers of Capacity Release Regulations, et al. of Antero Resources Corporation, et al. under RP20–879.

Filed Date: 5/19/20.

Accession Number: 20200519–5169.

Comments Due: 5 p.m. ET 6/1/20.

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: May 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11329 Filed 5–26–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0049; FRL–10009–85]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before June 26, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

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).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

Notice of Receipt—New Active Ingredients

EPA file symbols: 8033–RUN and 8033–RGO. *Docket ID number:* EPA–HQ–OPP–2020–0225. *Applicant:* Nippon Soda Co., Ltd., Shin-Ohtemachi Bldg. 2–1, 2-Chome Ohtemachi Chiyoda-ku, Tokyo 100–8165, Japan. *Active ingredient:* Ipflufenoquin. *Product type:* Fungicide. *Proposed use(s):* Almond and Pome Fruit (Crop Group 11–10). (RD).

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 11, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–11258 Filed 5–26–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–10008–43]

Access to Confidential Business Information by Access Interpreting, Inc.

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Access Interpreting, Inc. of Washington, DC, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than June 3, 2020.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott Sherlock, Environmental Assistance Division (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. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under GSA/FEDSIM solicitation number GS–10F–0372X, task order number 68HE0H18A0005/P00003, contractor Access Interpreting, Inc. of 1100 H Street NW, Suite 440, Washington, DC, is assisting the Office of Pollution Prevention and Toxics (OPPT) by attending meetings discussing TSCA CBI and interpret for staff requiring American Sign Language (ASL) interpretation. The contractors are American Sign Language interpreters.

In accordance with 40 CFR 2.306(j), EPA has determined that under GSA/FEDSIM solicitation number GS–10F–0372X, task order number 68HE0H18A0005/P00003, Access Interpreting, Inc. required access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Access Interpreting, Inc. personnel were given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA has provided Access Interpreting, Inc. access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract is taking place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until September 30, 2023. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Access Interpreting, Inc. personnel have signed nondisclosure agreements and were briefed on appropriate security procedures before they were permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 19, 2020.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2020–11314 Filed 5–26–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2019–0558, FRL–20005–94–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; RCRA Subtitle C Reporting Instructions and Forms (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), RCRA Subtitle C Reporting Instructions and Forms (EPA ICR Number 0976.19, OMB Control Number 2050–0024) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 30, 2020. Public comments were previously requested via the **Federal Register** on October 7, 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 June 26, 2020.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OLEM–2019–0558, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: RCRA Docket, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@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: Section 3002 of RCRA requires hazardous waste generators to report, at least every 2 years, the quantity and nature of hazardous waste generated and managed during that reporting cycle. Section 3004 requires treatment, storage, and disposal facilities (TSDFs) to report any waste received. This is mandatory reporting. The information is collected via the Hazardous Waste Report (EPA Form 8700–13 A/B). This form is also known as the ''Biennial Report'' form.

Section 3010 of RCRA requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal of regulated waste to notify the EPA of their activities, including the location and general description of activities and the regulated wastes handled. The entity is then issued an EPA Identification number. Entities use the Notification Form (EPA Form 8700–12) to notify EPA of their hazardous waste activities. This form is also known as the ''Notification'' form.

Section 3005 of RCRA requires TSDFs to obtain a permit. To obtain the permit, the TSDF must submit an application describing the facility's operation. The RCRA Hazardous Waste Part A Permit Application form (EPA Form 8700–23) defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. This form is also known as the ''Part A'' form.

Form Numbers: EPA form numbers 8700–12, 8700–13A/B, and 8700–23.

Respondents/affected entities: Business or other for-profit as well as State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA Sections 3002, 3304, 3005, 3010).

Estimated number of respondents: 3,192,310 per year.

Frequency of response: Biennially and on occasion.

Total estimated burden: 809,382 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $35,658,164 (per year), includes $342,016 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 161,956 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an increase in the universe of facilities subject to requirements.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–11357 Filed 5–26–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0264; FRL–10009–75]

Dinotefuran; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Maryland and Pennsylvania Departments of Agriculture, and the Virginia Department of Agriculture and Consumer Services to use the pesticide dinotefuran (CAS No. 165252–70–0) to treat up to 3,730; 24,973; and 29,000 acres, respectively, of pome and stone fruits to control the brown marmorated stinkbug. The Applicants propose uses which are supported by the Interregional Research Project Number 4 (IR–4) program and have been requested in 5 or more previous years, and petitions for tolerances have not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before June 11, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0264, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael 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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Maryland Department of Agriculture (MDA), Pennsylvania Department of Agriculture (PDA), and Virginia Department of Agriculture and Consumer Services (VDACS) have requested the EPA Administrator to issue specific exemptions for the uses of dinotefuran on pome and stone fruits to control the brown marmorated stinkbug. Information in accordance with 40 CFR part 166 was submitted as part of the requests.

As part of their requests, the Applicants assert that the rapid spread of large outbreaks of the brown marmorated stinkbug (an invasive species) resulted in an urgent and non-routine pest control situation that is expected to cause significant economic losses without the requested uses.

The Applicants propose to make no more than two applications at a rate of 0.203 to 0.304 lb. (maximum total of 0.608 lb.) of dinotefuran per acre, on up to 57,703 acres of pome fruits and stone fruits grown in Maryland, Pennsylvania, and Virginia from May 15 to October 15, 2020. A total of 35,084 lbs. of dinotefuran could be used (maximum acreage at highest rate).

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the applications.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Maryland and Pennsylvania Departments of Agriculture, and the Virginia Department of Agriculture and Consumer Services, as well as any subsequent specific exemption applications submitted by other state lead agencies.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 13, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2020–11257 Filed 5–26–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–12]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: Contractor Workforce Inclusion Good Faith Efforts—60-day Notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as ''Contractor Workforce Inclusion Good Faith Efforts,'' which has been assigned control number 2590–0016 by the Office of Management and Budget (OMB). FHFA intends to submit the information

collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2020.

DATES: Interested persons may submit comments on or before July 27, 2020.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Contractor Workforce Inclusion Good Faith Efforts, (No. 2020–N–12)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Contractor Workforce Inclusion Good Faith Efforts, (No. 2020–N–12).''

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Kenneth Hunter, Office of Minority and Women Inclusion, *Kenneth.Hunter@fhfa.gov,* (202) 649–3127; Karen Lambert, Associate General Counsel, *Karen.Lambert@fhfa.gov,* (202) 649–3094; or Angela Supervielle, Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 342(a)(1)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) requires FHFA and certain other Federal agencies each to establish an Office of Minority and Women Inclusion (OMWI) responsible for all matters of the agency relating to diversity in management, employment, and business activities.[1] Section 342(c)(1) requires the OMWI Director at each agency to develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority- and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts. Section 342(c)(2) requires that the OMWI Director include in the agency's procedures for evaluating contract proposals and hiring service providers a component that gives consideration to the diversity of an applicant, to the extent consistent with applicable law. That statutory provision also requires that each agency's procedures include a written statement that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

Further, section 342(c)(3)(A) of the Dodd-Frank Act requires that each agency's standards and procedures include a procedure for determining whether an agency contractor or subcontractor has failed to make a good faith effort to include minorities and women in its workforce. If the OMWI Director determines that a contractor or subcontractor has failed to make such a good faith effort, section 342(c)(3)(B)(i) provides that the OMWI Director shall recommend to the agency administrator that the contract be terminated. Section 342(c)(3)(B)(ii) provides that, upon receipt of such a recommendation, the agency administrator may either terminate the contract, make a referral to the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor, or take other appropriate action.

As a means of implementing the requirements of section 342(c) of the Dodd-Frank Act, FHFA developed a Minority and Women Inclusion Clause (MWI Clause) that it includes in Agency contracts with a dollar value greater than the ''simplified acquisition threshold'' established in the Federal Acquisition Regulation (FAR).[2] The MWI Clause requires a contractor to confirm its commitment to equal opportunity in employment and contracting, and to implement that commitment by ensuring, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce. The MWI Clause also requires that a contractor include the substance of the MWI Clause in all subcontracts with a dollar value greater than $150,000 awarded under the contract. (Hereinafter, contractors that are subject to the MWI Clause and subcontractors that are subject to a similar clause required to be included in a subcontract are referred to as ''covered'' contractors and subcontractors.)

Finally, the MWI Clause requires a contractor to provide, when requested by FHFA, documentation demonstrating that the contractor, as well as any covered subcontractor has made a good faith effort to ensure the fair inclusion of minorities and women in its workforce. The MWI Clause provides that such documentation may include, but is not limited to: (1) The contractor's total number of employees, and the number of minority and women employees, by race, ethnicity, and gender (*e.g.,* an EEO–1 Employer Information Report (Form EEO–1)); (2) a list of the subcontracts the contractor awarded including the dollar amount, date of the award, and the ownership status of the subcontractor by race, ethnicity, and/or gender; (3) information similar to that required under the first item above for each subcontractor; and (4) the contractor's plan to ensure that minorities and women have appropriate opportunities to enter and advance within its workforce, including outreach efforts (hereinafter, a ''workforce inclusion plan''). A request for documentation by FHFA pursuant to this provision of the MWI Clause constitutes a ''collection of information'' within the meaning of the PRA.

On March 9, 2018, FHFA finalized its ''Policy Establishing Procedures to Determine Compliance by Contractors with the Minority and Women Inclusion Contract Clause'' (Good Faith Efforts Policy (GFEP)), which establishes a process to determine whether covered contractors or subcontractors are making good faith efforts to ensure the fair inclusion of minorities and women in their respective workforces. The GFEP ensures transparency, clarity, and consistency in the good faith effort review process. Covered contractors

[1] 12 U.S.C. 5452.

[2] *See* FAR 2.101. The FAR appears at 48 CFR chapter 1. Although the FAR has not yet been updated, Congress increased the simplified acquisition threshold to $250,000 in 2017. *See* National Defense Authorization Act for Fiscal Year 2018, Public Law 115–91, section 805, 131 Stat. 1283, 1456 (2017), *codified at* 41 U.S.C. 134. The Civilian Agency Acquisition Council Memorandum for Civilian Agencies dated February 16, 2018 provides instructions to agencies that desire to issue a class deviation prior to this change being incorporated in the FAR. To date, FHFA has not issued such a deviation to increase the simplified acquisition threshold.

agree to provide documentation of the good faith effort they have made in support of this commitment within 10 business days after a request from FHFA. According to the GFEP, ''OMWI will rely on the conclusions of a prior GFE review if OMWI conducted that review within the past two fiscal years.''

FHFA's OMWI implemented the GFEP by conducting its first round of reviews of 20 covered contractors in May 2018. OMWI initiated another round of reviews in December 2018. The contractors' sizes ranged from small companies to large corporations. In March 2019, OMWI provided a summary of its reviews of 32 covered contractors. OMWI's GFEP review found that all the selected contractors had submitted satisfactory information to show compliance with their GFE contractual obligation. OMWI also considered developing new tools to capture and display information from GFE reviews to streamline the current process.

B. Need for and Use of the Information Collection

The purpose of this information collection is to fulfill the requirements of section 342(c) of the Dodd-Frank Act. The collected information allows FHFA's OMWI Director to determine whether covered contractors and subcontractors have complied with their contractual obligations to make good faith efforts to ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in their respective workforces.

C. Burden Estimate

FHFA estimates that the average annual burden imposed on all respondents by this information collection over the next three years will be 172 hours.

Because, as explained below, the amount of burden imposed upon a contractor by this information collection will differ depending upon whether the contractor has 50 or more employees, FHFA has based its total burden estimate on two separate sets of calculations—(1) one for contractors and subcontractors with 50 or more employees (16 hours); and (2) another for contractors and subcontractors with fewer than 50 employees (156 hours).

FHFA includes the MWI Clause in Agency contracts with a dollar value greater than $150,000. Under the MWI Clause, FHFA may also request information about covered subcontractors' ownership status, workforce demographics, and workforce inclusion plans. Contractors would request this information from their covered subcontractors, who, because the substance of the MWI Clause would be included in their subcontracts, would have a contractual obligation to keep records and report data as required under the MWI Clause.

FHFA data on the dollar value of contracts awarded by the Agency from the beginning of fiscal year 2016 through the third quarter of fiscal year 2019 shows that 61 contractors were subject to the MWI Clause. FHFA believes that 44 of those contractors have 50 or more employees, while 17 contractors have fewer than 50 employees. FHFA estimates that no more than two subcontracts with a dollar value of $150,000 or more were awarded by Agency contractors during that same time period. Both of those subcontractors have 50 or more employees each. Thus, over the preceding three years, a total of 63 contractors and subcontractors were subject to the MWI Clause—46 of which have 50 or more employees and 17 of which have fewer than 50 employees.

Based on these figures, FHFA estimates that, on average over the next three years, 48 contractors and subcontractors with 50 or more employees and 18 contractors or subcontractors with fewer than 50 employees will be subject to the MWI Clause at any given time. As mentioned above, the GFEP provides that OMWI will rely on the conclusions of a prior GFE review if OMWI conducted that review within the past two fiscal years. Accordingly, a covered contractor or subcontractor is required to submit new information only once within any three year period.

(1) Documentation Submitted by Contractors With 50 or More Employees

FHFA estimates that the average annual burden on contractors with 50 or more employees will be 16 hours (0 recordkeeping hours + 16 reporting hours).

Because Federal contractors with 50 or more employees are already required to maintain the same types of records that may be requested pursuant to the MWI Clause under regulations implementing Title VII of the Civil Rights Act of 1964 [3] and Executive Order 11246 (E.O. 11246),[4] this information collection does not impose additional recordkeeping burdens on such contractors and subcontractors. FAR 52.222–26, Equal Opportunity, requires that such contractors' contracts and subcontracts include a clause implementing E.O. 11246. OFCCP regulations require each contractor with 50 or more employees and a Federal contract or subcontract of $50,000 or more to maintain records on the race, ethnicity, gender, and EEO–1 job category of each employee.[5] OFCCP regulations also require each such contractor to: (1) Demonstrate that it has made a good faith effort to remove identified barriers, expand employment opportunities, and produce measurable results; [6] and (2) develop and maintain a written program summary describing the policies, practices, and procedures that the contractor uses to ensure that applicants and employees received equal opportunities for employment and advancement.[7] In lieu of creating and maintaining a separate workforce inclusion plan to submit in satisfaction of the MWI Clause, a contractor or subcontractor with 50 or more employees could submit the written program summary that it is already required to maintain under the OFCCP regulations to demonstrate its good faith efforts to ensure the fair inclusion of minorities and women in its workforce.

With respect to reporting burden, FHFA estimates that it will take each contractor or subcontractor with 50 or more employees approximately one hour to retrieve, review, and submit the documentation specified in the MWI Clause. Thus, the estimate of the triennial burden upon contractors or subcontractors with 50 or more employees associated with reporting requirements under this information collection is 48 hours (48 respondents × 1 hour per respondent) and the annual burden is 16 hours.

(2) Documentation Submitted by Contractors With Fewer Than 50 Employees

FHFA estimates that the average annual burden on contractors and subcontractors with fewer than 50 employees will be 156 hours (150 recordkeeping hours + 6 reporting hours).

OFCCP regulations require contractors with fewer than 50 employees to maintain records on the race, ethnicity, and gender of each employee.[8] FHFA believes that such contractors also keep EEO–1 job category information in the normal course of business, despite the fact that they are not required by law to do so. However, contractors or subcontractors with fewer than 50

[3] 42 U.S.C. 2000e, *et seq.*

[4] Exec. Order No. 11246, 30 FR 12319 (Sept. 28, 1965).

[5] *See* 41 CFR 60–1.7.

[6] *See* 41 CFR 60–2.17.

[7] *See* 41 CFR 60–2.31.

[8] *See* 41 CFR 60–3.4.

employees may not have the type of written program summary that is required of larger contractors under the OFCCP regulations or any similar document that could be submitted as a workforce inclusion plan under the MWI Clause. Accordingly, such contractors or subcontractors may need to create a workforce inclusion plan to comply with the MWI Clause.

In order to estimate the burden associated with creating a workforce inclusion plan, FHFA considered the OFCCP's burden estimates for the time needed to develop the written program summaries required under its regulations.[9] In its OMB Supporting Statement, the OFCCP estimated that a contractor with 50 to 100 employees would take approximately 73 hours to create an initial written program summary. While the OFCCP regulations require contractors to perform time-consuming quantitative analyses when developing their written program summaries, such analyses would not be required in connection with the creation of a workforce inclusion plan. For this reason, FHFA believes that a contractor could develop a workforce inclusion plan in about one-third of the time that it would take to develop the written program summary required under the OFCCP regulations.

FHFA estimates that a contractor or subcontractor with fewer than 50 employees would spend approximately 25 hours creating a workforce inclusion plan for the first time. It is likely that, going forward, many small contractors and subcontractors will simply submit updated versions of workforce inclusion plans that they have submitted previously. For purposes of this burden estimate, however, FHFA has assumed that all small contractors and subcontractors will need to create a new plan every time they are required to submit information under the MWI clause. This results in an estimated average triennial recordkeeping burden on all contractors and subcontractors with fewer than 50 employees over the next three years of 450 hours (18 respondents × 25 hours per respondent), with an annual burden of 150 hours.

As with larger entities, FHFA estimates that it will take each contractor and subcontractor with fewer than 50 employees approximately one hour to retrieve, review, and submit the documentation specified in the MWI Clause. Thus, FHFA estimates that the average triennial reporting burden on all contractors and subcontractors with fewer than 50 employees will be 18 hours (18 respondents × 1 hour per respondent), with an annual burden of 6 hours.

[9] *See* PRA Supporting Statement for the OFCCP Recordkeeping and Requirements-Supply and Service Program, OMB Control No. 1250–0003, at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201906-1250-001.*

D. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Robert Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2020–11259 Filed 5–26–20; 8:45 am]

BILLING CODE 8070–01–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, 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 the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 25, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Bath State Bancorp Employee Stock Ownership Plan With 401(k) Provisions, Bath, Indiana;* to become a bank holding company by acquiring Bath State Bancorp, and thereby indirectly acquire control of Bath State Bank, both of Bath, Indiana.

Board of Governors of the Federal Reserve System, May 21, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–11326 Filed 5–26–20; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice and request for comment.

SUMMARY: The FTC requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule). The current clearance expires on May 31, 2020.

DATES: Comments must be received by June 26, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. The reginfo.gov web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–3711.

SUPPLEMENTARY INFORMATION:

Title: Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule), 16 CFR part 703.

OMB Control Number: 3084–0113.

Type of Review: Extension of a currently approved collection.

Likely Respondents: Warrantors (Automobile Manufacturers) and Informal Dispute Settlement Mechanisms.

Estimated Annual Burden Hours: 9,055 (derived from 6,121 recordkeeping hours in addition to 2,040 reporting hours and 894 disclosure hours).

Estimated Annual Labor Costs: $209,595.

Estimated Annual Capital or Other Non-labor Costs: $314,566.

Abstract: On March 16, 2020, the FTC sought public comment on the information collection requirements associated with the Rule. 85 FR 14939. No germane comments were received.[1] Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

The Dispute Settlement Rule is one of three rules that the FTC implemented pursuant to requirements of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act). The Rule specifies the minimum standards which must be met by any informal dispute settlement mechanism (IDSM) that is incorporated into a written consumer product warranty and which the consumer is required to use before pursuing legal remedies under the Act in court (known as the ''prior resort requirement'').

The Dispute Settlement Rule standards for IDSMs include requirements concerning the mechanism's structure (*e.g.,* funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (*e.g.,* notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that IDSMs establish written operating procedures and provide copies of those procedures upon request.

Request for Comment

Your comment—including your name and your state—will be placed on the public record of this proceeding at the *https://www.regulations.gov* website. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, 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.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2020–11293 Filed 5–26–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Adoption Call to Action Data Collection (New Data Collection)

AGENCY: Administration on Children, Youth and Families; Administration for Children and Families; HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new descriptive study, Adoption Call to Action (ACTA) Data Collection.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ACTA is an effort by the ACF Children's Bureau. The purpose of the ACTA is to engage child welfare agencies to improve the timeliness and likelihood of permanency for children who are waiting for adoption. This new information collection will provide the Children's Bureau with an understanding of agency target populations, specific strategies (interventions), and outcomes measurement, in order to inform technical assistance strategies and provide a national picture of the overall success of the initiative. Baseline data will be collected with an initial survey (Baseline Survey), followed by two administrations of a follow-up survey instrument (Progress Update Survey) designed to collect process and outcome measures at two additional points in time. The instruments focus on: (1) Identifying the target population(s) agencies are addressing, (2) understanding elements of intervention implementation (process measures), and (3) capturing information related to the outcomes of these efforts.

Respondents: Respondents of these data collection instruments will include one representative from each of the 53 child welfare agencies who are participating in ACTA activities.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Adoption Call to Action: Baseline Survey	53	1	.33	18	6

[1] The Commission received six non-germane comments.

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Adoption Call to Action: Progress Update	53	2	.25	27	9

Estimated Total Annual Burden Hours: 15.

Comments: The Department specifically requests 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 203 of Section II: Adoption Opportunities of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5113).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–11362 Filed 5–26–20; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970–0461]

Submission for OMB Review; Immediate Disaster Case Management Intake Assessment

AGENCY: Office of Human Services, Emergency Preparedness and Response; Administration for Children and Families; HHS.

ACTION: Request for Public Comment.

SUMMARY: The Office of Human Services, Emergency Preparedness and Response (OHSEPR) is the emergency management office of the U.S. Department of Health and Human Services' (HHS) Administration for Children and Families (ACF). OHSEPR is requesting a 3-year extension of the Immediate Disaster Case Management Intake Assessment tool (OMB #0970–0461). The content of the form has not changed. There is one modification to the proposed use of resulting aggregate data, to include a use to advance research with a goal of developing a Quality Assurance/Performance Improvement process.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: OHSEPR leads HHS's and ACF's disaster human services missions conducted under the National Response Framework's Emergency Support Function 6 (ESF 6), Mass Care, Emergency Assistance, Temporary Housing, and Human Services. OHSEPR's ESF 6 disaster operations include implementation of disaster human services case management missions to connect disaster survivors to resources and services that support their individual and family recovery from disaster.

The primary purpose of the information collection pertains to the implementation of OHSEPR's delivery of case management services to individuals and households impacted by a disaster. OHSEPR's disaster case managers collect information during intake assessments that is utilized to identify a disaster survivor's unmet needs and connect them with resources. OHSEPR also utilizes this information to target resources and improve its disaster human services operations.

The information collection will be used to support OHSEPR's goal to quickly identify critical gaps, resources, needs, and services to support state, local, and non-profit capacity for disaster case management and to augment and build human service capacity where none exists. All information gathered will be used to (1) provide case management services to survivors and (2) inform the delivery of disaster case management services and programmatic strategies and improvements.

Respondents: Individuals impacted by a disaster.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Immediate Disaster Case Management Intake Assessment	33,489	1	1	33,489	11,163

Estimated Total Annual Burden Hours: 11,163.

Authority: Section 426 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–11312 Filed 5–26–20; 8:45 am]

BILLING CODE 4184–PC–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Office of Refugee Resettlement Unaccompanied Refugee Minors Program Application and Withdrawal of Application or Declination of Placement Form (Previous OMB #0970–0498)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR) is requesting a 3-year extension of the application and Withdrawal of Application or Declination of Placement Form for the Unaccompanied Refugee Minors (URM) Program. Proposed revisions to each instrument are minimal. These forms were previously approved under OMB #0970–0498, expiration 7/31/2020. ORR is currently seeking a new OMB number specific to these forms, as they were previously approved as part of another information collection package for ORR's Unaccompanied Alien Children's program.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The URM Program Application is completed on behalf of unaccompanied children in the United States who are applying for entry into the URM Program. The application includes biographical data and information on the child's needs to support placement efforts. The Withdrawal of Application or Declination of Placement Form is completed when a child is no longer interested in entering the URM program.

Respondents: Case managers, attorneys, or other representatives working with unaccompanied children who are eligible for the URM Program.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Unaccompanied Refugee Minors Program Application ...	350	3	1.50	1,575	525
Withdrawal of Application or Declination of Placement Form	30	3	0.20	18	6

Estimated Total Annual Burden Hours: 531.

Authority: 8 U.S.C. 1522(d).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–11307 Filed 5–26–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1875]

Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments; 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, the Agency, or we) is hosting a virtual public meeting entitled ''Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments,'' and an opportunity for public comment. This public meeting will take place virtually due to extenuating circumstances and will be held by webcast only.

DATES: The public meeting will take place remotely on June 22, 2020, from 9 a.m. to 11 a.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 22, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 22, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–1875 for ''Financial Transparency and Efficiency of Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner, 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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Monica Ellerbe, Office of Finance, Budget and Acquisitions, 4041 Powder Mill Rd., Rm. 72044, Beltsville, MD 20750, 301–796–5276, *Monica.Ellerbe@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The public meeting will include presentations from FDA on: (1) The 5-year plans for the Prescription Drug User Fee Act (PDUFA) VI, Biosimilar User Fee Act (BsUFA) II, and Generic Drug User Fee Amendments (GDUFA) II; (2) the Agency's progress in implementing resource capacity planning and modernized time reporting; and (3) the Agency's progress in addressing the findings from the independent third party evaluation of the resource management associated with PDUFA, BsUFA, and GDUFA that concluded and was published in fiscal year (FY) 2019. This meeting is intended to satisfy FDA's commitment to host an annual public meeting in the third quarter of each fiscal year beginning in FY 2019 and can be found in the Commitment letters listed below (II.B.3 of PDUFA VI (p. 38), IV.B.3 of BsUFA II (p. 28), and VI.B.4 of GDUFA II (p.22)).

This public meeting is intended to meet performance commitments included in PDUFA VI, BsUFA II, and GDUFA II. These user fee programs were reauthorized as part of the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52) signed by the President on August 18, 2017. The complete set of performance goals for each program are available at:

- PDUFA VI program: *https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM511438.pdf;*
- BsUFA II program: *https://www.fda.gov/downloads/forindustry/userfees/biosimilaruserfeeactbsufa/ucm521121.pdf;* and
- GDUFA II program: *https://www.fda.gov/downloads/forindustry/userfees/genericdruguserfees/ucm525234.pdf.*

Each of these user fee programs included a set of commitments related to financial management. These included commitments to publish a 5-year financial plan that should be updated annually, develop resource capacity planning capability and to modernize time reporting practices, and have a third-party evaluation of resource management practices for these user fee programs. In addition, each user fee program includes a commitment to host a public meeting in the third quarter of each fiscal year, beginning in FY 2019, to discuss specific topics.

II. Topics for Discussion at the Public Meeting

This public meeting will provide FDA the opportunity to update interested public stakeholders on topics related to the financial management of PDUFA VI, BsUFA II, and GDUFA II. FDA will present the 5-year financial plans for each of these programs and update participants on the progress towards implementing resource capacity planning and modernizing its time reporting approach. In addition, FDA will provide an update on the Agency's progress in addressing the findings from the independent third party evaluation of the resource management associated with PDUFA, BsUFA, and GDUFA that concluded and was published in FY 2019. To view the evaluation assessment report, please visit here: *https://www.fda.gov/media/127605/download.*

III. Attending the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://www.eventbrite.com/e/public-meeting-financial-transparency-and-efficiency-of-user-fee-programs-registration-101672491158.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Persons interested in attending this public meeting must register by June 19, 2020, at 11:59 p.m. Eastern Time. Registrants will receive confirmation once they have been accepted. We will let registrants know if registration closes before the day of the public meeting.

If you need special accommodations due to a disability, please contact Monica Ellerbe no later than June 15, 2020, 11:59 p.m. Eastern Time.

Streaming Webcast of the Public Meeting: The webcast for this public meeting is *https://collaboration.fda.gov/fdafinancial062220/.*

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: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 20, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11306 Filed 5–26–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1301]

Q3C(R8) Recommendations for the Permitted Daily Exposures for Three Solvents—2-Methyltetrahydrofuran, Cyclopentyl Methyl Ether, and Tert-Butyl Alcohol—According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; International Council for Harmonisation; 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 draft recommendations for new permitted daily exposures (PDEs) for the residual solvents 2-methyltetrahydrofuran, cyclopentyl methyl ether, and tert-butyl alcohol. The PDEs were developed according to the methods for establishing exposure limits included in the guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The recommendations were prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft guidance is intended to recommend acceptable amounts for the listed residual solvents in pharmaceuticals for the safety of patients.

DATES: Submit either electronic or written comments on the draft guidance by July 26, 2024 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–2020–D–1301 for ''Q3C(R8) Recommendations for the Permitted Daily Exposures for Three Solvents—2-Methyltetrahydrofuran, Cyclopentyl Methyl Ether, and Tert-Butyl Alcohol—According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents.'' 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 this 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 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 guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* Timothy McGovern, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6426, Silver Spring, MD 20993–0002, 240–402–0477; 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.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–4548, *Amanda.Roache@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, regulatory authorities and industry associations from around the world have participated in many important initiatives to promote international harmonization of regulatory requirements under the ICH. FDA has participated in several ICH meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and reduce differences in technical requirements for drug development among regulatory agencies.

ICH was established to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; FDA; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers. The Assembly is responsible for the endorsement of draft guidelines and adoption of final guidelines. FDA publishes ICH guidelines as FDA guidance.

In the **Federal Register** of December 24, 1997 (62 FR 67377), FDA published a notice announcing the availability of the ICH guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The guidance makes recommendations as to what amounts of residual solvents are considered toxicologically acceptable for some residual solvents, or permitted daily exposure. Upon issuance in 1997, the text and appendix 1 of the guidance contained several tables and a list of solvents categorizing residual solvents by toxicity, classes 1 through 3, with class 1 being the most toxic. The ICH Quality Expert Working Group (EWG) agreed that the PDEs could be modified if reliable and more relevant toxicity data were brought to the attention of the group and the modified PDE could result in a revision of the tables and list.

In 1999, ICH instituted a Q3C maintenance agreement and formed a maintenance EWG (the Q3C EWG). The agreement provided for the revisitation of solvent PDEs and allowed for minor changes to the tables and list that include the existing PDEs. The agreement also provided for new solvents and PDEs that could be added to the tables and list based on adequate toxicity data. In the **Federal Register** of February 12, 2002 (67 FR 6542), FDA briefly described the process for proposing future revisions to the PDEs. In the same notice, the Agency announced its decision to remove the link to the tables and list in the Q3C guidance and create a stand-alone document entitled ''Q3C: Tables and List'' to facilitate making changes recommended by ICH; the document is available at *https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm073395.pdf.* ''Q3C: Tables and List'' was updated in January 2017 to include the recommended PDE for triethylamine and methylisobutylketone.

In March 2020, the ICH Assembly endorsed the draft PDEs for three solvents—2-methyltetrahydrofuran, cyclopentyl methyl ether, and tert-butyl alcohol—and agreed that the guidance should be made available for public comment. The draft guidance is the product of the ICH Q3C EWG. Comments on this draft will be considered by FDA and the Quality EWG.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA's good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on the PDEs for 2-methyltetrahydrofuran, cyclopentyl methyl ether, and tert-butyl alcohol. 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 58 pertaining to good laboratory practice for nonclinical laboratory studies have been approved under OMB control number 0910–0119.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.regulations.gov, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: May 19, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11280 Filed 5–26–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0421]

Agency Father Generic Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork

Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before July 27, 2020.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0421–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: ASPE Generic Clearance for the Collection of Qualitative Research and Assessment.

OMB No.: 0990–0421.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting an extension for their generic clearance for purposes of conducting qualitative research. ASPE conducts qualitative research to gain a better understanding of emerging health policy issues, develop future intramural and extramural research projects, and to ensure HHS leadership, agencies and offices have recent data and information to inform program and policy decision-making. ASPE is requesting approval for at least four types of qualitative research: (a) Interviews, (b) focus groups, (c) questionnaires, and (d) other qualitative methods.

ASPE's mission is to advise the Secretary of the Department of Health and Human Services on policy development in health, disability, human services, data, and science, and provides advice and analysis on economic policy. ASPE leads special initiatives, coordinates the Department's evaluation, research and demonstration activities, and manages cross-Department planning activities such as strategic planning, legislative planning, and review of regulations. Integral to this role, ASPE will use this mechanism to conduct qualitative research, evaluation, or assessment, conduct analyses, and understand needs, barriers, or facilitators for HHS-related programs.

Need and Proposed Use of the Information: ASPE is requesting comment on the burden for qualitative research aimed at understanding emerging health and human services policy issues. The goal of developing these activities is to identify emerging issues and research gaps to ensure the successful implementation of HHS programs. The participants may include health and human services experts; national, state, and local health or human services representatives; public health, human services, or healthcare providers; and representatives of other health or human services organizations. The increase in burden from 747 in 2014 to 1,300 respondents in 2017 reflects an increase in the number of research projects conducted over the estimate in 2014.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Health Policy Stakeholder	Qualitative Research	1,300	1	1	1,300

Dated: May 13, 2020.

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–11289 Filed 5–26–20; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Step Up for Substance Use Disorders (SUD): A Drug Target Initiative for Scientists Engaged in Fundamental Research (U18—Clinical Trial Not Allowed).

Date: June 9, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Trinh T. Tran, Scientific Research Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 20, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–11275 Filed 5–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: June 10, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20892, (Virtual Meeting).

Contact Person: Jennifer Hartt Meyers, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20852, 301–761–6602, *jennifer.meyers@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 20, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–11273 Filed 5–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel: Clinical Trial Planning Grants.

Date: June 4, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer (Contractor), Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, Bethesda, MD 20892, (301) 435–1160.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel: Training Grant Applications.

Date: June 12, 2020.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 20, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–11277 Filed 5–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel NTU.

Date: June 17, 2020.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 20, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–11272 Filed 5–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory

Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: June 9, 2020.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G69, Rockville, MD 20892, (Virtual Meeting).

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 20, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–11274 Filed 5–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Exposures and COVID–19 Time-Sensitive Research.

Date: June 10, 2020.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556, *allen9@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Review of Outstanding New Environmental Scientist Program.

Date: June 15, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919–541–2824, *laura.thomas@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Mentored Career Award (K01 and K23).

Date: June 16, 2020.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709, (Telephone Conference Call).

Contact Person: Varsha Shukla, Ph.D., Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, 530 Davis Drive, Keystone Building, Room 3094, Durham, NC 27713, (984) 287–3288, *Varsha.shukla@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Applications on Implementing Genetic Diversity/Variants in High Throughput Toxicity Testing (R43/R44).

Date: June 18, 2020.

Time: 9:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 20, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–11276 Filed 5–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0346]

Navigation and Vessel Inspection Circular 01–16 Change 2—Use of Electronic Charts and Publications in Lieu of Paper Charts, Maps and Publications

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of the Navigation and Vessel Inspection Circular (NVIC) 01–16 Change 2 issued May 21, 2020, together with a Deregulatory Savings Analysis. The NVIC 01–16 Change 2 allows for U.S.-flagged vessels to use previously downloaded, electronic copies of Inland Navigation Rules and Vessel Traffic Service Rules, and to access voyage planning navigation publications electronically, including through underway connectivity, to meet domestic carriage and International Convention for the Safety of Life at Sea certification requirements.

DATES: The NVIC 01–16 Change 2 was issued May 21, 2020.

ADDRESSES: To view NVIC 01–16 Change 2, as well as other documents mentioned in this notice as being available in the docket, please search for docket number USCG–2019–0346 on the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Please address questions or feedback concerning this policy to Lieutenant Commander W. Christian Adams, Office of Navigation Systems, Coast Guard; telephone 202–372–1565, email *cgnav@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Abbreviations

CFR Code of Federal Regulations
FR Federal Register
MARPOL International Convention for the Prevention of Pollution from Ships
NVIC Navigation and Vessel Inspection Circular
SOLAS International Convention for the Safety of Life at Sea

VTS Vessel Traffic Service

II. Background

Navigation publications are a principal source of voyage planning information. Mariners use tide tables, the *United States Coast Pilot,* local notices to mariners, and other information sources to access relevant information for a particular transit. Since at least 2010, the Coast Guard has recognized the carriage of certain navigation publications electronically on U.S.-flagged vessels as meeting U.S. domestic regulations and International Convention for the Safety of Life at Sea (SOLAS) certificate requirements. This is an acceptance of common industry practice.

In response to recommendations from the Navigation Safety Advisory Council and the public, the Coast Guard is updating its policy on electronic carriage of the Inland Navigation Rules, Vessel Traffic Service (VTS) Rules, and navigation publications in general. Currently, the Coast Guard, the National Oceanic and Atmospheric Administration, and the National Geospatial-Intelligence Agency provide marine safety information in an updated electronic format, some of which is graphical and geographically selectable. Electronic devices (both hardware and software) have improved such that a mariner can efficiently access navigation publications when needed.

Furthermore, the Coast Guard recognizes that the maritime industry and mariners in general have made substantial investments to ensure vessels maintain internet connectivity, even while underway. Because mariners use certain navigation publications primarily for voyage planning purposes, the Coast Guard recognizes the practicality of accessing required navigation information via the internet on an as-needed basis, versus keeping a publication or extract onboard. To encourage the use of electronic voyage planning products, the Coast Guard is providing the option for vessels to meet certain publication carriage requirements via internet access.

Therefore, we are revising Navigation and Vessel Inspection Circular (NVIC) 01–16 Change 1 and issuing Change 2 to allow publications required by the Code of Federal Regulations (CFR) Title 33 (parts 83, 161, and 164) and Title 46 (parts 26, 28, 78, 97, 109, 121, 130, 140, 184, and 196), and the SOLAS Chapter V Regulation 27 to be carried electronically, with the majority of publications accessed via web services. However, if a mariner chooses to use an electronic version of the Inland Navigation Rules and VTS Rules, which are designated as ''ready reference'' in 33 CFR 83.01(g) and 161.4, the mariner must be able to display ready reference current electronic editions on their electronic device without internet connectivity by producing a previously downloaded copy.

III. Summary of Public Comments and Changes

On September 20, 2019, the Coast Guard published a *Notice of Availability of Navigation and Vessel Inspection Circular 01–16 Change 2—Use of Electronic Charts and Publications in Lieu of Paper Charts, Maps and Publications* (84 FR 49545) that sought public comments on any concerns related to these proposed policy changes and the supporting economic analysis. After the public comment period closed on November 4, 2019, the Coast Guard reviewed and analyzed the comments contained in the six public submissions received. Below we summarize and respond to these public comments.

Subchapter T inspection checklist: One commenter suggested that we amend the NVIC to address carriage of 46 CFR parts 166 to 199 in electronic or paper version because a subchapter T inspection checklist recommends that those parts be carried on board. Although 46 CFR parts 166 to 199 may be carried on board in electronic or paper versions in response to the checklist recommendations, this NVIC Change 2 is meant to address the carriage of navigation-related publications that are required by certain parts of CFR titles 33 and 46 to be carried on board. Since 46 CFR parts 166 through 199 are not required to be carried on board, they are not addressed in this NVIC. The Coast Guard did not revise the NVIC Change 2 in response to this comment.

Training courses on use of electronic publications: The same commenter suggested that the Coast Guard address mariner credentialing in the NVIC Change 2, and, specifically, recommend training courses and programs that are permitted and encouraged to train students in the use of electronic publications. Another commenter recommended that approved mariner credentialing courses and programs be permitted to train students in the use of electronic publications, including the applicable CFR sections. The scope and intent of this NVIC Change 2 is to provide voluntary equivalency for the purposes of carriage requirements between paper and electronic charts and publications required for navigation. It is not meant to prescribe the use of certain courses or programs, or the content of maritime courses and programs. For this reason, the Coast Guard did not revise the NVIC Change 2 in response to this comment. However, we are forwarding the recommendations regarding courses on the use of electronic publications to the Coast Guard's Office of Merchant Mariner Credentialing for their consideration.

Ready reference requirements: Two commenters raised concerns about the NVIC interpreting the ''ready reference'' requirements of the CFR for certain publications as meaning displayable within 2 minutes. One of the commenters believed it was arbitrary and could lead to unwarranted penalties for mariners during the Coast Guard's marine safety inspections and boardings. The commenter recommended that Section 4 of NVIC 01–16 Change 2 Memo be amended to read, ''To be eligible for the electronic charts and publications equivalency under this NVIC, mariners must be able to access the Inland Navigation Rules via the internet or produce a downloaded copy on their electronic device within a reasonable amount of time of the request of the boarding officer or marine inspector under the given circumstances.'' In addition, the commenter recommended that Section F.1 of Enclosure (2) to NVIC 01–16 also be revised to read, ''For publications stored or accessed electronically and which must be available for ready reference, the publications must be displayable within a reasonable amount of time under the given circumstances.''

We disagree with changing the standard to being able to display the publication within a reasonable amount of time. Section 83.01 of 33 CFR requires that the Inland Navigation Rules be carried as ''ready reference'' on board each self-propelled vessel 12 meters or more in length. Similarly, 33 CFR 161.4 requires each VTS user to carry on board and maintain for ready reference a copy of the VTS Rules. Practical use and reference to the Inland Navigation Rules and VTS Rules while underway may be directly related to a situation with vessels meeting, as well as navigation or communication requirements within VTS areas. A delay in accessing these rules is a safety concern. For this reason, we cannot amend the standard to ''within a reasonable amount of time.'' However, we are amending NVIC 01–16 Change 2 to require that, if an electronic version is to be used, those publications designated as ''ready reference'' be

previously downloaded so as to be accessible without internet access.[1]

Without the traditional requirements of having a paper copy on board a vessel, the proposed 2-minute standard was intended to set a reasonable limit on how ''ready reference'' could be interpreted for an electronic version that comes from a computer drive or the internet. The proposed time standard was also meant to reduce the inherent and unavoidable variation which results from marine inspections being conducted by many different inspectors with a variety of backgrounds and experience. We have not set such a specific time duration standard for paper copies in 33 CFR 83.01 or 161.4, and, if we are to introduce such a standard for the electronic equivalent, that would best be done by amending those regulations. If a maximum time period is to be established to access ''ready reference'' publications, it should apply equally whether the rules are viewed on a printed page or an electronic screen.

In terms of the time it takes to display an electronic version of the publication, the ''ready reference'' standard applies to an electronic version as if it were a paper version of the publication on a vessel. In consideration of the decision to allow ''carriage via internet access,'' the Coast Guard recognizes that many of the navigation publications required to be carried are used primarily for voyage planning. These publications must be current and accessible, but not ready reference.

Depending on vessel heading, masts or other topside obstructions may block antennas from receiving a signal. Additionally, connectivity may be intermittent or unavailable for short durations of a voyage. This temporary unavailability may not interfere with voyage planning activities, but even brief periods of unavailability could result in an unacceptable delay in accessing the Inland Navigation Rules and VTS Rules that are required to be ready reference. Maintaining downloaded copies will also ensure continuous access while maneuvering through close quarters situations when these ready reference publications may be most needed.

It should be noted that NVIC 01–16 Change 2 provides a voluntary equivalency for the purposes of carriage requirements between paper and electronic charts, and between paper and electronic versions of the Inland Navigation Rules and VTS Rules required for navigation. Vessel operators may continue to meet carriage requirements for all publications, including VTS Rules and the Inland Navigation Rules, in the traditional fashion by maintaining a paper (hard copy) reference.

Publication subscription service: Another commenter suggested that his company could sell a specific subscription service that provides up-to-date electronic versions of all the publications required for the purpose of carriage, but they were unable to obtain Coast Guard approval for this service at the time it was originally proposed. The Coast Guard does not require the use of any fee-based service to access these rules and publications. Nor does the Coast Guard prohibit the establishment of fee-based services to aid with the carriage of publications. However, all publications required for carriage under the CFR titles referenced by this NVIC are available free of charge from their respective governmental agencies' public websites.

Citing an example of issues his company encountered relating to providing printed oil record books, the same commenter stated that there is a need for the Coast Guard to clearly state what it wants with respect to this NVIC Change 2. We believe that the NVIC 01–16 Change 2 policy is very clearly written, so that companies seeking to offer products to enable mariners to use electronic charts and publications, as well as Coast Guard inspectors, will understand exactly what is required to meet NVIC 01–16 Change 2 equivalency standards. Regarding the commenter's example, we note that oil record books, which are required under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I, and 33 CFR part 151, are outside the scope of this NVIC. The Coast Guard did not revise the NVIC Change 2 in response to this comment.

Support for proposed action: Two other commenters were supportive of the proposed NVIC announced in September 2019 and of allowing certain navigation publications to be accessed electronically.

The Coast Guard appreciates all the comments received. We will continue to study this issue in light of the comments received and our experience with mariners' implementation of this policy before issuing other notices or policy letters on this matter.

IV. Cost Savings Analysis

The Coast Guard prepared a Deregulatory Savings Analysis for the September 2019 initial notice of availability of NVIC 01–16 Change 2 that identified and examined the potential costs and cost savings associated with implementing the new equivalency determination for carriage. The Coast Guard received no comments on this analysis, but we did receive comments on the NVIC that caused us to change our ready reference equivalency standard. Changing this standard impacts the estimated cost savings. Additionally, the Coast Guard identified typographical and other grammatical errors that have been corrected in the final version along with updating the cost savings estimates based on the changes to the final notice. This analysis is available in the docket, where indicated under the **ADDRESSES** portion of this document.

V. Public Availability of NVIC 01–16 Change 2

A version of NVIC 01–16 Change 2 with an issue date of May 21, 2020, will be placed in the docket for this notice. Also, NVIC 01–16 Change 2 will be located on the following Commandant website: *https://www.dco.uscg.mil/Our-Organization/NVIC/.* This version contains the NVIC's enclosures—Enclosure (1), Equivalency determination for ''Marine Charts,'' ''Charts,'' or ''Maps;'' ''Publications;'' and navigation functions; and Enclosure (2), Guidelines for inspecting and using electronic charts and publications.

Dated: May 21, 2020.

R.V. Timme,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2020–11363 Filed 5–26–20; 8:45 am]

BILLING CODE 9110–04–P

[1] This was the only substantive change to NVIC 01–16 Change 2 we made from the version we posted in the docket when we invited comments in September 2019.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0877]

National Merchant Mariner Medical Advisory Committee; Initial Solicitation for Members

AGENCY: U.S. Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard is requesting applications from persons interested in serving as a member of the National Merchant Mariner Medical Advisory Committee (''Committee''). This recently established Committee advises the Secretary of the Department of Homeland Security on matters relating to: Medical certification determinations for the issuance of licenses, certification

of registry, and merchant mariners' documents with respect to merchant mariners; medical standards and guidelines for the physical qualifications of operators of commercial vessels; medical examiner education; and medical research. Please read this notice for a description of 14 Committee positions we are seeking to fill.

DATES: Completed application should reach the Coast Guard on or before July 27, 2020.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the National Merchant Mariner Medical Advisory Committee and a resume detailing their experience. We will not accept a biography. Applications should be submitted via one of the following methods:

- *By Email (preferred): Michael.W.Lalor@uscg.mil.* Subject Line: N–MEDMAC
- *By Fax:* 202–372–4908; ATTN: Michael Lalor, Alternate Designated Federal Officer; or
- *By Mail:* Michael Lalor, Alternate Designated Federal Officer, Commandant (CG–MMC–2), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr Ave SE, Washington, DC 20593–7509

FOR FURTHER INFORMATION CONTACT: Michael Lalor, Alternate Designated Federal Officer of the Merchant Mariner Medical Advisory Committee; Telephone 202–372–2357; or Email at *MMCPolicy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Merchant Mariner Medical Advisory Committee is a Federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act,* 5 U.S.C Appendix 2, and the administrative provisions in § 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2019, by the *Frank LoBiondo Coast Guard Authorization Act of 2018,* which added § 15104, National Merchant Mariner Medical Advisory Committee, to Title 46 of the U.S. Code (46 U.S.C. 15104). The Committee will advise the Secretary of Homeland Security on matters relating to (1) medical certification determinations for the issuance of licenses, certificates of registry, and merchant mariners' documents with respect to merchant mariners; (2) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (3) medical examiner education; and (4) medical research.

The Committee is required to hold meetings at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently. The meetings are generally held in cities that have high concentrations of maritime personnel and related marine industry businesses.

All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed, however, for travel and per diem in accordance with Federal Travel Regulations.

Under 46 U.S.C. 15109(f) (6), membership terms expire on December 31st of the third full year after the effective date of appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f) (4).

In this initial solicitation for Committee members, we will consider applications for all positions, which include:

- Nine health-care professionals who have particular expertise, knowledge, and experience regarding the medical examinations of merchant mariners or occupational medicine; and
- Five professional mariners who have particular expertise, knowledge, and experience in occupational requirements for mariners.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See ''*Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions*'' (79 FR 47482, August 13, 2014). Registered lobbyists are ''lobbyists,'' as defined in Title 2 U.S.C. 1602, who are required by Title 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in the selection of Committee members based on race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Michael Lalor, Alternate Designated Federal Officer of the National Merchant Mariner Medical Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. If you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: May 20, 2020.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2020–11298 Filed 5–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0131]

Port Access Route Study: The Areas Offshore of Massachusetts and Rhode Island

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The United States Coast Guard (USCG) announces the completion of The Areas Offshore of Massachusetts and Rhode Island Port Access Route Study. The study focused on the seven adjacent leased areas of the outer continental shelf south of Martha's Vineyard, Massachusetts, and east of Rhode Island that together constitute the Massachusetts/Rhode Island Wind Energy Area (MA/RI WEA). The study was conducted to (1) determine what, if any, navigational safety concerns exist with vessel transits in the study area; (2) determine whether to recommend changes to enhance navigational safety by examining existing shipping routes and waterway uses as any or all of the lease areas within the MA/RI WEA are partially or fully developed as wind farms; and (3) to evaluate the need for establishing vessel routing measures. This notice summarizes the study's recommendations.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Craig Lapiejko, Waterways Management at First Coast Guard District, telephone (617) 223–8351, email *craig.d.lapiejko@uscg.mil.*

I. Table of Abbreviations

AIS Automatic Identification System
BOEM Bureau of Ocean Energy Management
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MARIPARS Massachusetts and Rhode Island Port Access Route Study

MA/RI WEA Massachusetts/Rhode Island Wind Energy Area
NEPA National Environmental Policy Act
NM Nautical Mile
NMFS National Marine Fisheries Service
OCS Outer Continental Shelf
PARS Port Access Route Study
PWSA Ports and Waterways Safety Act
TSS Traffic Separation Scheme
U.S. United States
U.S.C. United States Code
USCG United States Coast Guard
WEA Wind Energy Area
WTG Wind Turbine Generator

II. Background and Purpose

When did the USCG conduct this Port Access Route Study (PARS)?

We conducted this PARS following our announcement of the PARS in a notice published in the **Federal Register** on March 26, 2019 (84 FR 11314).

There was a 60-day public comment period, and USCG convened three public meetings (in Massachusetts, Rhode Island, and New York) to receive public input. The USCG received 30 comments in response to our **Federal Register** Notice, public meetings and other outreach efforts which included announcement via a Marine Safety Information Bulletin (MSIB), publication in the Local Notice to Mariners (LNM), and Twitter posts.

On January 29, 2020, we published a Notice of availability of draft report; request for comments entitled ''Port Access Route Study (PARS): The Areas Offshore of Massachusetts and Rhode Island'' in the **Federal Register** (85 FR 5222) announcing the availability of the draft version of the study report.

During the 45-day public comment period, the USCG received 48 comments in response to our **Federal Register** Notice and other outreach which included announcement via a Marine Safety Information Bulletin (MSIB), publication in the Local Notice to Mariners (LNM), and Twitter posts. All comments and supporting documents are available in a public docket and can be viewed at *http://www.regulations.gov.* In the ''Search'' box insert ''USCG–2019–0131'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column.

Comments have been summarized in section III.

What is the study area?

The study area is described as an area bounded by a line connecting the following geographic positions:

- 41°20′ N, 070°00′ W
- 40°35′ N, 070°00′ W
- 40°35′ N, 071°15′ W
- 41°20′ N, 071°15′ W

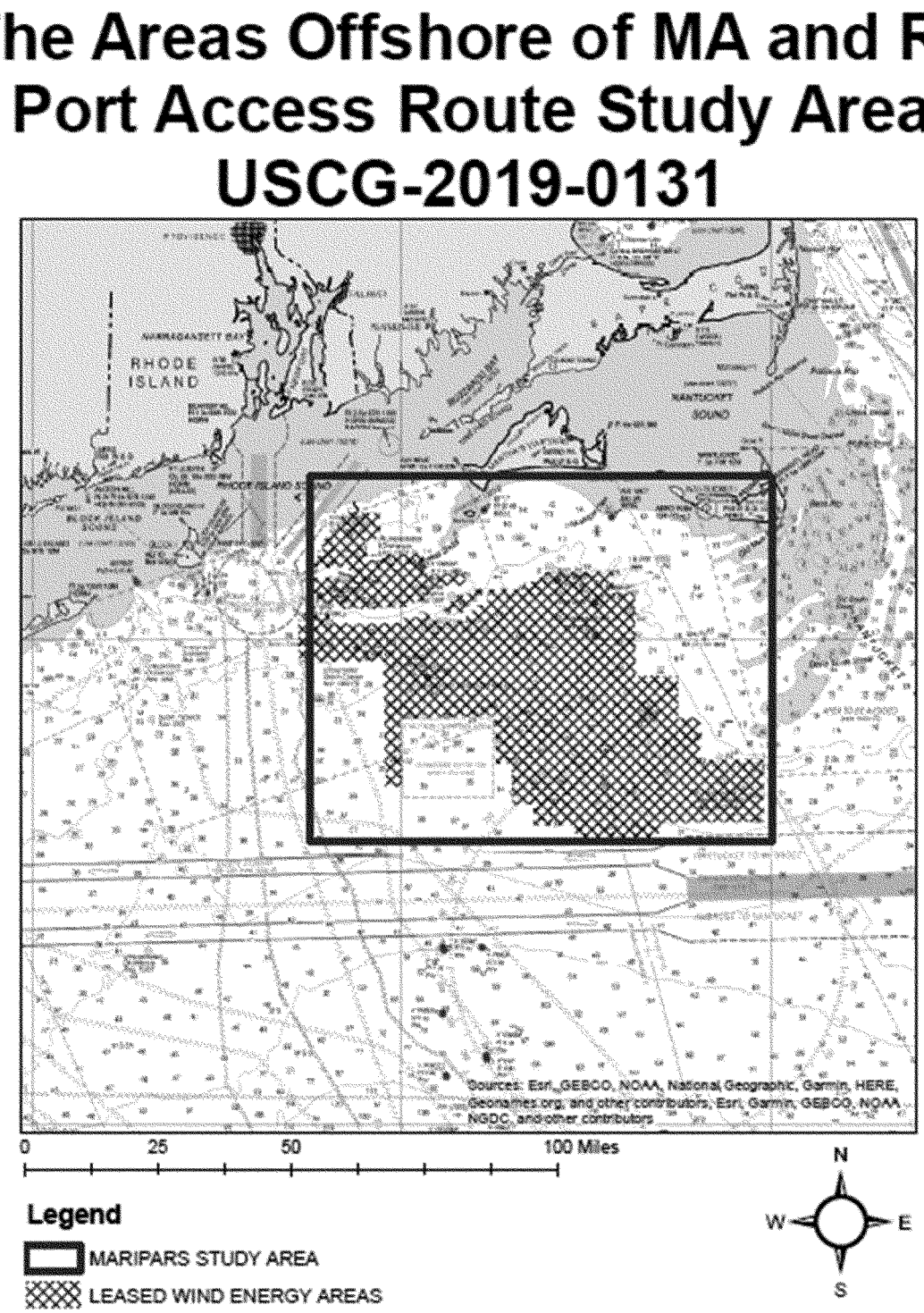

Illustration showing the study area

Why did the USCG conduct this PARS?

The topic of safe navigation routes to facilitate vessel transits through the MA/RI WEA has been considered since at least May of 2018, when the USCG first invited developers to discuss the issue. At various subsequent meetings throughout southeastern New England, which included participation by the USCG, other federal, state, and local agencies, fishing industry representatives, and myriad stakeholders, various vessel transit layout plans were proposed. After a consensus among all stakeholders could not be reached, the USCG concluded that a PARS should be conducted to determine the best possible alternative for potentially seven distinct offshore renewable energy installations (''wind farms'') which could be constructed, each with its own number, size, type of wind turbines, and distinct turbine layout.

PARS are conducted anytime the USCG considers a need to recommend routing changes, within the territorial seas, for any port. The Ports and Waterways Safety Act (PWSA) requires the USCG to conduct a study before establishing new or adjusting existing fairways or TSS. U.S. waterways support multiple uses, such as commercial shipping, tug and barge operations, commercial and recreational fishing, research vessels, offshore support vessels, military vessels, and aquaculture apparatus. A PARS is a study, not a rulemaking. The USCG does not plan a related rulemaking provided that the MA/RI WEA turbine layout is developed along a standard and uniform grid pattern.

How did the USCG conduct this PARS?

The PARS was conducted in alignment with guidance outlined in USCG Commandant Instruction 16003.2B, *Marine Planning to Operate and Maintain the Marine Transportation System (MTS) and Implement National Policy* which is available in the docket or see *https://media.defense.gov/2017/Mar/15/2001716995/-1/-1/0/CI_16003_2A.PDF.*

What is the goal of the study?

The goal of the study is to enhance navigational safety in the study area by examining existing shipping routes and waterway uses. To accomplish this goal, the USCG has undertaken measures to (1) determine what, if any, navigational safety concerns exist with vessel transits in the study area; (2) determine whether to recommend changes to enhance navigational safety by examining existing shipping routes and waterway uses as any or all of the lease areas within the MA/RI WEA are partially or fully developed as wind farms; and (3) evaluate the need for establishing vessel routing measures.

III. Discussion of Comments

A total of 48 comments on the draft version of the final report were submitted by representatives of the maritime community, wind energy developers, non-governmental organizations, federal and state governmental agencies, and private citizens. Twenty three of the comments are considered to be in support of the recommendations, while sixteen of the comments were considered to be opposed to the recommendations and nine of the comments were considered to be neutral.

Comments covered many topics, but a number of commenters with specific concerns focused their comments on navigation corridors, radar interference with a request for additional studies, and cost benefit analysis or economic analysis. The substance of those comments is covered below. Other comments received are more appropriate for the offshore wind NEPA process as USCG provides BOEM with a navigation safety recommendation for each project. Comments not related to the subject of the draft report are not covered in this notice.

Navigation Corridors

Various comments were received concerning navigation corridors. Although the majority of commenters agreed with our recommendation for a standard and uniform grid pattern with 1 NM spacing between WTGs across the entire WEA, others disagreed and supported larger 2 NM to 4 NM corridors to serve as clear lanes for vessels to transit within the WEA. Although these larger navigation corridors may appear to provide more area for navigation, they actually provide far less area than the numerous corridors that result from the recommended array and spacing. Additionally, the project developers have made clear that larger corridors, even though fewer in number, would result in reduced WTG spacing for the WEA. Because the reduced turbine spacing makes navigation more challenging, most traffic would then be funneled into the corridors thereby increasing traffic density and risks for vessel interaction. Furthermore, the recommended standard and uniform grid pattern provide sufficient space for certain vessels that fish in the WEA to continue fishing after the wind farms are constructed. If the WEA provided several larger corridors as some commenters proposed, the reduced turbine spacing would largely preclude fishing in the WEA, an area of almost 1400 square miles.

For these reasons, the USCG has determined that if the MA/RI WEA turbine layout is developed along a standard and uniform grid pattern, formal or informal vessel routing measures would not be required as such a grid pattern will result in the functional equivalent of numerous navigation corridors that can safety accommodate both transits through and fishing within the WEA. While these navigation corridors would be smaller than those suggested by some commenters, the USCG believes they should be sufficient to maintain navigational safety and provide vessels with multiple straight-line options to transit safely throughout the MA/RI WEA.

Radar Interference and Additional Studies

Some commenters expressed their concerns about possible radar interference while transiting within the WEA and said the Coast Guard should conduct additional studies before making final recommendations for the MARIPARS. There are, however, no wind farms in U.S. waters with a sufficient number and arrangement of turbines to conduct such a study. As the Block Island wind farm is a single line of five turbines spaced approximately 0.5 NM apart, it does not provide the turbine array needed to conduct such a study. The USCG has reviewed all available studies on radar interference and found that although these studies show that structures may have some effect upon radar, as discussed in the MARIPARS report, they do not render radar inoperable and do not inform planning decisions about turbine arrangement or spacing.

Coast Guard vessels and aircraft that will operate in the WEA also rely upon radar for safe navigation, collision avoidance and maritime situational awareness. Although the Coast Guard is confident that by following principles of prudent seamanship and utilizing all available bridge resources, including AIS, vessels can safely navigate through the WEA in most weather conditions, it will continue to evaluate operational effectiveness within wind farms as they are being developed. Additionally, the USCG will remain a participating member of the Wind Turbine Radar Interference Working Group which will continue to evaluate WTG impacts to marine radar and will recommend mitigation strategies through the BOEM leasing process as necessary.

Cost Benefit Analysis or Economic Analysis

The USCG received comments requesting we conduct a cost benefit analysis or economic analysis. The purpose of the MARIPARS was to determine what routing measures, if any, may be necessary for navigation safety should any or all of the lease areas within the MA/RI WEA become partially or fully developed as wind farms. In conducting the MARIPARS, the USCG considered traditional uses of the waterway and related economic impacts, as well as the economic impacts related to its recommendations on routing measures on wind farm development in the MA/RI WEA. While these economic impacts were addressed in some areas of the MARIPARS, the purpose of such limited examination was twofold: (1) To address how

economic issues might impact behaviors with regards to safe navigation and (2) to find a balanced solution for navigation concerns that addresses both the proposed uses of the waterway and the traditional uses of the waterway.

As MARIPARS is merely a study for the purpose of making recommendations, and not a regulatory action through which the Coast Guard is imposing a cost or other burden upon the public, the Coast Guard cannot complete such a study at this time. If, however, the Coast Guard were to later determine that it should take regulatory measures as a result of this study, it would then evaluate the economic aspects of the proposed regulatory activity as part of the rulemaking process.

IV. Study Recommendations

The recommendations of this PARS are primarily based on the comments received to the docket, public outreach, and consultation with other government agencies. The MARIPARS evaluated several concerns that resulted in the following recommendations:

A. That the MA/RI WEA's turbine layout be developed along a standard and uniform grid pattern with at least three lines of orientation and standard spacing to accommodate vessel transits, traditional fishing operations, and search and rescue operations, throughout the MA/RI WEA. The adoption of a standard and uniform grid pattern through BOEM's approval process will likely eliminate the need for the USCG to pursue formal or informal routing measures within the MA/RI WEA at this time.

1. Lanes for vessel transit should be oriented in a northwest to southeast direction, 0.6 NM to 0.8 NM wide. This width will allow vessels the ability to maneuver in accordance with the COLREGS while transiting through the MA/RI WEA.

2. Lanes for commercial fishing vessels actively engaged in fishing should be oriented in an east to west direction, 1 NM wide.

3. Lanes for USCG search and rescue operations should be oriented in a north to south and east to west direction, 1 NM wide. This will ensure two lines of orientation for USCG helicopters to conduct search and rescue operations.

In the event that subsequent MA/RI WEA project proposals diverge from a standard and uniform grid pattern approved in previous projects, the USCG will revisit the need for informal and formal measures to preserve safe, efficient navigation and SAR operations.

B. That mariners transiting in or near the MA/RI WEA should use extra caution, ensure proper watch and assess all risk factors. Offshore renewable energy installations present new challenges to safe navigation, but proper voyage planning and access to relevant safety information should ensure that safety is not compromised.

In general, mariners transiting through this WEA should make a careful assessment of all factors associated with their voyage. These factors at a minimum should include;

(1) The operator's experience and condition with regard to fitness and rest.

(2) The vessels characteristics, which should include the size, maneuverability, and sea keeping ability. The overall reliable and operational material condition of propulsion, steering, and navigational equipment.

(3) Weather conditions—both current and predicted including sea state and visibility.

(4) Voyage planning to include up-to-date information regarding the positions of completed wind towers or wind towers under construction and their associated construction vessels. A great deal of consideration should also be given to whether the transit will be conducted during day or night.

V. Summary of Changes

No substantive changes were made to the report as a result of the comment period. Only minor editorial changes were made to the report.

VI. Future Actions

The USCG will continue to serve as a NEPA cooperating agency to BOEM's environmental review of each proposed project. In that role, the USCG will evaluate the navigational safety risks of each proposal on a case-by-case basis.

The First Coast Guard District actively monitors all waterways subject to its jurisdiction to ensure navigation safety and will continue to monitor the areas offshore of Massachusetts and Rhode Island for evolving conditions, which may require additional studies to ensure navigational safety and minimize impacts to USCG operations.

The final report is available for viewing and download from the **Federal Register** docket at *http://www.regulations.gov* or the USCG Navigation Center website at *https://www.navcen.uscg.gov/?pageName=PARSReports.*

This notice is published under the authority of 46 U.S.C. 70003, 70004 and 5 U.S.C. 552(a).

Dated: May 14, 2020.

A.J. Tiongson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2020–11262 Filed 5–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 20–06]

Western Hemisphere Travel Initiative: Designation of an Approved Native American Tribal Card Issued by the Confederated Tribes of the Colville Reservation as an Acceptable Document To Denote Identity and Citizenship for Entry in the United States at Land and Sea Ports of Entry

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American tribal card issued by the Confederated Tribes of the Colville Reservation (''Colville Tribes'') to U.S. and Canadian citizens as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Colville Tribes members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on May 27, 2020.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via email at *Colleen.M.Manaher@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C.

1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI Land and Sea Final Rule). The rule amended various sections in the Code of Federal Regulations (CFR), including 8 CFR 212.0, 212.1, and 235.1. The WHTI Land and Sea Final Rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI Land and Sea Final Rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands [1] is a Native American tribal card that has been designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA. Specifically, 8 CFR 235.1(e), as amended by the WHTI Land and Sea Final Rule, provides that upon designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. It provides that the Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. It further provides that a list of the documents designated under this section will also be made available to the public.

A United States qualifying tribal entity is defined as a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards. *See* 8 CFR 212.1.[2] Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American tribal cards. *See* DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

The WHTI Land and Sea Final Rule allowed U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal ID cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.[3] As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant Native American tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of Homeland Security or the Commissioner of CBP may designate the Native American tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. More information about WHTI-compliant documents is available at *www.cbp.gov/travel.*

The Pascua Yaqui Tribe of Arizona became the first Native American tribe to have its Native American tribal card designated as a WHTI-compliant document by the Commissioner of CBP. This designation was announced in a notice published in the **Federal Register** on June 9, 2011 (76 FR 33776). Subsequently, the Commissioner of CBP announced the designation of several other Native American tribal cards as WHTI-compliant documents. *See, e.g.,* the Native American tribal cards of the Kootenai Tribe of Idaho, 77 FR 4822 (January 31, 2012); the Seneca Nation of Indians, 80 FR 40076 (July 13, 2015); the Hydaburg Cooperative Association of Alaska, 81 FR 33686 (May 27, 2016); and the Pokagon Band of Potawatomi Indians, 82 FR 42351 (September 7, 2017).

Confederated Tribes of the Colville Reservation WHTI-Compliant Native American Tribal Card Program

The Confederated Tribes of the Colville Reservation (''Colville Tribes'') have voluntarily established a program to develop a WHTI-compliant Native American tribal card that denotes identity and U.S. or Canadian citizenship. On May 21, 2013, CBP and the Colville Tribes entered into a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Colville Tribes who can establish identity, tribal membership, and U.S. or Canadian citizenship. The cards incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation by CBP of identity, citizenship, and tribal membership.[4]

CBP has tested the cards developed by the Colville Tribes pursuant to the above MOA and related agreements, and has performed an audit of the tribes' card program. On the basis of these tests and audit, CBP has determined that the Native American tribal cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands.[5] CBP's continued acceptance of

[1] ''Adjacent islands'' is defined in 8 CFR 212.0 as ''Bermuda and the islands located in the Caribbean Sea, except Cuba.'' This definition applies to 8 CFR 212.1 and 235.1.

[2] This definition applies to 8 CFR 212.1 and 235.1.

[3] The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as ''Enhanced Tribal Cards'' or ''ETCs.''

[4] CBP and the Colville Tribes entered into a Service Level Agreement (SLA) on October 3, 2016, concerning the technical requirements and support for the production, issuance, and verification of the Native American tribal cards. CBP and the Colville Tribes also entered into an Interconnection Security Agreement in February 2016, with respect to individual and organizational security responsibilities for the protection and handling of unclassified information.

[5] The Native American tribal card issued by the Colville Tribes may not, by itself, be used by Canadian citizen tribal members to establish that

Continued

the Native American tribal cards as a WHTI-compliant document is conditional on compliance with the MOA and related agreements.

Acceptance and use of the WHTI-compliant Native American tribal cards is voluntary for tribe members. If an individual is denied a WHTI-compliant Native American tribal card, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the Native American tribal card issued by the Colville Tribes in accordance with the MOA and all related agreements between the tribes and CBP as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. or Canadian citizenship of Colville Tribes members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Dated: May 21, 2020.

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2020–11378 Filed 5–26–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCIS–2020–0014]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security, U.S. Citizenship and Immigration Services.

ACTION: Notice of modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''DHS/U.S. Citizenship and Immigration Services (USCIS)–004 Systematic Alien Verification for Entitlements (SAVE) Program System of Records.'' This system of records allows DHS/USCIS to collect and maintain records on applicants for public benefits, licenses, grants, governmental credentials, or other statutorily authorized purposes to operate the fee-based SAVE. SAVE allows users agencies to confirm immigration and naturalized and certain derived citizen status information, in order for the user agencies to make decisions related to: Determine eligibility for a Federal, state, tribal, or local public benefit; issue a license or grant; issue a government credential; conduct a background investigation; or for any other lawful purpose within the user agency's jurisdiction. DHS/USCIS is updating this system of records notice to include updates and modifications to the authority for maintenance of the system, the purpose of the system, categories of individuals, categories of records, record source categories, routine uses, and contesting records procedures to better reflect how USCIS operates SAVE and data sharing efforts. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This modified system will be included in DHS's inventory of record systems.

DATES: Submit comments on or before June 26, 2020. This modified system will be effective upon publication. New or modified routine uses will be effective June 26, 2020.

ADDRESSES: You may submit comments, identified by docket number USCIS–2020–0014 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number USCIS–2020–0014. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Donald K. Hawkins, (202) 272–8030, *USCIS.PrivacyCompliance@uscis.dhs.gov,* Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW, Washington, DC 20529. For privacy questions, please contact: Constantina Kozanas, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) proposes to modify and reissue a current DHS system of records titled, ''DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records.''

The Systematic Alien Verification for Entitlements (SAVE) Program is a fee-based service designed to assist Federal, state, tribal, and local government agencies, benefit-granting agencies, private entities, institutions, and licensing bureaus authorized by law in determining citizenship and immigration status for the purpose of granting benefits, licenses, and other lawful purposes. Uses of SAVE may include verification of citizenship and immigration status (for naturalized and certain derived citizens) when issuing Social Security benefits, public health care, Supplemental Nutrition Assistance Program (SNAP) benefits, Temporary Assistance for Needy Families (TANF), Medicaid, Children's Health Insurance Program (CHIP), conducting background investigations, armed forces recruitment, REAL ID compliance, or any other purpose authorized by law. SAVE provides citizenship and immigration status to the extent that such confirmation is necessary to enable Federal, state, tribal, or local government agencies to make decisions related to: (1) Determining eligibility for a Federal, state, tribal, or local public benefit; (2) issuing a license or grant; (3) issuing a government credential; (4) conducting a background investigation; or (5) any other lawful purpose. SAVE does not determine an applicant's eligibility for a specific benefit or license; only the benefit-granting agency can make that determination.

A typical SAVE verification involves a registered Federal, state, tribal, or local government benefit or license granting agency verifying the citizenship and immigration status of an immigrant or non-immigrant. The initial SAVE response is derived from information contained in a U.S. government-issued document, such as a Permanent Resident Card (often referred to as a Green Card) or Employment

they meet the requirements of section 289 of the Immigration and Nationality Act (INA) [8 U.S.C. 1359]. INA § 289 provides that nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. While the tribal card may be used to establish a card holder's identity for purposes of INA § 289, it cannot, by itself, serve as evidence of the card holder's Canadian birth or that he or she possesses at least 50% American Indian blood, as required by INA § 289.

Authorization Document. Before a SAVE user agency can submit a query, the user agency must collect certain information from the benefit or license applicant's immigration-related document. The verification process is document driven and requires the document's numeric identifier (*e.g.,* Alien Number (A-Number)). The document presented by the individual determines the verification process.

When a user agency submits a case, SAVE queries various DHS-accessed databases for matching records. These databases consist of case management systems used for adjudicating immigration benefits. If SAVE locates a record pertaining to the applicant in any of these DHS databases, SAVE displays that data. The data displayed by SAVE depends on the user agency's authority to use SAVE and the type of benefit provided by the user agency. If SAVE is unable to find a record pertaining to the applicant, it will request additional verification. The user agency may initiate the additional verification procedure, which entails in-depth research in available records by USCIS Status Verifiers Operations Branch to confirm the applicant's citizenship and immigration status.

DHS/USCIS is publishing this modified system of records notice to make several changes for transparency and to describe new initiatives.

Although SAVE provides citizenship and immigration status information to approved and configured user agencies, SAVE currently does not collect benefit determination information. Where SAVE provides immigrant sponsorship information to user agencies for sponsor deeming and agency reimbursement processes governed by Section 213A of the Immigration and Nationality Act (INA), 8 U.S.C. 1183a, and implementing regulations at 8 CFR part 213a, SAVE does not currently prompt a response from those agencies as to their use of that information in determining the benefit.

On May 23, 2019, President Trump issued a Presidential Memorandum (PM), *Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens,* which placed a renewed focus on adequately enforcing reimbursement and deeming requirements. The PM details requirements related to data collection when determining eligibility for certain sponsored immigrants who seek Federal means-tested public benefits, and directs Federal agencies to take steps necessary to ensure compliance with requirements under the INA and other applicable Federal law. As such, SAVE is amending its processes so if sponsorship information is provided to the benefit-granting agency, SAVE will request to receive the benefit-granting agency's final adjudication determination of the Federal means-tested public benefit. DHS/USCIS is collecting information regarding actions that agencies adjudicating Federal means-tested public benefits take to deem sponsor income as part of applicant income for purposes of Federal means-tested benefits eligibility [1] and to seek reimbursement from sponsors for the value of benefits provided to sponsored applicants. This information will provide the Federal Government with greater visibility into whether and how benefit-granting agencies use the sponsor and household member information that SAVE provides for the deeming and reimbursement processes.

With this information, DHS/USCIS plans to compile and make reports available to Federal means-tested public benefit agencies (*i.e.,* Social Security Administration, Department of Health and Human Services (HHS)—Centers for Medicare and Medicaid Services, HHS—Administration for Children and Families, and U.S. Department of Agriculture—Food and Nutrition Service) that perform oversight, monitoring, and compliance activities regarding Federal deeming and reimbursement rules. These reports will consist of general statistics in addition to case-specific information, so that Federal means-tested public benefit oversight and administrative agencies can see individual cases that did not complete sponsor deeming and/or those cases in which the benefit was not provided due to deeming. These reports will also be made available to the Department of Justice and the Department of Treasury, as necessary and authorized by law, and in coordination with the Federal means-tested public benefit agencies for reimbursement activity. DHS/USCIS will further provide access to relevant reports to approved adjudicating SAVE user agencies to assist them in managing their SAVE cases and monitoring their own compliance with SAVE program rules and the Federal deeming and reimbursement rules.

As part of this change, DHS/USCIS is updating this system of records (SORN) to cite the relevant legal authority to collect benefit determination information. DHS/USCIS is also adding new categories of records collected from benefit-granting agencies relating to actions that agencies adjudicating Federal means-tested public benefits take to deem sponsor income as part of applicant income for purposes of Federal means-tested benefits eligibility and to seek reimbursement from sponsors for the value of benefits provided to sponsored applicants. This includes whether the benefit-granting agency approved or denied the application for the means-tested public benefit; if the benefit-granting agency denied the application, whether the denial was based upon the information that SAVE provided in its response to the citizenship and immigration status verification request from the benefit-granting agency; whether the benefit-granting agency deemed sponsor/household member income and, if not, the exception or reason for not doing so; whether the benefit-granting agency sent the sponsor a reimbursement request letter; whether the sponsor complied with his or her reimbursement obligation; and whether the benefit-granting agency conducted a collection action if the sponsor did not comply with his or her reimbursement obligation. DHS/USCIS is also adding Routine Use J for disclosure to a Federal, state, tribal, or local government agency that oversees or administers Federal means-tested public benefits for purposes of seeking reimbursement from sponsors for the value of benefits provided to sponsored applicants, as well as reporting on overall sponsor deeming and agency reimbursement efforts to appropriate administrative and oversight agencies.

DHS/USCIS is also expanding the purpose of this system to include USCIS bond management processes. Under section 213 of the Immigration and Nationality Act, 8 U.S.C. 1183, the Secretary of Homeland Security may admit an individual to the United States upon posting a suitable and proper bond. The individual may breach the bond conditions if they receive certain public benefits, as defined in 8 CFR 212.21(b), after adjustment of status to that of a lawful permanent resident, and until the bond is cancelled under 8 CFR 213.1(g). For purposes of managing this bond process, DHS/USCIS may access the Verification Information System (VIS) to review whether USCIS bond submitters may have applied for and

[1] Under Section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631), agencies adjudicating Federal means-tested public benefits must consider (''deem'') the income and assets of a qualified sponsor who has completed a Form I–864 or Form I–864EZ, *Affidavit of Support* (collectively referred to herein as a ''Form I–864''), or a qualified household member who has completed a Form I–864A, *Contract Between Sponsor and Household Member,* as available to the sponsored benefit applicant in determining whether he or she is eligible for certain Federal means-tested public benefits.

received public benefits, and to inform potential inquiries related to the receipt of those public benefits.

DHS/USCIS is also modifying the category of individuals covered under this SORN to reflect that the system covers individuals who have filed, for themselves or on the behalf of others, applications or other requests for Federal, state, local, or tribal licenses or benefits; individuals who have been granted naturalized or derived U.S. citizenship; individuals who have applied for or received other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.* or other applicable law; individuals subject to certain background investigations; individuals accessing SAVE Case Check; users and administrators who access the system to facilitate citizenship and immigration status verification; and other individuals whose information is verified with SAVE pursuant to a SAVE Memorandum of Agreement or Computer Matching Agreement. DHS/USCIS is also clarifying that the categories of individuals covered by the system include sponsors that have signed either a Form I–864, *Affidavit of Support Under Section 213A of the Act,* Form I–864EZ, *Affidavit of Support Under Section 213A of the Act,* or household members that have signed a Form I–864A, *Contract Between Sponsor and Household Member.* The previous SORN only covered the I–864 and not the I–864EZ or I–864A.

DHS/USCIS is also expanding the categories of records to clarify the data elements that USCIS collects from the applicant by the benefit-granting agency to facilitate citizenship and immigration status verification, from the benefit-granting agency users who access the system to facilitate citizenship and immigration status verification, and the individual information that may be used by SAVE to verify citizenship and immigration status and provide a SAVE response.

DHS/USCIS is updating the record source categories to reflect information collected from USCIS, DHS, and other Federal agency systems of records.

DHS/USCIS is also modifying the routine use section of this SORN, including updating Routine Use E and adding Routine Use F to comply with requirements set forth by Office of Management and Budget (OMB) Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' (Jan. 3, 2017).

DHS/USCIS is updating the contesting record procedures to remove references to InfoPass, which has been phased out. Additionally, this notice includes non-substantive changes, including re-lettering routine uses, to simplify the formatting and text of the previously published notice.

Consistent with DHS's information sharing mission, information stored in DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCIS may share information with appropriate Federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)-004 Systematic Alien Verification for Entitlements Program System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at USCIS Headquarters in Washington, DC, and at DHS/USCIS field offices. Electronic records are stored in the Verification Information System (VIS).

SYSTEM MANAGER(S):

Chief, Verification Division, *SAVE.help@uscis.dhs.gov,* U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE, Suite 200, Mail Stop 2620, Washington, DC 20529.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for having a system for verification of citizenship and immigration status is found in Immigration and Nationality Act, Public Law 82–414, 66 Stat. 163 (1952), as amended, Immigration Reform and Control Act, Public Law 99–603, 100 Stat. 3359 (1986); Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104–193, 110 Stat. 2105 (1996); Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 104–208, 110 Stat. 3009 (1997); the REAL ID Act of 2005, Public Law 109–13, 119 Stat. 231 (2005); Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029 (Mar. 30, 2010); and the FAA Extension, Safety, and Security Act of 2016, Public Law 114–190, 130 Stat. 615 (July 15, 2016), 8 CFR Part 213a (Affidavits of Support on Behalf of Immigrants).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to provide a fee-based service that assists Federal, state, tribal, and local government agencies, benefit-granting agencies, private entities, institutions, and licensing bureaus for any legally mandated purpose in accordance with an authorizing statute to confirm immigration and naturalized and certain derived citizen status information, and to otherwise efficiently administer their programs, to the extent that such disclosure is necessary to enable these agencies and entities to make decisions related to (1) determining eligibility for a Federal, state, tribal, or local public benefit; (2) issuing a license or grant; (3) issuing a government credential; (4) conducting a background investigation; or (5) any other lawful purpose. This system is also used for USCIS bond management purposes under sec. 213 of the Immigration and Nationality Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) Individuals who have filed, for themselves or on the behalf of others, applications or other requests for Federal, state, local or tribal licenses or benefits; (2) individuals who have been granted naturalized or derived U.S. citizenship; (3) individuals who have applied for or received other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.* or other applicable law; (4) sponsors [2] and household members listed on the Form I–864 or I–864EZ, *Affidavit of Support Under Section 213A of the Act* or Form I–864A, *Contract Between Sponsor and Household Member;* (5) individuals subject to certain background investigations; (6) individuals accessing SAVE Case Check; (7) users and administrators who access the system to facilitate citizenship and immigration status verification; and (8) other individuals whose information is verified with SAVE pursuant to a SAVE Memorandum of Agreement or Computer Matching Agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected from the benefit applicant by the user agency to facilitate citizenship and immigration status verification may include the following:

- Full Name;
- Date of birth;
- Citizenship or nationality;
- Country of birth;
- Alien Number (A-Number);
- Social Security number (SSN) (in very limited circumstances using the Form G–845, *Document Verification Request*);
- Receipt number;
- Admission number (I–94 number);
- User Agency Case number;
- Agency DUNS number;
- Visa number;
- DHS Document type;
- DHS Document Expiration date;
- Government-issued identification (*e.g.,* passport):
  - Document type;
  - Country of issuance (COI);
  - Document number;
  - Expiration date; and
  - Benefit requested (*e.g.,* unemployment insurance, educational assistance, driver license).
- Copies of original immigration documents;
- U.S. Immigration and Custom Enforcement (ICE) Student and Exchange Visitor Identification System (SEVIS) ID number; and
- Other immigration number (*e.g.,* Employment Authorization Document card number, naturalization number, citizenship certificate number).

Information collected from agency user who accesses the system to facilitate citizenship and immigration status verification may include the following:

- Agency name;
- Address;
- Names of Agency Point(s) of Contact;
- Title of Agency Point(s) of Contact;
- Contact telephone number;
- Fax number;
- Email address;
- User ID; and
- Type of license/benefit(s) the agency issues (*e.g.,* Unemployment Insurance, Educational Assistance, Driver Licensing, and Social Security Enumeration).

System-generated responses as a result of the SAVE verification process may include:

- Verification Case Number; and
- SAVE response.

Information collected from the benefit-granting agency about actions that an agency adjudicating Federal means-tested public benefits takes to deem sponsor income as part of applicant income for purposes of Federal means-tested benefits eligibility and to seek reimbursement from sponsors for the value of benefits provided to sponsored applicants may include:

- Whether the benefit-granting agency approved or denied the application for the means-tested public benefit;
- If the benefit-granting agency denied the application, whether the denial was based upon the information that SAVE provided in its response to the citizenship and immigration status verification request from the benefit-granting agency;
- Whether the benefit-granting agency deemed sponsor/household member income and, if not, the exception or reason for not doing so;
- Whether the benefit-granting agency sent the sponsor a reimbursement request letter (yes/no);
- Whether the sponsor complied with his or her reimbursement obligation; and
- Whether the benefit-granting agency conducted a collection action or other proceeding if the sponsor did not comply with his or her reimbursement obligation (yes/no and if yes, the status, court or forum, and docket or matter number).

Individual information that may be used by SAVE to verify citizenship and immigration status and provide a SAVE response includes:

- Full Name;
- Date of birth;
- Country of birth;
- A-Number;
- SSN;
- Photograph;
- Government-issued identification (*e.g.,* foreign passport):
  - Document type;
  - Country of issuance (COI);
  - Document number; and
  - Expiration date.
- Visa number;
- Form numbers (*e.g.,* Form I–551, *Lawful Permanent Resident Card,* Form I–766, *Employment Authorization Document*);
- Other unique identifying numbers (*e.g.,* SEVIS Identification Number (SEVIS ID number), Admission number (I–94 number));
- Entry/Departure date;
- Port of entry;
- Alien Status Change date;
- Naturalization date;
- Date admitted until;
- Country of citizenship;
- Document Grant date;
- Document Receipt number;
- Codes (*e.g.,* class of admission, file control office, provision of law cited for employment authorization);
- Employment Authorization Document (EAD) history;
- Beneficiary information (*e.g.,* Full Name, A-Number, Date of birth, Country of birth, SSN);
- Petitioner information (*e.g.,* Full Name, A-Number, SSN, Individual Taxpayer Identification Number, Naturalization Certificate number);
- Sponsor(s) and household member(s) information (*e.g.,* Full Name, Address, SSN);
- Spouse information (*e.g.,* Full Name, A-Number, Date of birth, Country of birth, Country of citizenship, Class of admission, Date of admission, Receipt number, Phone number, Marriage date and location, Naturalization date and location);
- Children information (*e.g.,* Full Name, A-Number, Date of birth, Country of birth, Class of admission);
- Employer information (*e.g.,* Full Name, Address, Supervisor's name, Supervisor's Phone number); and
- Individuals associated with background checks information (*e.g.,* Full Name, A-Number, Date of birth, Country of birth).

Case history information may include:

- Alert(s);
- Case summary comments;
- Case category;
- Date of encounter;
- Encounter information;

[2] All references to ''sponsor'' or ''sponsors'' include sponsors, joint sponsors, and substitute sponsors, as defined in the regulations at 8 CFR part 213a.

- Custody actions and decisions;
- Case actions and decisions;
- Bonds;
- Photograph;
- Asylum applicant receipt date;
- Airline and flight number;
- Country of residence;
- City (*e.g.,* where boarded, where visa was issued);
- Date visa issued;
- Address in United States;
- Nationality;
- Decision memoranda; Investigatory reports and materials compiled for the purpose of enforcing immigration laws;
- Exhibits;
- Transcripts; and
- Other case-related papers concerning aliens, alleged aliens, or lawful permanent residents brought into the administrative adjudication process.

RECORD SOURCE CATEGORIES:

Records are obtained from several sources including: (A) Agencies and entities seeking to determine immigration or naturalized or derived citizenship status; (B) Individuals seeking public licenses, benefits, or credentials; (C) Other DHS components assisting with enrollment and system maintenance processes; (D) Information created by SAVE; and (E) Information collected from USCIS, DHS, and other Federal agency systems of records:

- DHS/USCIS/ICE/CBP–001 Alien File, Index, and National File Tracking System of Records, September 18, 2017 (82 FR 43556);
- DHS/USCIS–007 Benefits Information System, October 10, 2019 (84 FR 54622);
- DHS/USCIS–010 Asylum Information and Pre-Screening System of Records, November 30, 2015 (80 FR 74781);
- DHS/USCIS–018 Immigration Biometric and Background Check (IBBC) Records System of Records, July 31, 2018 (83 FR 36950);
- DHS/CBP–005 Advance Passenger Information System (APIS), March 13, 2015 (80 FR 13407);
- DHS/CBP–006 Automated Targeting System, May 22, 2012 (77 FR 30297);
- DHS/CBP–007 CBP Border Crossing Information (BCI), December 13, 2016 (81 FR 89957);
- DHS/CBP–011 U.S. Customs and Border Protection TECS, December 19, 2008 (73 FR 77778);
- DHS/CBP–016 Nonimmigrant Information System, March 13, 2015 (80 FR 13398);
- DHS/CBP–021 Arrival and Departure Information System (ADIS), November 18, 2015 (80 FR 72081);
- DHS/ICE–001 Student and Exchange Visitor Information System, January 5, 2010 (75 FR 412);
- DHS/ICE–011 Criminal Arrest Records and Immigration Enforcement Records (CARIER) System of Records, October 19, 2016 (81 FR 72080);
- DHS/ALL–003 Department of Homeland Security General Training Records, November 25, 2008 (73 FR 71656);
- DHS/ALL–016 Correspondence Records, September 26, 2018 (83 FR 48645);
- JUSTICE/EOIR–001 Records and Management Information System, May 11, 2004 (69 FR 26179); including routine use updates in 82 FR 24147 (May 25, 2017);
- STATE–05 Overseas Citizens Services Records and Other Overseas Records, September 8, 2016 (81 FR 62235);
- STATE–26 Passport Records, March 24, 2015 (80 FR 15653); and
- STATE–39 Visa Records, June 15, 2018 (83 FR 28062).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other Federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate Federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To approved Federal, state, tribal, and local government agencies for any legally mandated purpose in accordance with their authorizing statute or law and when an approved Memorandum of Agreement (MOA) or Computer

Matching Agreement (CMA) is in place between DHS and the entity.

J. To a Federal, state, tribal, or local government agency that oversees or administers Federal means-tested public benefits for purposes of seeking reimbursement from sponsors for the value of benefits provided to sponsored applicants, as well as reporting on overall sponsor deeming and agency reimbursement efforts to appropriate administrative and oversight agencies.

K. To airport operators to determine the eligibility of individuals seeking unescorted access to any Security Identification Display Area of an airport, as required by the FAA Extension, Safety, and Security Act of 2016.

L. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/USCIS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/USCIS retrieves records by name of applicant or other unique identifier to include: Verification Case Number, A-Number, I–94 Number, Social Security number, Passport number, Visa number, SEVIS ID number, or by the submitting agency name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

SAVE records are covered by NARA-approved records retention and disposal schedule, N1–566–08–07. Records collected in the process of enrolling in SAVE and in verifying citizenship or immigration status are stored and retained in SAVE for ten (10) years from the date of the completion of verification. However, if the records are part of an ongoing investigation, they will be retained until completion of the investigation and pursuant to the records retention schedule associated with the investigation. This initial 10-year period is based on the statute of limitations for most types of misuse or fraud possible using SAVE (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship, or naturalization documents).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and to the USCIS FOIA/Privacy Act Officer whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act (JRA) provide a right of access, certain records about him or her may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why the individual believes the Department would have information on him/her;
- Identify which component(s) of the Department the individual believes may have the information about him/her;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for the first individual to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, see ''Record Access Procedures'' above. For records not covered by the Privacy Act or Judicial Redress Act, individuals may still amend their records at a USCIS Field Office by contacting the USCIS Contact Center at 1–800–375–5283 to request an appointment.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None. However, when this system receives a record from another system exempted in that source system under 5 U.S.C. 552a, DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

HISTORY:

81 FR 78619 (November 8, 2016); 76 FR 183 (September 21, 2011); 73 FR 75445 (December 11, 2008); 73 FR 10793 (February 28, 2008); 72 FR 17569 (April 9, 2007); 67 FR 64134 (October 17, 2002); and 66 FR 174 (September 7, 2001).

Constantina Kozanas,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–11390 Filed 5–26–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X LLAZ920000.71220000.KD0000. LVTFA2058950; AZA31116]

Public Land Order No. 7894; Partial Revocation of a Withdrawal Created by an Executive Order Dated April 17, 1926, Which Established the Public Water Reserve No. 107; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This Order revokes portions of a withdrawal created by an Executive Order dated April 17, 1926, which established Public Water Reserve (PWR) No. 107 insofar as it affects 378.29 acres of public lands withdrawn from settlement, sale, location, or entry under the public land laws, including location for non-metalliferous minerals under the United States mining laws, for protection of springs and waterholes. This Order opens the land to the public land laws.

DATES: This Public Land Order took effect on May 14, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Werner, BLM, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004, 602–417–9561. 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 per day, 7 days per week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A portion of the withdrawal created by Executive Order dated April 17, 1926, which established Public Water Reserve No. 107 (PWR No. 107), is no longer necessary for the purpose for which the land was withdrawn, and partial revocation of the withdrawal is needed to facilitate a land exchange.

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. The withdrawal created by the Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described Federal lands:

Gila & Salt River Meridian, Arizona

T. 3 S., R. 12 E.,
Sec. 25, SE¼SW¼ and SW¼SE¼.

T. 3 S., R. 14 E.,
Sec. 33, NE¼NW¼, SW¼NW¼, SE¼SW¼ and SW1/4SE¼;
Sec. 34, SE¼SW¼.

T. 4 S., R. 14 E.,
Sec. 4, lots 3 and 4;
Sec. 5, lot 1.

The areas described aggregate 378.29 acres in Pinal County, Arizona.

2. On May 14, 2020 the land described in Paragraph 1 opened to settlement, sale, or entry under the public land laws described by the Executive Order in Paragraph 1, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: May 14, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–11265 Filed 5–26–20; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

20X.LLIDI02000. L71220000.FR0000.LVTFD2015100. 241A.4500131504]

Notice of Availability for the Final Environmental Impact Statement for the Proposed Blackrock Land Exchange, Bannock and Power Counties, Idaho

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Pocatello Field Office, in Pocatello, Idaho, has prepared a Final Environmental Impact Statement (EIS) for the proposed Blackrock Land Exchange and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 60 days after the date that the U.S. Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: The Final EIS is available on the BLM ePlanning project website at *https://go.usa.gov/xEUuc.* If you are unable to access the documents online and would like a paper copy, please contact the Project Lead identified below.

FOR FURTHER INFORMATION CONTACT: Bryce Anderson, Project Manager by telephone: 208–478–6353; address: 4350 S Cliffs Dr., Pocatello, ID 83204; or email: *bdanderson@blm.gov.* People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Anderson. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Anderson. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is the lead agency for the land exchange that was proposed in 2019. The Idaho Department of Environmental Quality (IDEQ), Idaho Governor's Office of Energy and Mineral Resources (OEMR), EPA, and Bureau of Indian Affairs (BIA) are Cooperating Agencies.

In 1994, the J.R. Simplot Company (Simplot) submitted a proposal to acquire 719 acres of Federal land managed by the BLM in exchange for 667 acres of non-Federal land. The Federal lands are adjacent to Simplot's Don Plant in Power and Bannock Counties, Idaho. The non-Federal lands are located in the Blackrock and Caddy Canyon areas in Bannock County approximately 5 miles east-southeast of Pocatello.

In 1998, pursuant to the Comprehensive Environmental Response Compensation and Liability Act, the Don Plant facilities and the surrounding area, known as the Eastern Michaud Flats (EMF), were designated as a Superfund Site, including a portion of the proposed Federal lands to be exchanged. The BLM prepared an Environmental Assessment (EA) to analyze the proposed land exchange and issued a Decision Record/Finding of No Significant Impact (DR/FONSI) on December 21, 2007. The Shoshone-Bannock Tribes litigated the decision in District Court. In May 2011, the Court granted the Tribes' motion and remanded the DR/FONSI to the BLM, ordering the agency to prepare an EIS.

The BLM's purpose is to evaluate the current land exchange proposal and the need is to respond to the proposal pursuant to FLPMA. The land exchange would result in improved resource management in an area containing crucial mule deer winter range and would secure permanent public access within a popular recreation area. Simplot's purpose for the proposed land exchange is to implement legally enforceable controls as directed by the EPA and IDEQ. To meet fluoride reduction requirements from a 2016 Consent Order with the IDEQ, Simplot has proposed construction of cooling

ponds adjacent to the Don Plant, which would require the acquisition of adjacent Federal lands. Additionally, this acquisition would allow Simplot to maximize the operational life of its ongoing phosphate processing operations at the Don Plant by expanding gypsum stacks onto adjacent land.

The formal public scoping process for the EIS began on May 20, 2019, with publication of a Notice of Intent in the **Federal Register**, which initiated a 45-day public comment period. Key resource issues identified during scoping include: Air quality, cultural resources, fish and wildlife, hazardous and solid wastes, lands and realty, recreation, socioeconomics, environmental justice, tribal treaty rights, visual resources, and water resources. The Notice of Availability for the Draft EIS was published on December 20, 2019, initiating a 45-day public comment period. The public comments resulted in the addition of: (1) Information on radioactivity and radionuclides, (2) information on water quality in the Portneuf River, including contributions from upstream sources, especially phosphorous and arsenic, and (3) qualitative information describing how a complete liner failure could occur and general types of effects/impacts. The BLM has responded to substantive comments and made appropriate revisions to the Final EIS or explained why a comment did not warrant a change.

The Final EIS evaluates the Proposed Action and two action alternatives, in addition to a No Action Alternative. The Proposed Action is to exchange 719 acres of Federal land for 667 acres of non-Federal land.

Alternative A (Increased Non-Federal Land Acreage) includes the same area of Federal (719 acres) and non-Federal lands (667 acres) as the proposed action, with the addition of voluntary mitigation and donation parcels (A and B) proposed by Simplot. Parcel A is voluntary mitigation that includes an additional 160 acres of non-Federal land within Blackrock Canyon to mitigate the net loss of Federal acres in the proposed action. The acquired lands would be available to tribal members for aboriginal purposes and would improve existing public access to the Chinese Peak/Blackrock Trail system. Parcel B is a proposed donation consisting of approximately 950 acres within the Fort Hall Reservation that would be offered to the Secretary of the Interior, or to the Shoshone-Bannock Tribes.

Alternative B (Avoiding the West Canyon) was developed from comments received during scoping to adjust the boundary of the Federal lands to minimize impacts to cultural and tribal resources in the West Canyon area on the north side of Howard Mountain. The Federal lands that would be acquired by Simplot would be reconfigured to eliminate the West Canyon area from the land exchange. This alternative would involve exchanging 711 acres of Federal land for 667 acres of non-Federal land. This alternative also includes the voluntary mitigation and donation parcels (A and B). Simplot would donate $25,000 to the Shoshone-Bannock Tribes' Language Program as voluntary mitigation for the BLM's conveyance of a National Register of Historic Places (NRHP)-eligible site within the Federal land.

Under the No Action Alternative, the proposed land exchange would not be authorized.

The BLM selected Alternative B as the Preferred Alternative, because it adjusts the boundary of the Federal lands to minimize impacts to cultural resources, allows for a net gain of public lands, and makes additional lands available for tribal uses. The BLM will continue consultation with Native American Tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. The BLM will give tribal concerns due consideration, including impacts on Native American trust assets and potential impacts to cultural resources.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

John F. Ruhs,

BLM Idaho State Director.

[FR Doc. 2020–11365 Filed 5–26–20; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–578]

Generalized System of Preferences: Possible Modifications, 2020 Review

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on May 4, 2020, from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted Investigation No. 332–578, *Generalized System of Preferences: Possible Modifications, 2020 Review,* for the purpose of providing advice and information relating to the possible addition of articles and removal of articles.

DATES:

June 3, 2020: Deadline for filing requests to appear at the public hearing.

June 3, 2020: Deadline for filing pre-hearing briefs and statements.

June 19, 2020: Public hearing.

June 29, 2020: Deadline for filing post-hearing briefs and statements.

June 29, 2020: Deadline for filing all other written submissions.

August 31, 2020: Transmittal of Commission report to the USTR.

Because COVID–19 mitigation measures are in effect, the Commission will hold the public hearing virtually. For further information on the hearing, see the section below on ''public hearing'' and also the Commission's ongoing investigations website (*https://usitc.gov/research_and_analysis/what_we_are_working_on.htm*), before June 22, 2020 for details about the hearing format.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Sharon Ford, Project Leader, Office of Industries (202–205–3084 or *sharon.ford@usitc.gov*), or Greg LaRocca, Deputy Project Leader, Office of Industries (202–205–3405 or *gregory.larocca@usitc.gov*) or Marin Weaver, Technical Advisor, Office of Industries (202–205–3461 or *marin.weaver@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*http://www.usitc.gov*). 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.

Background: In his letter, the USTR requested the advice and information described below.

(1) Advice as to the probable economic effect on total U.S. imports, on U.S. industries producing like or directly competitive articles, and on U.S. consumers of the elimination of U.S. import duties on the articles in Table A for all beneficiary developing countries under the GSP program. In accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974, as amended (''the 1974 Act'') and pursuant to the authority of the President delegated to the USTR by sections 4(c) and 8(c) and (d) of Executive Order 11846 of March 31, 1975, as amended, and pursuant to section 332(g) of the Tariff Act of 1930, the USTR notified the Commission that the articles identified in Table A of the Annex to the USTR request letter are being considered for designation as eligible articles for purposes of the GSP program. The USTR requested that the Commission provide its advice as to the probable economic effect on total U.S. imports, U.S. industries producing like or directly competitive articles, and on U.S. consumers of the elimination of U.S. import duties on the articles identified in Table A of the Annex to the USTR request letter for all beneficiary developing countries under the GSP program (see Table A below).

TABLE A—2020 GSP ANNUAL REVIEW—PETITIONS SUBMITTED TO ADD PRODUCTS TO THE LIST OF ELIGIBLE ARTICLES FOR THE GENERALIZED SYSTEM OF PREFERENCES (GSP)

HTS provision	Brief description
0603.11.00	Sweetheart, Spray and other Roses, fresh cut.
0603.11.0010	Sweetheart roses, fresh, suitable for bouquets or for ornamental purposes.
0603.11.0030	Spray roses, fresh, suitable for bouquets or for ornamental purposes.
0603.11.0060	Roses, fresh, suitable for bouquets for ornamental purposes, nesoi.

(2) Advice as to the probable economic effect of the removal from eligibility for duty-free treatment under the GSP program for these articles from all countries on total U.S. imports, on U.S. industries producing like or directly competitive articles, and on U.S. consumers. The USTR notified the Commission that six articles from all beneficiary developing countries are being considered for removal from eligibility for duty-free treatment under the GSP program. Under authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, with respect to the articles listed in Table B of the Annex to the USTR request letter, the USTR requested that the Commission provide its advice as to the probable economic effect of the removal from eligibility for duty-free treatment under the GSP program for these articles from all beneficiary developing countries on total U.S. imports, on U.S. industries producing like or directly competitive articles, and on U.S. consumers (see Table B below).

TABLE B—2020 GSP ANNUAL REVIEW—PETITIONS SUBMITTED TO REMOVE DUTY-FREE STATUS FOR A PRODUCT ON THE LIST OF ELIGIBLE ARTICLES FOR THE GSP PROGRAM

HTS provision	Brief description
1006.10.00	Rice in the husk (paddy or rough).
1006.20.20	Basmati rice, husked.
1006.20.40	Husked (brown) rice, other than Basmati.
1006.30.10	Rice semi-milled or wholly milled, whether or not polished or glazed, parboiled.
1006.30.90	Rice semi-milled or wholly milled, whether or not polished or glazed, other than parboiled.
1006.40.00	Broken rice.

Time for reporting, HTS detail, portions of report to be classified. As requested by the USTR, the Commission will provide the requested advice and information by August 31, 2020. The USTR asked that the Commission issue, as soon as possible thereafter, a public version of the report containing only the unclassified information, with any confidential business information deleted. As requested, the Commission will provide its probable economic effect advice and statistics (profile of the U.S. industry and market and U.S. import and export data) and any other relevant information or advice separately and individually for each U.S. Harmonized Tariff Schedule provision for all products subject to the request. The USTR indicated that those sections of the Commission's report and working papers that contain the Commission's advice and assessment of probable economic effects on domestic industries, on U.S. imports, and on U.S. consumers, will be classified as ''confidential.'' The USTR also stated that his office considers the Commission's report to be an interagency memorandum that will contain pre-decisional advice and be subject to the deliberative process privilege.

Public Hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on June 19, 2020, virtually. Information about the virtual hearing and how to participate will be posted on the Commission's website at (*https://usitc.gov/research_and_analysis/what_we_are_working_on.htm*). Once on that web page, scroll down to the entry for investigation No. 332–578, *Generalized System of Preferences: Possible Modifications, 2020 Review,* and click on the link to ''hearing instructions''. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., June 3, 2020. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., June 3, 2020; and all post-hearing briefs and statements should be filed no later than 5:15 p.m., June 29, 2020. All requests to appear, and pre- and post-hearing briefs and statements should be filed in accordance with the requirements of the ''written submissions'' section below.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., June 29, 2020. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Confidential Business Information: Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All

written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR. Additionally, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the report should include a summary with their written submission and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the report'' at the top of the page. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: May 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–11359 Filed 5–26–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1201]

Certain Liquid Crystal Display Devices, Components Thereof, and Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 21, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Sharp Corporation of Japan and Sharp Electronics Corporation of New Jersey. Supplements to the complaint were filed on April 22, 2020, May 4, 2020, and May 12, 2020. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 7,245,329 (''the '329 patent''); U.S. Patent No. 7,372,533 (''the '533 patent''); U.S. Patent No. 8,022,912 (''the '912 patent''); U.S. Patent No. 8,451,204 (''the '204 patent''); and U.S. Patent No. 8,847,863 (''the '863 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION: *Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 20, 2020, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1 and 4–6 of the '329 patent; claims 1–2 and 11–13 of the '533 patent; claims 1, 4, 6, 11–12, 15, 17, and 22 of the '912 patent; claims 1, 3, 5, 10–11, 13, 15, 17, and 22 of the '204 patent; and claims 8–13 of the '863 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''high definition televisions and display screens, LCD panels, LCD modules (consisting of LCD panels as well as a controller and backlight), and components of each'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Sharp Corporation, 1 Takumi-cho, Sakai-ku, Sakai City, Osaka, 590–8522 Japan

Sharp Electronics Corporation, 100 Paragon Drive, Montvale, New Jersey 07645

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

VIZIO Inc., 39 Tesla, Irvine, CA 92618

Xianyang CaiHong Optoelectronics Technology Co., Ltd., No.1, Gaoke Yilu, Qindu District, Xianyang, Shaanxi, 712000, China

TPV Technology, Ltd., Units 1208–16, 12/F, C-Bons International Center, 108

Wai Yip Street, Kwun Tong, Kowloon, Hong Kong

TPV Display Technology (Xiamen) Co., Ltd., No. 1, Xianghai Road, (Xiang'An) Industrial Zone, Torch Hi-New Zon, Xiamen, Fujian, 361101, China

TPV International (USA), Inc., 3737 Executive Center Drive, Suite 261, Austin, TX 78731

Trend Smart America, Ltd., 2 South Pointe Dr., Ste. 152, Lake Forest, CA 92630

Trend Smart CE Mexico S.R.L. De D.V., Sor Juana Ines De La Cruz No. 196202, Tijuana, Baja California 22435, Mexico

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be named as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–11360 Filed 5–26–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on May 12, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, MediaTek, Inc., Hsinchu, TAIWAN has become a party to this venture. Also, Onkyo Corporation, Osaka, JAPAN has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on March 10, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 20, 2020(85 FR 16133).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–11367 Filed 5–26–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Mobile Alliance

Notice is hereby given that, on May 11, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Mobile Alliance (''OMA'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, grandcentrix GmbH, Cologne, GERMANY; Institute for Information Industry (III), Taipei City, TAIWAN; Vasala Oyj, Vantaa, FINLAND, have been added as parties to this venture.

Also, Adups Tech. Co., Ltd., Zhangjiang, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Communications Global Certification Inc., Gweishan, Tao-Yuan, TAIWAN; Huawei Technologies Co., Ltd Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Invigo Offshore SAL, Beirut, LEBANON; Nautes Technology Inc, Anyang-si, Gyeonggido, REPUBLIC OF KOREA; Open Source Alliance, Jung-gu, Seoul, REPUBLIC OF KOREA; Orange SA, Bristol, UNITED KINGDOM; Redstone Sunshine (Beijing) Technology Co., Ltd., Haidian District, Beijing, PEOPLE'S REPUBLIC OF CHINA; RETHING IoT Technologies pc, Chalandri, Attiki, GREECE; SigMast Communications, Bedford, NS, CANADA; TeleCommunication Systems, Inc., Annapolis, MN; Works Systems, Inc, San Jose, CA; ZTE Corporation, Shenzhen, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on April 26, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 10, 2019 (84 FR 20660).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–11364 Filed 5–26–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Meeting of the NDCAC Executive Advisory Board

AGENCY: Justice Department.

ACTION: Virtual meeting notice.

SUMMARY: The purpose of this notice is to announce the virtual meeting of the Department of Justice's National Domestic Communications Assistance Center's (NDCAC) Executive Advisory Board (EAB). The meeting is being called to address the items identified in the Agenda detailed below.

DATES: The NDCAC EAB virtual meeting is open to the public, subject to the registration requirements detailed below. The EAB will meet in open session from 10:00 a.m. until 1:00 p.m. on June 10, 2020.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Alice Bardney-Boose, Designated Federal Officer, National Domestic Communications Assistance Center, Department of Justice, by email at *NDCAC@fbi.gov* or by phone at (540) 361–4600.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting will be called to order at 10:00 a.m. by EAB Chairman Al Cannon. All EAB members will be introduced and EAB Chairman Cannon will provide remarks. The EAB will: Receive an update and hold a discussion on the National Domestic Communications Assistance Center and the support it provides to the law enforcement; be provided a briefing on the FBI's future vision of the NDCAC; receive a briefing from the Manhattan District Attorney's Office; and receive a status report from its Administrative Subcommittee. *Note:* agenda items are subject to change.

The purpose of the EAB is to provide advice and recommendations to the Attorney General or designee, and to the Director of the NDCAC that promote public safety and national security by advancing the NDCAC's core functions: Law enforcement coordination with respect to technical capabilities and solutions, technology sharing, industry relations, and implementation of the Communications Assistance for Law Enforcement Act (CALEA). The EAB consists of 15 voting members from Federal, State, local and tribal law enforcement agencies. Additionally, there are two non-voting members as follows: A federally-employed attorney assigned full time to the NDCAC to serve as a legal advisor to the EAB, and the DOJ Chief Privacy Officer or designee to ensure that privacy and civil rights and civil liberties issues are fully considered in the EAB's recommendations. The EAB is composed of eight State, local, and/or tribal representatives and seven federal representatives.

Written Comments: Any member of the public may submit written comments to the EAB. Written comments must be provided to Ms. Alice Bardney-Boose, DFO, at least seven (7) days in advance of the meeting so that the comments may be made available to EAB members for their consideration prior to the meeting. Written comments must be submitted to *NDCAC@fbi.gov* on or before June 3, 2020.

In accordance with the FACA, all comments shall be made available for public inspection. Commenters are not required to submit personally identifiable information (such as name, address, etc.). Nevertheless, if commenters submit personally identifiable information as part of the comments, but do not want it made available for public inspection, the phrase ''Personally Identifiable Information'' must be included in the first paragraph of the comment. Commenters must place all personally identifiable information not to be made available for public inspection in the first paragraph and identify what information is to be redacted. *Privacy Act Statement:* Comments are being collected pursuant to the FACA. Any personally identifiable information included voluntarily within comments, without a request for redaction, will be used for the limited purpose of making all documents available to the public pursuant to FACA requirements.

Registration: Individuals and entities who wish to attend the public meeting are required to pre-register for the meeting on-line by clicking the registration link found at: *https://ndcac.fbi.gov/virtual-executive-advisory-board-meeting-registration.* Registrants will be provided information on how to access the virtual meeting through email.

Privacy Act Statement: The information requested on the registration form is being collected and used pursuant to the FACA for the limited purpose of ensuring accurate records of all persons present at the meeting, which records may be made publicly available. Providing information for registration purposes is voluntary; however, failure to provide the required information for registration purposes will prevent you from attending the meeting.

Online registration for the meeting must be completed on or before 5:00 p.m. (EST) May 27, 2020. Anyone requiring special accommodations should notify Ms. Bardney-Boose at least seven (7) days in advance of the meeting or indicate your requirements on the online registration form.

Alice Bardney-Boose,

Designated Federal Officer, National Domestic Communication Assistance Center, Executive Advisory Board.

[FR Doc. 2020–11263 Filed 5–26–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0240]

Agency Information Collection Activities; Proposed Collection Comments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2020 Law Enforcement Administrative and Management Statistics (LEMAS) Survey

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, allowing a 60-day comment period. Following publication of the 60-day notice, BJS received two requests for the survey instruments and one set of comments. The comments suggested new items to add to the instruments but no changes were made. New items require cognitive testing which at this point would result in a significant delay to launching the survey.

DATES: Comments are encouraged and will be accepted for 30 days until June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of the Law Enforcement Management and Administrative Statistics (LEMAS) Survey, with changes, a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* 2020 Law Enforcement Management and Administrative Statistics Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is CJ–44. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Respondents will be general purpose state, county and local law enforcement agencies (LEAs), including local and county police departments, sheriff's offices, and primary state law enforcement agencies. Since 1987, BJS has collected information about the personnel, policies, and practices of law enforcement agencies via the Law Enforcement Management and Administrative Statistics (LEMAS) survey. This core survey, which has been administered every 4 to 6 years, has been used to produce nationally representative estimates on the demographic characteristics of sworn personnel, hiring practices, operations, equipment, technology, and agency policies and procedures. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An agency-level survey will be sent to approximately 3,500 LEA respondents. At the time of the 60-day notice, the expected burden was about 2.33 hours per respondent. Based on additional analysis of cognitive interviewing results, the expected burden placed on these respondents is about 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* At the time of the 60-day notice, there was an estimated 8,155 total burden hours associated with this collection. With the burden update to about 2.5 hours per respondent, there are an estimated 8,750 total burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–11319 Filed 5–26–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Announcing Discontinuation of the DOL Lock-Up Facility for Participating News Media Organizations With Pre-Release Access to Statistical Information

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) plans to discontinue use of the lock-up facility currently available for participating news media organizations to access statistical information prior to official release time. This **Federal Register** Notice supersedes the previous Notice issued on February 7, 2020, which announced the DOL's intent to eliminate use of electronic devices in the lock-up room. As a result of the COVID–19 pandemic, use of the lock-up facility has been indefinitely suspended since March 20, 2020, and timely and orderly distribution of DOL statistical information has been accomplished at official release time through DOL websites, social media channels, and email subscription lists. This notification announces the permanent discontinuation of the DOL lock-up facility effective June 3, 2020, regardless of whether the current restrictions in place as a result of the COVID–19 pandemic remain necessary as of that date.

FOR FURTHER INFORMATION CONTACT: Michael Trupo, Deputy Assistant Secretary, Office of Public Affairs, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC; 202–693–4676; *trupo.michael@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Management and Budget (OMB) is responsible for the development and oversight of Government-wide policies, principles, standards, and guidelines concerning statistical information presentation and dissemination, as well as the timely release of statistical data. OMB has issued a series of Statistical Policy Directives (SPDs) to guide agencies in their dissemination of statistical products to ensure timely and equitable distribution of data to the public. Each of these SPDs describes the fundamental statistical-system principle of equitable and timely dissemination of statistical information to the public. *See, e.g.,* SPD No. 1, Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units (Dec. 2, 2014) (''The objectivity of the information released to the public is maximized by making information available on an equitable, policy-neutral, transparent, timely, and punctual basis''); SPD No. 3, Compilation, Release, and Evaluation of Principal Federal Economic Indicators (Sept. 25, 1985) (emphasizing the importance of releasing Principal Federal Economic Indicators (PFEIs) to the public in a fair and orderly manner); SPD No. 4, Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies (Mar. 7, 2008) (''Statistical agencies must ensure that all users have equitable and timely access to data that are disseminated to the public.''). In short, equitable and timely dissemination of statistical information is a core principle of Federal statistical policy.

Since the mid-1980s, consistent with these SPDs, DOL agencies have provided pre-release data access to news

organizations, as a courtesy, under strict embargoes (known as ''lock-ups'') for PFEIs. PFEIs are a set of designated economic data series (*e.g.,* the Employment Situation or Consumer Price Index) that have significant commercial value and may affect the movement of commodity and financial markets upon release. DOL, in its discretion, has employed lock-ups for the release of limited non-PFEI data (*i.e.,* Unemployment Insurance Weekly Claims). Although not required to do so, DOL in 1988 constructed a special lock-up facility to provide pre-release access to news media organizations. DOL took steps to enhance the security of the lock-up facility, including in 1992 and again in 2011–2012. These lock-ups have provided participating media organizations a period of time (typically 30 minutes) to review data prior to the official release time. At the official release time, DOL has opened the communication lines within the facility, allowing the press to transmit their articles or tables of data to the public.

For many years, dissemination through the lock-up process served as one of several effective methods to assist the government in getting information to the public. But today, with increased communication and technology capabilities utilized by the government, the media, and the general public, this particular method is no longer necessary and discontinuation of the lock-up best ensures the equitable and timely dissemination of statistical information consistent with OMB's guidance. Continuing security, resource, and equity concerns also outweigh any benefits of the current process.

DOL's Inspector General has noted concerns with the current press lock-up process, including in reports dated January 2, 2014 (17–14–001–03–315) and March 25, 2016 (17–16–001–01–001) and in every subsequent Semi-Annual OIG Report to Congress. Specifically, DOL Inspector General Report 17–14–001–03–315 states that the lock-up ''unintentionally creates an unfair competitive advantage for certain news organizations and their clients'':

> Pre-release access of DOL-generated economic data is intended to serve the general public by ensuring that news reports about the data are accurate. To that end, the media are given access to the data in advance of the public release to facilitate their ability to analyze and ask questions about the data as they prepare their news stories. However, the intended purpose of ensuring accurate news reports must be weighed against the inequitable trading advantage that a lock-up can potentially create. Several news organizations that participate in the DOL press lock-up are able to profit from their presence in the lock-up by selling, to traders, high speed data feeds of economic data formatted for computerized algorithmic trading. Because these news organizations have pre-release access, they are able to pre-load the data . . . allowing their clients to get this information faster than the general public, which has to wait to download the data after it gets posted to the Department of Labor websites.

The aforementioned report further recommends that BLS and ETA ''. . . implement a strategy designed to eliminate any competitive advantage that news organizations present in the lock-up and/or their clients may have; or, absent a viable solution, consider discontinuing the use of the press lock-up that provides news organizations pre-release access.'' Some media lock-up attendees continue to post online advertisements claiming that their clients are advantaged by their lock-up attendance.[1]

To protect the integrity of our data releases and to ensure dissemination of key economic data in an equitable, timely, secure, and cost-effective manner, as of June 3, 2020, DOL will permanently discontinue use of the lock-up facility, regardless of whether the restrictions that are currently in place as a result of the COVID–19 pandemic remain necessary as of that date. Discontinuing use of the lock-up facility eliminates the risk of premature disclosure of the data by the press or as a result of the lock-up embargo process, and eliminates the risk of providing an unfair competitive advantage to lock-up participants and their clients compared to the rest of the public due to the preparation time provided by the media's early access to the data. BLS and ETA will continue to make their data available to the general public immediately upon their 8:30AM Eastern Time release through the Web and other sources.

II. Action

As a result of the COVID–19 pandemic, the DOL lock-up facility is currently closed, and will remain closed at least through June 3, 2020. In an effort to protect the integrity of our data and ensure fairness in the dissemination of statistical information, DOL plans to permanently discontinue use of the DOL lock-up facility starting on June 3, 2020. After that date, regardless of any restrictions that may remain in place as a result of the COVID–19 pandemic, DOL will no longer provide credentialed press early access to the economic data under embargo conditions in a lock-up. Instead, data will be released to the general public all at once, through online publication. The purpose of this action is to ''ensure that all users have equitable and timely access to data that are disseminated to the public,'' as noted in OMB SPD No. 4.

The previously proposed policy change to suspend the use of electronic devices in the lock-up room (see 85 FR 7333), was designed to retain the media's ability to publish accurate and informed stories shortly after the embargo was lifted. During the suspension of the media lock-up room for the ongoing COVID–19 pandemic, however, the media demonstrated their ability to produce informed and accurate articles within minutes of the electronic release to the BLS website despite not having early access to the data at all.

Furthermore, DOL invests significant personnel and financial resources to administer and staff the lock-up facility, ensure that data products are created and transported to the lock-up facility, and secure the lock-up facility. Discontinuing lock-ups, as opposed to merely eliminating use of electronic devices, will enable DOL to cease these expenditures while also eliminating entirely any possibility of a breach from the lock-up room. As explained in more detail below, the recent COVID–19 experience demonstrates that DOL can eliminate the overhead and risk of lock-up rooms altogether without degrading the quality or timeliness of media coverage.

At the appropriate scheduled times, BLS and ETA will provide access to official news releases on the agency websites. In addition, the agencies will issue releases through social media and to email subscribers. Agencies will continue to respond to questions about the data from the public, including the media, following the releases.

III. Necessity of Action

When DOL first used embargoed data releases in the mid-1980s, media dissemination was an equitable and timely method to get data to the public. Today, technology and the internet permit the public and interested data users to obtain releases for themselves. However, unlike media organizations in

[1] For example, as recently as May 12, 2020, the Associated Press advertised on their event-driven data page that users can ''[g]et the lowest-latency delivery of economic release from Washington DC lock-ups'' and that their ''low-latency delivery of economic releases, coupled with [their] machine-readable format of [their] entire text news output, gives firms the data they need to make informed, split-second decisions.'' *See* Associated Press, Microseconds Matter, *https://www.ap.org/discover/event-driven-data* (last visited May 12, 2020). *See also* Dow Jones, Calendar Live, *https://professional.dowjones.com/newswires/calendar-live/* (last visited May 12, 2020) (advertising that they can provide ''[s]ub-second updates on actual data from government lockups, banks, industry, and trade groups'').

the lock-up facility, internet users are not allowed to digest data 30 minutes before the official release time. Internet users are also disadvantaged relative to lock-up participants to the extent that internet postings may lag slightly behind lock-up transmissions. Developments in high-speed algorithmic trading technology have also raised concerns about the possible impact of unequal access to sensitive economic data. As discussed above, DOL's Inspector General has issued multiple reports with findings that the current press lock-up ''creates an unfair competitive advantage for certain news organizations and their clients.''

It was never the intent of DOL in establishing the lock-up facility to provide a financial windfall to paying clients of credentialed media organizations, or to allow credentialed media organizations to profit off of the privilege of early access to government data. DOL does not wish to facilitate those practices. Although DOL understands that certain high-frequency trading firms may retain some advantage in faster ingestion and downloading of government data even after the lock-up process is discontinued, DOL itself will no longer have any role in facilitating such an advantage.

It is no longer necessary to use the credentialed news media to help the Department disseminate DOL's statistical data widely because the internet permits the public and interested users to obtain releases for themselves. Discontinuing the lock-up will not disadvantage the lock-up participants; it will merely remove the advantage they currently enjoy. In the time since the OIG recommendations were issued, BLS and ETA have devoted significant resources to introducing improved technologies to ensure data are posted and accessible on their websites immediately following the official release time. When the COVID–19 pandemic required the closure of the media lock-up in March of 2020, these improved technologies allowed BLS and ETA to disseminate the data immediately and widely to the public without incident and without providing early access to lock-up participants. Specifically, the March Employment Situation report, released on April 3, 2020 without a lock-up, demonstrates that the BLS website can serve all interested users in the seconds after release time with little or no degradation in response time and a negligible error rate. The same holds true for the Unemployment Insurance Weekly Claims Reports issued since March 20, 2020. Stories in the press covering the March data were available to the public only slightly later—and, in at least one case, actually earlier—than they were a month earlier when a lock-up was held. Given this success over the past two months, DOL now believes it can continue to disseminate the data to the public, including the media, in a timely manner. DOL will therefore discontinue the use of the lock-up facility to allow all parties, including the media, commercial entities, and the public, equitable and timely access to our most important statistical data.

IV. Result

By permanently discontinuing the lock-up facility as of June 3, 2020, DOL intends to protect the integrity of its data and enable dissemination of news releases in an equitable, secure, and cost-effective manner so that all information is available to the public and the media at the official release time.

The Commerce Department's Bureau of Economic Analysis and U.S. Census Bureau are also committed to the secure, timely, and equitable release of all data. As such, for the reasons stated in this notice, both Bureaus will also discontinue embargoed media lock-ups at the Department of Labor's facility and will continue to release their data securely through their websites.

Signed at Washington, DC, this 19th day of May 2020.

William W. Beach,

Commissioner of Labor Statistics.

[FR Doc. 2020–11297 Filed 5–26–20; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. MSHA–2018–0015]

Escapeways and Refuges in Underground Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of cancellation; Program Policy Letter.

SUMMARY: The Mine Safety and Health Administration (MSHA) cancels a Program Policy Letter (PPL) that was issued on July 29, 2019 to provide guidance on escapeways and refuges used by underground metal and nonmetal miners in emergency situations.

DATES: Cancellation as of May 27, 2020.

ADDRESSES:

Federal Register Publications: Access rulemaking documents electronically at *http://www.msha.gov/regsinfo.htm* or *http://www.regulations.gov* [Docket Number: MSHA–2018–0015].

Email Notification: To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://www.msha.gov/subscriptions.*

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *fontaine.roslyn@dol.gov* (email), 202–693–9440 (voice), or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Cancellation of Program Policy Letter

On July 29, 2019, MSHA published in the **Federal Register** a PPL to clarify requirements in 30 CFR 57.11050, Escapeways and Refuges, together with a request for public comment (84 FR 36623). The PPL was intended to assist MNM mine operators with guidance on the placement of escapeways and refuges that underground miners need to use in emergency situations. On October 10, 2019, MSHA also held a public stakeholder meeting to ensure that the public would have additional opportunities to provide feedback. After reviewing all the comments received during both the public comment period and the stakeholder meeting, MSHA has now determined that the clarification in this PPL is not needed. Therefore, MSHA cancels the PPL.

(Authority: 30 U.S.C. 811)

David G. Zatezalo,

Assistant Secretary of Labor for Mine Safety and Health Administration.

[FR Doc. 2020–11300 Filed 5–26–20; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0035]

The Ethylene Oxide (EtO) Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements

specified in the Ethylene Oxide (EtO) Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by July 27, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0035, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2009–0035) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security number and date of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the below phone number to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The EtO Standard (29 CFR 1910.1047) specifies a number of paperwork requirements. The following is a brief description of the collection of information requirements contained in the standard.

The information collection requirements specified in the Ethylene Oxide Standard protect workers from the adverse health effects that may result from occupational exposure to ethylene oxide. The principal information collection requirements in the EtO Standard include conducting worker exposure monitoring, notifying workers of the exposure, implementing a written compliance program, and implementing medical surveillance of workers. Also, the examining physician must provide specific information to ensure that workers receive a copy of their medical examination results. The employer must maintain exposure-monitoring and medical records for specific periods, and provide access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and their authorized representatives and other designated parties.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the collection of information (paperwork) requirements contained in the Ethylene Oxide Standard. There is an overall adjustment increase in burden hours for this ICR. The burden hours have increased a total of 3,377 hours (from 27,880 hours to 31,257 hours). The adjustment increase is primarily due to estimated number of establishments covered by the standard.

Type of Review: Extension of a currently approved collection.

Title: Ethylene Oxide (EtO) Standard (29 CFR 1910.1047).

OMB Number: 1218–0108.

Affected Public: Businesses or other for-profits.

Number of Respondents: 2,085.

Frequency of Response: Initially, annually; on occasion.

Total Responses: 112,016.

Average Time per Response: Various.

Estimated Total Burden Hours: 31,257.

Estimated Cost (Operation and Maintenance): $4,971,000.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for this ICR (Docket No. OSHA–2009–0035). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you

must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as your social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice.

The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 19, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–11299 Filed 5–26–20; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0182]

Information Collection: License and Radiation Safety Requirements for Well-Logging

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''License and Radiation Safety Requirements for Well-Logging.''

DATES: Submit comments by July 27, 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 on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0182. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0182 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0182. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0182 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html* then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession ML19298C513.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2019–0182 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the

information collection summarized below.

1. *The title of the information collection:* 10 CFR part 39, ''License and Radiation Safety Requirements for Well-Logging''.

2. *OMB approval number:* 3150–0130.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* N/A.

5. *How often the collection is required or requested:* Applications for new licenses and amendments may be submitted at any time (on occasion). Applications for renewal are submitted every 15 years. Reports are submitted as events occur.

6. *Who will be required or asked to respond:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for well logging.

7. *The estimated number of annual responses:* 3,804.

8. *The estimated number of annual respondents:* 180.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 40,454.

10. *Abstract:* Part 39 of Title 10 of the *Code of Federal Regulations* (10 CFR), establishes radiation safety requirements for the use of radioactive material for well logging. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: May 21, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–11315 Filed 5–26–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0171]

Information Collection: Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, 'Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.' ''

DATES: Submit comments by June 26, 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 on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0171 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0171.
- *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML20105A073 and ML19311C796.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR part 34, 'Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.' '' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 5, 2020 (85 FR 6585).

1. *The title of the information collection:* ''10 CFR part 34, 'Licenses for Radiography and Radiation Safety

Requirements for Radiographic Operations.'''

2. *OMB approval number:* 3150–0007.

3. *Type of submission:* Extension.

4. *The form number if applicable:* N/A.

5. *How often the collection is required or requested:* Applications for new licenses and amendments may be submitted at any time (on occasion). Applications for renewal are submitted every 15 years. Reports are submitted as events occur.

6. *Who will be required or asked to respond:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

7. *The estimated number of annual responses:* 3,296.

8. *The estimated number of annual respondents:* 607.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 270,760 (5,213.5 reporting + 241,448.98 recordkeeping + 24,097.9 third party disclosure).

10. *Abstract:* Part 34 of Title 10 of the *Code of Federal Regulations,* establishes radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Dated: May 21, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–11311 Filed 5–26–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 25, June 1, 8, 15, 22, 29, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of May 25, 2020

There are no meetings scheduled for the week of May 25, 2020.

Week of June 1, 2020—Tentative

There are no meetings scheduled for the week of June 1, 2020.

Week of June 8, 2020—Tentative

There are no meetings scheduled for the week of June 8, 2020.

Week of June 15, 2020—Tentative

There are no meetings scheduled for the week of June 15, 2020.

Week of June 22, 2020—Tentative

There are no meetings scheduled for the week of June 22, 2020.

Week of June 29, 2020—Tentative

There are no meetings scheduled for the week of June 29, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 21, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–11392 Filed 5–22–20; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0124]

Information Collection: Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR and Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget (OMB) for emergency processing; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on our request for emergency review for and OMB approval of the information collection that is summarized below. The information collection is entitled, ''Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR And Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms''.

DATES: Submit comments by July 27, 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 on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0124. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0124 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–2020–0124. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0124 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML20141L572 and ML20141L573. The supporting statement is available in ADAMS under Accession No. ML20141L524.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0124 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov/* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations under section 1320.13 of title 5 of the *Code of Federal Regulations* (CFR). We cannot reasonably comply with the normal clearance procedures because an unanticipated event has occurred, as stated in 5 CFR 1320.13(a)(2)(ii). This information collection only addresses the incremental burden change to an existing clearance and not the total burden for the clearance.

1. *The title of the information collection:* Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR And Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms.

2. *OMB approval number:* 3150–0014.

3. *Type of submission:* Revision.

4. *The form number, if applicable:* There is no form number for the online submission form.

5. *How often the collection is required or requested:* On Occasion.

6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'' who seek exemptions from the medical evaluation frequency and fit-testing frequency requirements specified in 10 CFR 20.1703(c)(5)(iii) and 10 CFR 20.1703(c)(6), as allowed by 10 CFR 20.2301 ''Applications for exemptions.''

7. *The estimated number of annual responses:* 60.

8. *The estimated number of annual respondents:* 60.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 120.

10. *Abstract:* The NRC requested an emergency review of this information collection in order to add this form to the previously approved information collection OMB Control Number 3150–0014 for a period of 6 months. The purpose of this information collection is to introduce the Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR and the Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms that simplifies the filing the exemption requests because the existing system may be too burdensome for licensees under current conditions. Under the existing collection under OMB Control No. 3150–0014, licensees are already able to seek exemptions from the requirements of 10 CFR part 20, Standards for Protection Against Radiation. This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

10 CFR part 20 contains specific requirements for respiratory protection. Due to the impacts of the COVID–19 public health emergency (PHE), the NRC will also consider exemption requests for the medical evaluation frequency and fit-testing frequency requirements specified in 10 CFR 20.1703(c)(5)(iii) and 10 CFR 20.1703(c)(6); these exemptions would allow delay of these requirements during the COVID–19 PHE as allowed by 10 CFR 20.2301 ''Applications for exemptions.''

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: May 21, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–11321 Filed 5–26–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289; NRC–2020–0122]

Exelon Generation Company, LLC; Three Mile Island Nuclear Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a partial exemption in response to a July 12, 2019, request from Exelon Generation Company, LLC (the licensee). The issuance of the exemption grants the licensee a partial exemption from regulations that require the retention of records for certain systems, structures, and components associated with Three Mile Island Nuclear Station, Unit 1, until the termination of its operating license.

DATES: The exemption was issued on May 19, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0122 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 *http://www.regulations.gov* and search for Docket ID NRC–2020–0122. 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.
- *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 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.

FOR FURTHER INFORMATION CONTACT: Justin C. Poole, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2048, email: *Justin.Poole@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: May 21, 2020.

For the Nuclear Regulatory Commission.

James S. Kim,

Project Manager, Projects Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment: Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50–289

Exelon Generation Company, LLC; Three Mile Island Nuclear Station, Unit 1

Exemption

Exelon Generation Company, LLC (Exelon or the licensee) is the holder of Renewed Facility Operating License No. DPR–50 for Three Mile Island Nuclear Station, Unit 1 (TMI–1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The TMI–1 facility is located in Dauphin County, Pennsylvania.

By letter dated June 20, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17171A151), Exelon submitted a certification in accordance with Section 50.82(a)(1)(i) of Title 10 of the *Code of Federal Regulations* (10 CFR), stating its determination to permanently cease operations at TMl-1 no later than September 30, 2019. By letter dated September 26, 2019 (ADAMS Accession No. ML19269E480), Exelon submitted to the NRC a certification in accordance with 10 CFR 50.82(a)(1)(ii), stating that as of September 26, 2019, all fuel had been permanently removed from the TMl-1 reactor vessel. However, the licensee is still authorized to possess and store irradiated nuclear fuel. Irradiated fuel is currently being stored onsite in a spent fuel pool (SFP). TMI–1 is currently designing and constructing an independent spent fuel storage installation (ISFSI) facility, which is expected to be completed in early 2021 and that will allow for dry cask storage. The irradiated fuel will be stored in the ISFSI until it is shipped offsite. With the reactor emptied of fuel, the reactor, reactor coolant system, and secondary system will no longer be in operation and will have no function related to the safe storage and management of irradiated fuel.

II. Request/Action

By letter dated July 12, 2019 (ADAMS Accession No. ML19193A005), Exelon submitted a partial exemption request for NRC approval from the record retention requirements of: (1) 10 CFR part 50, Appendix B, Criterion XVII, which requires certain records (*e.g.,* results of inspections, tests, and materials analyses) be maintained, consistent with applicable regulatory requirements; (2) 10 CFR 50.59(d)(3), which requires that records of changes in the facility must be maintained until termination of a license is issued pursuant to 10 CFR part 50; and (3) 10 CFR 50.71(c), which requires certain records to be retained for the period specified by the appropriate regulation, license condition, or technical specification (TS), or until termination of the license, if not otherwise specified.

The licensee requested the partial exemptions because it wants to eliminate: (1) Records associated with structures, systems, and components (SSCs) and activities that were applicable to the nuclear unit, which are no longer required by the 10 CFR part 50 licensing basis (*i.e.,* removed from the Updated Final Safety Analysis Report (UFSAR) and/or TSs by appropriate change mechanisms; and (2) records associated with the storage of spent nuclear fuel in the SFP once all fuel has been removed from the spent fuel pool and the TMI–1 license no longer allows storage of fuel in the SFP. The licensee cites record retention partial exemptions granted to Oyster Creek Nuclear Generating Station (ADAMS Accession No. ML18122A306); Millstone Power Station, Unit 1 (ADAMS Accession No. ML070110567); Zion Nuclear Power Station, Units 1 and 2 (ADAMS Accession No. ML111260277); Vermont Yankee Nuclear Power Station (ADAMS Accession No. ML15344A243); San Onofre Nuclear Generating Station, Units 1, 2, and 3 (ADAMS Accession No. ML15355A055); Kewaunee Power Station (ADAMS Accession No. ML17069A394); and Fort Calhoun Station (ADAMS Accession No. ML17172A730), as examples of the NRC granting similar requests.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security and quality assurance, are not affected by the partial exemption request because they will be retained as decommissioning records, as required by 10 CFR part 50, until the termination of the TMI–1 license. In addition, the licensee did not request an exemption

associated with any other recordkeeping requirements for the storage of spent fuel at its ISFSI under 10 CFR part 50 or the general license requirements of 10 CFR part 72. No exemption was requested from the decommissioning records retention requirements of 10 CFR 50.75 or any other requirements of 10 CFR part 50 applicable to decommissioning and dismantlement.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are described in 10 CFR 50.12(a)(2).

Many of the TMI–1 reactor facility SSCs are planned to be abandoned in place pending dismantlement. Abandoned SSCs will no longer be operable or maintained. Following permanent removal of fuel from the SFP, those SSCs required to support safe storage of spent fuel in the SFP will also be abandoned. In its July 12, 2019, partial exemption request, the licensee stated that the basis for eliminating records associated with reactor facility SSCs and activities is that these SSCs have been (or will be) removed from service per regulatory change processes, dismantled or demolished, and no longer have any function regulated by the NRC.

The licensee recognizes that some records related to the nuclear unit will continue to be under NRC regulation primarily due to residual radioactivity. The radiological and other necessary programmatic controls (such as security, quality assurance, etc.) for the facility and the implementation of controls for the defueled condition and the decommissioning activities are and will continue to be appropriately addressed through the license and current plant documents such as the UFSAR and TSs. Except for future changes made through the applicable change process defined in the regulations (*e.g.,* 10 CFR 50.48(f), 10 CFR 50.59, 10 CFR 50.90, 10 CFR 50.54(a), 10 CFR 50.54(p), 10 CFR 50.54(q), etc.), these programmatic elements and their associated records are unaffected by the requested partial exemption.

Records necessary for SFP SSCs and activities will continue to be retained through the period that the SFP is needed for safe storage of irradiated fuel. Analogous to other plant records, once the SFP is permanently emptied of fuel, there will be no need for retaining SFP-related records.

Exelon's general justification for eliminating records associated with TMI–1 SSCs that have been or will be removed from service under the NRC license, dismantled, or demolished, is that these SSCs will not in the future serve any TMI–1 functions regulated by the NRC. Exelon's decommissioning plans for TMI–1 are described in the Post Shutdown Decommissioning Activities Report dated April 5, 2019 (ADAMS Accession No. ML19095A041). The licensee's decommissioning process involves evaluating SSCs with respect to the current facility safety analysis; progressively removing them from the licensing basis where necessary through appropriate change mechanisms (*e.g.,* 10 CFR 50.59 or by NRC-approved TS changes, as applicable); revising the defueled safety analysis report and/or UFSAR as necessary; and then proceeding with an orderly dismantlement.

Exelon intends to retain the records required by its license as the state of the facility transitions through decommissioning. However, equipment abandonment will obviate the regulatory and business needs for maintenance of most records. As the SSCs are removed from the licensing basis, Exelon asserts that the need for its records is, on a practical basis, eliminated. Therefore, Exelon is requesting partial exemptions from the associated records retention requirements for SSCs and historical activities that are no longer relevant. Exelon is not requesting to be exempted from any recordkeeping requirements for storage of spent fuel at an ISFSI under 10 CFR part 50 or the general license requirements of 10 CFR part 72.

A. The Exemption Is Authorized by Law

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from 10 CFR part 50 requirements if it makes certain findings. As described here and in the sections below, the NRC staff has determined that special circumstances exist to grant the partial exemption. In addition, granting the licensee's proposed partial exemption will not result in a violation of the Atomic Energy Act of 1954, as amended; other laws; or the Commission's regulations. Therefore, the granting of the partial exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

As SSCs are prepared for SAFSTOR and eventual decommissioning and dismantlement, they will be removed from NRC licensing basis documents through appropriate change mechanisms, such as through the 10 CFR 50.59 process or through a license amendment request approved by the NRC. These change processes involve either a determination by the licensee or an approval from the NRC that the affected SSCs no longer serve any safety purpose regulated by the NRC. Therefore, the removal of the SSCs would not present an undue risk to public health and safety. In turn, elimination of records associated with these removed SSCs would not cause any additional impact to public health and safety.

The granting of the partial exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the records described is administrative in nature and will have no impact on any remaining decommissioning activities or on radiological effluents. The granting of the partial exemption request will only advance the schedule for disposition of the specified records. Because these records contain information about SSCs associated with reactor operation and contain no information needed to maintain the facility in a safe condition when the facility is permanently defueled and the SSCs are dismantled, the elimination of these records on an advanced timetable will have no reasonable possibility of presenting any undue risk to the public health and safety.

C. The Exemption is Consistent With the Common Defense and Security

The elimination of the recordkeeping requirements does not involve information or activities that could potentially impact the common defense and security of the United States. Upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear security.

Rather, the partial exemption requested is administrative in nature and would only advance the current schedule for disposition of the specified records. Therefore, the partial exemption request from the recordkeeping requirements of 10 CFR

50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the types of records described is consistent with the common defense and security.

D. Special Circumstances

Paragraph 50.12(a)(2) of 10 CFR states, in part:

> The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever— . . .
>
> (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or
>
> (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted . . .

Criterion XVII of Appendix B to 10 CFR part 50 states, in part: ''Sufficient records shall be maintained to furnish evidence of activities affecting quality.''

Paragraph 50.59(d)(3) of 10 CFR states, in part: ''The records of changes in the facility must be maintained until the termination of an operating license issued under this part . . .''

Paragraph 50.71(c) of 10 CFR, states, in part:

> Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license. . . .

In the statement of considerations for the final rulemaking, ''Retention Periods for Records'' (53 FR 19240; May 27, 1988), in response to public comments received during the rulemaking process, the NRC stated that records must be retained ''for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety.'' In the statement of considerations, the Commission also explained that requiring licensees to maintain adequate records assists the NRC ''in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident.''

These regulations apply to licensees in decommissioning. During the decommissioning process, safety-related SSCs are retired or disabled and subsequently removed from NRC licensing basis documents by appropriate change mechanisms. Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval from the NRC that the SSC no longer has the potential to cause an accident, event, or other problem that would adversely impact public health and safety.

The records subject to removal under this partial exemption request are associated with SSCs that had been important to safety during power operation or operation of the SFP, but are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, as evidenced by their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then it is reasonable to conclude that the records associated with these SSCs would not reasonably be necessary to assist the NRC in determining compliance and noncompliance, taking action on possible noncompliance, or examining facts following an incident. Therefore, their retention would not serve the underlying purpose of the rule.

In addition, once removed from the licensing basis documents (*e.g.,* UFSAR or TSs), SSCs are no longer governed by the NRC's regulations, and therefore, are not subject to compliance with the safety and health aspects of the nuclear environment. As such, retention of records associated with SSCs that are or will no longer be part of the facility serves no safety or regulatory purpose, nor does it serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment in order to accomplish the NRC's mission. Therefore, special circumstances are present that the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(ii), to grant the partial exemption request.

Records that continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety in support of the NRC's mission, will continue to be retained pursuant to other regulations in 10 CFR part 50 and 10 CFR part 72. Retained records that are not subject to the proposed partial exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, security, and quality assurance, as well as records associated with the ISFSI and spent fuel assemblies.

The retention of records required by 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rule results in a considerable cost to the licensee. Retention of the volume of records associated with the SSCs during the operational phase is appropriate to serve the underlying purpose of determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident, as discussed.

However, the cost effect of retaining operational phase records beyond the operations phase until the termination of the license was not fully considered or understood when the records retention rule was put in place. For example, existing records storage facilities are eliminated as decommissioning progresses. Retaining records associated with SSCs and activities that no longer serve a safety or regulatory purpose would, therefore, result in an unnecessary financial and administrative burden. As such, compliance with the rule would result in an undue cost in excess of that contemplated when the rule was adopted. Therefore, special circumstances are present that the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(iii), to grant the partial exemption request.

E. Environmental Considerations

Pursuant to 10 CFR 51.22(b) and (c)(25), the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR part 50 meets the eligibility criteria for categorical exclusion provided that: (1) There is no significant hazards consideration; (2) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (3) there is no significant increase in individual or cumulative public or occupational radiation exposure; (4) there is no significant construction impact; (5) there is no significant increase in the potential for or consequences from radiological accidents; and (6) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The partial exemption request is administrative in nature. The partial exemption request has no effect on SSCs and no effect on the capability of any plant SSC to perform its design function. The partial exemption request would not increase the likelihood of the malfunction of any plant SSC.

The probability of occurrence of previously evaluated accidents is not

increased since most previously analyzed accidents will no longer be able to occur, and the probability and consequences of the remaining fuel handling accident are unaffected by the partial exemption request. Therefore, the partial exemption request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The partial exemption request does not involve a physical alteration of the plant. No new or different types of equipment will be installed, and there are no physical modifications to existing equipment associated with the partial exemption request. Similarly, the partial exemption request will not physically change any SSCs involved in the mitigation of any accidents. Thus, no new initiators or precursors of a new or different kind of accident are created. Furthermore, the partial exemption request does not create the possibility of a new accident as a result of new failure modes associated with any equipment or personnel failures. No changes are being made to parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions, and no new failure modes are being introduced. Therefore, the partial exemption request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The partial exemption request does not alter the design basis or any safety limits for the plant. The partial exemption request does not impact station operation or any plant SSC that is relied upon for accident mitigation. Therefore, the partial exemption request does not involve a significant reduction in a margin of safety.

For these reasons, the NRC staff has determined that approval of the partial exemption request involves no significant hazards consideration because granting the licensee's partial exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) at the decommissioning TMI–1 does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety (10 CFR 50.92(c)). Likewise, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure.

The partial exempted regulations are not associated with construction, so there is no significant construction impact. The partial exempted regulations do not concern the source term (*i.e.,* potential amount of radiation involved for an accident) or accident mitigation; therefore, there is no significant increase in the potential for, or consequences from, radiological accidents. Allowing the licensee partial exemption from the record retention requirements for which the exemption is sought involves recordkeeping requirements, as well as reporting requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

The NRC staff has determined that the granting of the partial exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) will not present an undue risk to the public health and safety. The destruction of the identified records, following permanent removal of the related SSCs and/or SFP from service, will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security. The NRC staff has determined that the destruction of the identified records at that time is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States.

The purpose for the recordkeeping regulations is to assist the NRC in carrying out its mission to protect the public health and safety by ensuring that the licensing and design basis of the facility are understood, documented, preserved, and retrievable in such a way that will aid the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Since the TMI–1 SSCs that were safety-related or important to safety have been or will have been removed from the licensing basis and permanently removed from service prior to destruction of the related records, the NRC staff has determined that the records identified in the partial exemption request will no longer be required to achieve the underlying purpose of the records retention rule.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the partial exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon a partial exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for TMI–1 only to the extent necessary to allow the licensee to advance the schedule to remove records associated with SSCs that have been or will have been removed from NRC licensing basis prior to the destruction of the related documents by appropriate change mechanisms (*e.g.,* 10 CFR 50.59 or by NRC-approved license amendment request, as applicable).

This exemption is effective upon issuance.

Dated: May 19, 2020.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–11347 Filed 5–26–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0049]

Information Collection: ''Standard Specification for the Granting of Patent Licenses''

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Standard Specification for the Granting of Patent Licenses.' ''

DATES: Submit comments by July 27, 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 on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search

for Docket ID NRC–2020–0049. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0049 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–2020–0049. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0049 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *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 supporting statement is available in ADAMS under Accession No. ML20104A035.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0049 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 81, ''Standard Specification for the Granting of Patent Licenses.''

2. *OMB approval number:* 3150–0121.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* N/A.

5. *How often the collection is required or requested:* Applications for licenses are submitted once. Other reports are submitted annually, or as other events require.

6. *Who will be required or asked to respond:* Applicants for and holders of NRC licenses to NRC inventions.

7. *The estimated number of annual responses:* 1.

8. *The estimated number of annual respondents:* 1.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 10; however, no applications are anticipated during the next three years.

10. *Abstract:* As specified in Part 81 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC may grant nonexclusive licenses or limited exclusive licenses to its patented inventions to responsible applicants. Applicants for licenses to NRC inventions are required to provide information which may provide the basis for granting the requested license. In addition, all license holders must submit periodic reports on efforts to bring the invention to a point of practical application and the extent to which they are making the benefits of the invention reasonably accessible to the public. Exclusive license holders must submit additional information if they seek to extend their licenses, issue sublicenses, or transfer the licenses. In addition, if requested, exclusive license holders must promptly supply to the United States Government copies of all pleadings and other papers filed in any patent infringement lawsuit, as well as evidence from proceedings relating to the licensed patent.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: May 21, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–11317 Filed 5–26–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–548; NRC–2020–0090]

Entergy Operations Inc.; River Bend Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Entergy Operations, Inc. (Entergy, the licensee) to withdraw its

application dated March 23, 2020, for a proposed amendment to River Bend Station, Unit 1 (River Bend), Renewed Facility Operating License No. NPF–47. The proposed amendment would have extended the implementation date for Amendment No. 197 to upgrade the River Bend Emergency Action Level scheme based on Nuclear Energy Institute (NEI) 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' from May 13, 2020, to September 30, 2020, due to the ongoing COVID–19 pandemic and the resulting impact on the station.

DATES: May 27, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0090 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–2020–0090. 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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

FOR FURTHER INFORMATION CONTACT: Thomas J. Wengert, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4037, email: *Thomas.Wengert@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Entergy to withdraw its March 23, 2020, application (ADAMS Accession No. ML20083N719) for a proposed amendment to River Bend, Renewed Facility Operating License No. NPF–47, located in West Feliciana Parish, Louisiana.

The proposed amendment would have extended the implementation date for Amendment No. 197 (ADAMS Accession No. ML19070A062), which approved a revision to the River Bend Emergency Plan to revise the emergency action level scheme to one based on the NEI document NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' from May 13, 2020, to September 30, 2020, due to the ongoing COVID–19 pandemic and the resulting impact on the station.

This proposed amendment request was noticed in the **Federal Register** on April 2, 2020 (85 FR 18590). Entergy requested to withdraw the request by letter dated April 24, 2020 (ADAMS Accession No. ML20115E516).

Dated: May 21, 2020.

For the Nuclear Regulatory Commission.

Thomas J. Wengert,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–11313 Filed 5–26–20; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Submission for OMB Emergency Review: Request for Comments

AGENCY: Peace Corps.

ACTION: Notice of information collection—OMB emergency review and request for comments requested.

SUMMARY: The Peace Corps has submitted the following information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 and OMB regulations. OMB approval has been requested by the Office of Volunteer Recruitment and Selection. OMB is particularly interested in comments that: Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; Enhance the quality, utility, and clarity of the information to be collected; and Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments on this proposal for emergency review should be received by May 22, 2020. If granted, the emergency approval is only valid for 180 days. We are requesting OMB to take action within two calendar days from the close of this **Federal Register** Notice on the request for emergency review.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Peace Corps or sent via email to *oira_submission@omb.eop.gov* or faxed to (202) 395–3086.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA Officer, Peace Corps, 1275 First Street NE, Washington, DC 20526, (202) 692–1887, or email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.13. The Peace Corps plans to follow this emergency request with a submission for a 3 year approval through OMB's normal PRA clearance process. We are seeking an emergency clearance to allow us to collect information from Returned Peace Corps Volunteers.

Title: Expedited Reinstatement Application.

OMB control number: Pending.

Type of request: New Emergency Review.

Affected public: Volunteers, Trainees, and Response Volunteers, who were recently evacuated from their countries of service in response to the coronavirus disease 2019 (COVID 19) pandemic.

Respondents' obligation to reply: Voluntary.

Burden to the public:

a. *Number of respondents:* 7, 000.

b. *Frequency of response:* 1.

c. *Completion time:* 15 Minutes.

d. *Annual burden hours:* 1,750.

e. *Estimated cost to respondents:* $ 0.00.

This notice issued in Washington, DC on May 22, 2020.

Virginia Burke,

FOIA/Privacy Act Officer/Management.

[FR Doc. 2020–11415 Filed 5–22–20; 4:15 pm]

BILLING CODE 6051–01–P

PEACE CORPS

Submission for OMB Emergency Review: Request for Comments

AGENCY: Peace Corps.

ACTION: Notice of information collection—OMB emergency review and request for comments requested.

SUMMARY: The Peace Corps has submitted the following information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 and OMB regulations. OMB approval has been requested by the Office of Peace Corps Response. OMB is particularly interested in comments that: Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; Enhance the quality, utility, and clarity of the information to be collected; and Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments on this proposal for emergency review should be received by May 26, 2020. If granted, the emergency approval is only valid for 180 days. We are requesting OMB to take action within two calendar days from the close of this **Federal Register** Notice on the request for emergency review.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Peace Corps or sent via email to *oira_submission@omb.eop.gov* or faxed to (202) 395–3086.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA Officer, Peace Corps, 1275 First Street NE, Washington, DC 20526, (202) 692–1887, or email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.13. The Peace Corps plans to follow this emergency request with a submission for a 3 year approval through OMB's normal PRA clearance process. We are seeking an emergency clearance to allow us to collect information from Returned Peace Corps Volunteers.

Title: Peace Corps Response Reinstatement Application 2020.

OMB control number: Pending.

Type of request: New Emergency Review.

Affected public: Volunteers, Trainees, and Response Volunteers, who were recently evacuated from their countries of service in response to the coronavirus disease 2019 (COVID 19) pandemic.

Respondents' obligation to reply: Voluntary.

Burden to the public:

a. *Number of respondents:* 1, 000.

b. *Frequency of response:* 1.

c. *Completion time:* 15 Minutes.

d. *Annual burden hours:* 250.

e. *Estimated cost to respondents:* $ 0.00.

This notice issued in Washington, DC on May 22, 2020.

Virginia Burke,

FOIA/Privacy Act Officer/Management.

[FR Doc. 2020–11414 Filed 5–22–20; 4:15 pm]

BILLING CODE 6051–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval without change.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information on qualitative feedback on PBGC's service delivery (OMB Control Number 1212–0066; expires October 31, 2020). This notice informs the public of PBGC's intent and solicits comments on the proposed information collection. This collection of information was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery.

DATES: Comments must be received on or before July 27, 2020 to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery information collection in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery information collection. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided.

Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington DC 20005–4026; 202–229–6563. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–6563.)

SUPPLEMENTARY INFORMATION: The information collection activity will gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with PBGC's commitment to improving service delivery. Qualitative feedback means information that provides useful insights on perceptions and opinions, but the information requests are not statistical surveys that yield quantitative results generalizable to the population of interest. This feedback provides insights into customer or stakeholder perceptions, experiences and expectations, provides early warnings of issues with service, and focuses attention on areas where changes in PBGC's communication with the public, in training of staff, or in operations might improve the delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between PBGC and its customers and stakeholders. These collections also allow feedback to contribute directly to

the improvement of program management.

The solicitation of feedback targets areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information were not collected, vital feedback from customers and stakeholders on PBGC's services would be unavailable.

PBGC only submits a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of interest.

As noted, feedback collected under this generic clearance does not produce results generalizable to the population of interest. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Collections with such objectives require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Annually, over the next three years, PBGC estimates that it will conduct three activities involving about 1,630 respondents, each of whom will provide one response. The number of respondents will vary by activity: 40 for usability testing, 90 for focus groups (nine groups of ten respondents), and 1,500 for customer satisfaction surveys.

PBGC estimates the annual burden of this collection of information as 635 hours: 2 hours per response for usability testing (total 80 hours); 2 hours per response for focus groups (total 180 hours); and 15 minutes per response for customer satisfaction surveys (total 375 hours). No cost burden to the public is anticipated.

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.

PBGC is soliciting public comments to—

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Issued in Washington DC, by

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–11346 Filed 5–26–20; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–135 and CP2020–143]

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:* May 29, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.[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 3030, and 39 CFR part 3040, 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 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–135 and CP2020–143; *Filing Title:* USPS Request to Add Priority Mail Contract 616 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 20, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 29, 2020.

This Notice will be published in the **Federal Register.**

Erica A. Barker,

Secretary.

[FR Doc. 2020–11304 Filed 5–26–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88912; File No. SR–NYSEArca–2020–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Representations Relating to the Redemption Procedures Applicable to the Sprott Physical Gold Trust and the Sprott Physical Silver Trust

May 20, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 6, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend representations relating to the redemption procedures applicable to the Sprott Physical Gold Trust and the Sprott Physical Silver Trust (each a ''Trust''), as contained in the respective rule change filed with and approved by the Securities and Exchange Commission (''Commission'') relating to listing and trading of ''Units'' of each Trust on the Exchange. Units of the Trusts are currently listed and traded on the Exchange under NYSE Arca Rule 8.201–E. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved proposed rule changes relating to listing and trading on the Exchange of Units of the Sprott Physical Gold Trust and the Sprott Physical Silver Trust under NYSE Arca Rule 8.201–E (''Commodity-Based Trust Shares'').[4] The Exchange proposes to amend a representation relating to the procedure for the redemption of Units of each Trust for gold or silver bullion, respectively, as contained in the Prior Releases. Units of the Sprott Physical Gold Trust and the Sprott Physical Silver Trust commenced trading on the Exchange on February 25, 2010 and October 27, 2010, respectively.

The manager of each Trust is Sprott Asset Management LP (''Manager'').[5] The Trust custodian for a Trust's physical gold and silver bullion, respectively, is the Royal Canadian Mint (''Custodian''). RBC Investor Services Trust (''RBC'') (formerly RBC Dexia Investor Services Trust) is the trustee and valuation agent of each Trust and the custodian of each Trust's assets other than physical gold and silver bullion.

Change to Procedures for Redemption of Units for Gold or Silver

The Sprott Gold Notice stated that ''[a] redemption notice to redeem Units for physical gold bullion must be received by the Trust's transfer agent no later than 4:00 p.m., Toronto time, on the 15th day of the calendar month in which the redemption notice will be processed or, if such day is not a day on which banks located in New York, New York, are open for the transaction of banking business (a ''Business Day''), then on the immediately following day that is a Business Day. Any redemption notice received after such time will be processed in the next month.'' The Sprott Gold Notice stated further that ''[p]hysical gold bullion received by a Unitholder as a result of a redemption of Units will be delivered by armored transportation service carrier pursuant to delivery instructions provided by the Unitholder'' and that ''[t]he armored transportation service carrier will receive gold bullion in connection with a redemption of Units approximately 10 Business Days after the end of the month in which the redemption notice is processed.''

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 61236 (December 23, 2009), 75 FR 170 (January 4, 2019) (SR–NYSEArca–2009–113) (Notice of Filing of Proposed Rule Change for the Listing and Trading of Sprott Physical Gold Trust) (''Sprott Gold Notice''); 61496 (February 10, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113) (Order Granting Approval of a Proposed Rule Change to List and Trade Sprott Physical Gold Trust) (''Sprott Gold Order''); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR–NYSEArca–2010–84) (Notice of Filing and Order Approving Proposed Rule Change to List and Trade Shares of Sprott Physical Silver Trust) (''Sprott Silver Order'' and, together with the Sprott Gold Notice and Sprott Gold Order, the ''Prior Releases'').

[5] The Sprott Physical Gold Trust and the Sprott Physical Silver Trust filed with the Commission registration statements on Form F–10 under the Securities Act of 1933, as amended, relating to the Trusts on June 20, 2018 (as amended and supplemented) (File No. 333–225771)) and June 20, 2018 (as amended and supplemented) (File No. 333–225772), respectively (together, the ''Registration Statements''). The description of the operation of the Trusts herein is based, in part, on the Registration Statements.

Similarly, the Sprott Silver Order stated that ''[a] redemption notice to redeem Units for physical silver bullion must be received by the Trust's transfer agent no later than 4:00 p.m. Toronto time, on the 15th day of the calendar month in which the redemption notice will be processed or, if such day is not a day on which banks located in New York, New York, are open for the transaction of banking business (a ''Business Day''), then on the immediately following day that is a Business Day. Any redemption notice received after such time will be processed in the next month. The Sprott Silver Order stated further that ''[p]hysical silver bullion received by a Unitholder as a result of a redemption of Units will be delivered by armored transportation service carrier pursuant to delivery instructions provided by the Unitholder'' and that ''[t]he armored transportation service carrier will receive silver bullion in connection with a redemption of Units approximately 10 Business Days after the end of the month in which the redemption notice is processed.''

The Exchange proposes to delete the preceding statements relating to receipt of bullion by the armored transportation service carrier in connection with a redemption of Units approximately 10 Business Days after the end of the month in which the redemption notice is processed in accordance with a pending amendment to the ''Trust Agreement'' for each Trust (the ''Amendments'').[6]

The Manager represents that the actual timing of receipt of bullion by the armored transportation service carrier varies based on the number of redemption requests received in a given month, the redemption amount per request and the amount of gold and silver bullion redeemed, as applicable. The Manager represents that, in the event of large numbers or volumes of redemption requests, the Custodian and the armored transportation service carrier experience severe constraints in performing their required actions within the existing time period (*i.e.,* approximately 10 Business Days).[7] A high frequency of shipments in a short period of time places a significant strain on the operational and security resources necessary to prepare such shipments, resulting in additional expenses and risk to the Trust and the Custodian. The Manager and the Custodian expect that the Amendments will decrease operational expenses and risk caused by the 10 Business Day term currently provided by the applicable Trust Agreement. The Manager represents that by mitigating such expenses and risk, it is anticipated that the Amendments will allow the Custodian to continue to provide each Trust with low custody pricing. The Amendments thereby may result in narrowing of the spread between the trading price of Units, which price reflects the performance of the trading prices of gold and silver, respectively, less the expenses of a Trust's operations, and the trading prices of gold and silver in accordance with each Trust's objectives. Pursuant to the terms of the Trust Agreements and the applicable laws of the Province of Ontario, the Amendments are being effected on the ground that they provide added protection or benefit to ''Unitholders.'' [8]

The Manager represents that the proposed change described above is consistent with each Trust's investment objective, and will further assist the Manager to achieve such investment objective. Except for the changes noted above, all other representations made in the Prior Releases remained unchanged.[9]

[6] The Exchange notes that the proposed deletions are substantively identical to those included in a proposed rule change relating to redemption procedures of the Sprott Physical Gold and Silver Trust. *See* Securities Exchange Act Release No. 84282 (September 25, 2018), 83 FR 49442 (October 1, 2018) (SR–NYSEArca–2018–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend a Representation Relating to the Redemption Procedures Applicable to the Sprott Physical Gold and Silver Trust).

[7] The Commission has previously approved the listing and trading of other gold-based commodity trusts that include a physical redemption feature but do not specify any minimum deadline for physical delivery of the commodity to the redeeming investor following a redemption request. *See, e.g.,* Securities Exchange Act Release Nos. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the Merk Gold Trust Pursuant to NYSE Arca Equities Rule 8.201); 82593 (January 26, 2018), 83 FR 4718 (February 1, 2018) (SR–NYSEArca–2017–140) (Order Approving a Proposed Rule Change to List and Trade Shares of the Perth Mint Physical Gold ETF Trust Pursuant to NYSE Arca Rule 8.201–E).

[8] Each Trust will file an amendment to its respective Trust Agreement or an amended and restated Trust Agreement, as appropriate, in Canada on SEDAR (System for Electronic Document Analysis and Retrieval), the electronic filing system for the disclosure documents of issuers across Canada. In addition, a brief description of the amendment will be included in a Trust's quarterly disclosures. Such filings or disclosures would be furnished to the Commission under cover of Form 6–K in accordance with Rules 13a–1 and/or 13a–3 under the Exchange Act. Pursuant to the terms of the applicable Trust Agreement, a Unitholder vote is not required to effect the amendment.

[9] *See* note 4, *supra.* All terms referenced but not defined herein are defined in the Prior Releases.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [10] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the Amendments may provide potential benefits to investors by decreasing operational expenses and risk caused by the 10 Business Day time frame currently provided by the applicable Trust Agreement. The Manager represents that by mitigating such expenses and risk, it is anticipated that the Amendments will allow the Custodian to continue to provide each Trust with low custody pricing and may result in the narrowing of the spread between the trading price of Units, which price reflects the performance of the trading prices of gold or silver, respectively less the expenses of a Trust's operations, and the trading prices of gold or silver in accordance with a Trust's objectives.

The Manager represents that the proposed changes described above are consistent with each Trust's investment objective, and will further assist the Manager to achieve such investment objectives. The Manager also represents that all Unitholders will be subject to the Amendments; that the Manager has determined that the Amendments will provide added protection or benefit to Unitholders; and that the Amendments are being proposed to mitigate the practical constraints associated with the high volume of redemption requests.

Except for the changes noted above, all other representations made in the Prior Releases remained unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes the proposed rule change, by decreasing each Trust's operational expenses and risk relating to redemptions, will enhance competition among issues of Commodity-Based Trust Shares relating to physical gold and silver.

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the Commission has previously approved the listing and trading of gold-based commodity trusts that include a physical redemption feature but do not specify any minimum deadline for physical delivery of the commodity to the redeeming investor following a redemption request,[16] and the proposed changes are substantively identical to those in another proposed rule change relating to redemption procedures.[17] In addition, the Exchange believes the proposed rule change may benefit investors by decreasing operational expenses and risk caused by the 10 Business Day timeframe (as described above) currently provided by the Trust Agreements. Furthermore, the Exchange represents that, in the absence of large numbers or volumes of redemption requests or other factors causing delay, the armored transportation service carrier will typically receive physical gold and silver bullion in accordance with the 10 Business Day time frame contained in the Prior Releases, and the Commission notes that Units of the Trusts have commenced trading on the Exchange. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest for these reasons. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–42 on the subject line.

Paper Comments

- *Send paper comments in triplicate to:* Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–42 and should be submitted on or before June 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11286 Filed 5–26–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See* note 7, *supra.*

[17] *See* note 6, *supra* (relating to redemption procedures of the Sprott Physical Gold and Silver Trust).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88911; File Nos. SR–DTC–2020–008; SR–FICC–2020–004; SR–NSCC–2020–008]

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Order Approving a Proposed Rule Change To Modify the Clearing Agency Model Risk Management Framework

May 20, 2020.

On April 10, 2020, The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC''), and National Securities Clearing Corporation (''NSCC,'' each a ''Clearing Agency,'' and collectively, the ''Clearing

Agencies''), filed with the Securities and Exchange Commission (''Commission'') proposed rule changes SR–DTC–2020–008; SR–FICC–2020–004; SR–NSCC–2020–008, respectively, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule changes were published for comment in the **Federal Register** on April 21, 2020,[3] and the Commission received no comment letters regarding the changes proposed in the proposed rule changes. For the reasons discussed below, the Commission is approving the proposed rule changes.[4]

I. Description of the Proposed Rule Change

A. Background

Each Clearing Agency has established a Model Risk Management Framework (''Framework'') [5] to help it identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models.[6] Pursuant to the Framework, a model developed for use by any of the Clearing Agencies and meeting the above definition for the term ''model'' is included and tracked within a model inventory (''Model Inventory'') maintained by DTCC's Model Validation and Control Unit (''MVC''), which is part of the Group Chief Risk Office. The parent company of the Clearing Agencies is The Depository Trust & Clearing Corporation (''DTCC''). DTCC operates on a shared services model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a Clearing Agency.

The proposed rule changes would amend the Framework to (i) modify certain roles and governance arrangements set forth within the Framework, (ii) incorporate a description of and references to the ''Model Risk Tolerance Statement,'' and (iii) make other technical and clarifying changes to the text of the Framework, as described below.

B. Modification of Roles and Governance Arrangements

1. Role and Reporting Lines of the Model Owner, MVC, and MRC

Section 3.1 of the Framework describes how models are developed for use by any of the Clearing Agencies and tracked within the Model Inventory.[7] In particular, the Framework currently describes a ''Model Owner'' [8] as the person responsible for the development or operation of a model being validated by MVC. The proposal would define a Model Owner as the person who is designated by the applicable business area or support function to be responsible for a particular model and who is recorded as the Model Owner for such model by MVC in the Model Inventory.

Currently, the Framework states that the Executive Director of MVC reports to the Group Chief Risk Officer rather than to any Model Owner. The proposal would change the title of the head of MVC from an Executive Director to Managing Director at each Clearing Agency to reflect that a more senior officer of the Clearing Agencies would be responsible for supervising MVC.[9] The proposal would also clarify that the head of MVC reports to the Group Chief Risk Officer rather than to anyone that could be a Model Owner (*i.e.,* anyone who develops and operates a model and not only personnel who are currently Model Owners). The Clearing Agencies represent that this change is to make clear that MVC has an independent reporting line to the Group Chief Risk Officer, without potential conflict of reporting to any person that could be a Model Owner.[10] Under the proposal, the Framework would further state that the head of MVC is a member of the Management Risk Committee (''MRC'').[11]

2. Processes for Determining Model Materiality and Complexity

Section 3.2 of the Framework outlines that MVC assigns a materiality rating and complexity rating to each model after it is added to the Model Inventory.[12] Currently, all model materiality rating and complexity rating assignments are reviewed by at least annually by MVC, as well as by the Model Risk Governance Committee (''MRGC'').[13]

The proposal would revise the role of the MRGC, including by removing its oversight authority in the Model Validation process and leaving MVC as the sole entity responsible for reviewing the model materiality and complexity ratings. Moreover, under the proposal, the MRGC would serve as a forum for review of model risk matters rather than a decision-making body charged with the oversight of such matters. The proposal would also revise the MRGC's name by replacing ''Committee'' with ''Council'' to reflect the MRGC's role as an advisory body.[14]

3. Processes for Model Approval and Control

Section 3.6 of the Framework currently provides that the Financial Engineering Unit (''FEU'') within Quantitative Risk Management (''QRM'') is responsible for developing, testing, and signing-off on new models and enhancements to existing models before

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 88640 (April 15, 2020), 85 FR 22191 (April 21, 2020) (''DTC Notice of Filing''); Securities Exchange Act Release No. 88636 (April 15, 2020), 85 FR 22228 (April 21, 2020) (''FICC Notice of Filing''); Securities Exchange Act Release No. 88637 (April 15, 2020), 85 FR 22222 (April 21, 2020) (''NSCC Notice of Filing'').

[4] Capitalized terms not defined herein are defined in the DTC Rules, GSD Rules, MBSD Rules, or NSCC Rules, as applicable, *available at http://dtcc.com/legal/rules-and-procedures.*

[5] *See* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File Nos. SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008) (''2017 Framework Order''). The proposed rule changes do not require any changes to (1) the Rules, By-Laws and Organization Certificate of DTC (''DTC Rules''), (2) the Rulebook of the Government Securities Division of FICC (''GSD Rules''), (3) the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD Rules''), or (4) the Rules & Procedures of NSCC (''NSCC Rules''), as the Framework is a standalone document.

[6] *See* 2017 Framework Order, 82 FR at 41433. ''[M]odel'' refers to a quantitative method, system, or approach that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates. A ''model'' consists of three components: An information input component, which delivers assumptions and data to the model; a processing component, which transforms inputs into estimates; and a reporting component, which translates the estimates into useful business information. The definition of ''model'' also covers quantitative approaches whose inputs are partially or wholly qualitative or based on expert judgment, provided that the output is quantitative in nature. *See* DTC Notice of Filing, 82 FR at 22192; FICC Notice of Filing, 82 FR at 22228; NSCC Notice of Filing, 82 FR at 22222.

[7] *See* DTC Notice of Filing, 82 FR at 22192; FICC Notice of Filing, 82 FR at 22228; NSCC Notice of Filing, 82 FR at 22223.

[8] *See* 2017 Framework Order, 82 FR at 41434.

[9] *See* DTC Notice of Filing, 82 FR at 22193; FICC Notice of Filing, 82 FR at 22229; NSCC Notice of Filing, 82 FR at 22223.

[10] *See* DTC Notice of Filing, 82 FR at 22193; FICC Notice of Filing, 82 FR at 22229; NSCC Notice of Filing, 82 FR at 22224.

[11] The MRC is the Clearing Agencies' management level committee responsible for, among other things, model risk management matters. *See* 2017 Framework Order, 82 FR at 41435.

[12] A model's rating impacts both the prioritization and approval authority for that model's validation. *See* DTC Notice of Filing, 82 FR at 22193; FICC Notice of Filing, 82 FR at 22230; NSCC Notice of Filing, 82 FR at 22224.

[13] *See* 2017 Framework Order, 82 FR at 41434.

[14] *See* DTC Notice of Filing, 82 FR at 22193; FICC Notice of Filing, 82 FR at 22230; NSCC Notice of Filing, 82 FR at 22224. As proposed, the MRGC could provide advice or recommendations regarding model risk matters to the interested party of a pertinent model.

submitting any new model to MVC for Model Validation and approval. The Clearing Agencies state that QRM is a risk management function within the Group Chief Risk Office, and that a representative of QRM is the Model Owner for all margin models used by the Clearing Agencies.[15] The section further explains that all new models and all material changes to existing models undergo Model Validation by MVC and must be approved prior to business use. In addition, the section states that models that have a materiality rating of 'Medium' or 'High' must be approved by the MRC, after the MRGC has reviewed the model and recommended it to the MRC for approval.

The proposal would transfer FEU's responsibilities to the Model Owners to reflect the elimination of the FEU within QRM.[16] Also, the proposal would remove the requirement that Model Validations with a materiality rating of 'Medium' or 'High' be approved by the MRC, after the MRGC has reviewed and recommended the model to the MRC for approval. As a result of these changes, MVC would have the sole and exclusive authority to approve a model.

The Clearing Agencies represent that MVC is best suited to address Model Validation issues based on its quantitative and technical expertise and knowledge.[17] Accordingly, the proposal would remove any text that indicates that MRC approval is required for any Model Validation to be complete and/or for a model to remain in production. In addition, consistent with the proposed changes to Section 3.2, the proposal would make changes to reflect that the MRGC does not have any oversight role for model approval and control.

4. Model Performance Monitoring Responsibilities

Section 3.8 of the Framework currently states that MVC is responsible for model performance monitoring, including review of risk-based models used to calculate margin requirements and relevant parameters/threshold indicators, sensitivity analysis, and model backtesting results, and preparation of related reports. It also states that review of these model performance measures is subject to review by the MRGC.

Under the proposal, the Framework would identify Model Owners as responsible for the design and execution of model performance monitoring and preparation of model performance monitoring reports. Similarly, the proposal would revise the Framework to clarify that QRM, which encompasses Model Owners, would be responsible for model performance monitoring of the Clearing Agencies' margin models. The proposal would also revise the role of MVC with respect to model performance monitoring to providing oversight of model performance monitoring activities (as opposed to conducting the monitoring) by setting organizational standards and providing critical analysis for identifying model issues and/or limitations. In addition, the proposal would remove the statement that review of model performance measure is subject to review by the MRGC.

5. Backtesting Responsibilities

Section 3.9 of the Framework currently states that MVC is responsible for each Clearing Agency's Value-at-Risk (''VaR'') backtesting and Clearing Fund Requirement (''CFR'') backtesting. Consistent with the changes described above, this section would be revised to state that QRM would perform VaR and CFR backtesting, as QRM is responsible for performance monitoring functions with respect to margin models.

6. Board of Directors and Senior Management Reporting

Section 4.1 of the Framework currently describes the MRGC as the primary forum for MVC's regular reporting of Model Validation activities and material model risks identified through regular model performance monitoring. The proposal would delete this reference to the MRGC's role, as it would no longer have oversight of Model Validation and model performance monitoring. In addition, it would add the MRC as a recipient of periodic reporting.

7. Escalation

Section 4.2 describes the processes applicable for further review of the key metrics identified in Section 3.9 (Backtesting). Currently, such metrics are reviewed by the Market and Liquidity Risk Management unit within the Group Chief Risk Office and MVC, and also reported to the MRC, on at least a monthly basis. The section further states that the MRGC reviews and approves changes to backtesting methodology.

The proposal would eliminate the provision that MVC would review the metrics and clarify that the key metrics are reported to MRC by the group within the Group Chief Risk Office responsible for risk reporting. The proposal would remove the MRGC's role in review and approval of changes to backtesting methodology and instead vest that responsibility with MVC to reflect the change in oversight of Model Validation from the MRGC to MVC.

C. Incorporation of the Model Risk Tolerance Statement

The Framework currently includes a description of internal DTCC policies and procedures that support the Framework, including the (1) DTCC Model Risk Management Policy, (2) DTCC Model Validation Procedures, (3) DTCC Model Risk Performance Monitoring Procedures, (4) the DTCC Backtesting Procedures, and (5) Market Risk Tolerance Statement (''Related Procedures''). The Framework also notes that the Related Procedures may be updated or amended.

The proposal would add the Model Risk Tolerance Statement as one of DTCC's internal policies and procedures to support the Framework. The proposal would explain that the Model Risk Tolerance Statement sets forth, among other things, risk tolerance levels covering model design and implementation, including consideration of a model's intended purpose and/or its adequacy of performance.

The proposal would also add an explanation of the existing Market Risk Tolerance Statement, stating that it articulates, among other things, risk tolerance levels for (i) margin backtests addressing backtest coverage and (ii) stress tests covering exposure to extreme market moves.

Further, the proposal would add language to the Framework stating that the Model Risk Tolerance Statement and the Market Risk Tolerance Statement (each a ''Risk Tolerance Statement'') record the overall risk reduction or mitigation objectives as they relate to model risk and market risk activities. Under the proposal, the Framework would also state that the Risk Tolerance Statements document the risk controls and other measures used to manage such activities, including escalation requirements in the event of risk metric breaches. Similarly, the proposal would also revise the Framework to provide that the Risk Tolerance Statements would be reviewed, revised, retired, replaced, or approved by the BRC annually, based upon the existing circumstances and the reasonable best judgement of management relating to model risk management matters.

[15] *See* DTC Notice of Filing, 82 FR at 22194; FICC Notice of Filing, 82 FR at 22230; NSCC Notice of Filing, 82 FR at 22224.

[16] *See id.*

[17] *See id.*

D. Other Technical Changes

The proposal would also make a number of technical changes to the Framework. First, Section 3.8 of the Framework currently states that model performance monitoring is the process of (i) evaluating an active model's ongoing performance based on theoretical tests, (ii) monitoring the model's parameters through the use of threshold indicators, and/or (iii) backtesting using actual historical data/realizations to test a VaR model's predictive power. The Clearing Agencies state that the process of model performance monitoring does not always take into account theoretical tests, threshold indicators, and/or historical data/realizations, but could take some or all of these into account as appropriate under the circumstances.[18] Accordingly, the proposal would eliminate references to ''theoretical tests,'' ''threshold indicators,'' and ''historical data/realizations'' to provide a more accurate description of the Clearing Agencies' model performance monitoring process.[19]

Second, to improve the readability and clarity of the Framework's text, the proposal would (1) remove the use of the modifier ''Clearing Agency'' with respect to references to models and other parts of the Framework, (2) replace ''vendor'' with ''externally purchased'' in describing models developed externally, (3) relocate certain sentences, and (4) consistently use ''model'' without capitalization.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[20] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Clearing Agencies. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F)[21] of the Act and Rules 17Ad–22(e)(2)(v), (e)(4)(vii), and (e)(7)(vii) thereunder.[22]

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[23]

As described above, the Framework is designed to identify, measure, monitor, and manage the risks related to the design, development, implementation, use, and validation of quantitative models. The proposal is designed to enhance the Framework by improving the governance arrangements relating to the management of the Clearing Agencies' quantitative models, expanding internal policies and procedures to manage the models, and removing inconsistent and inaccurate terminology.

First, the proposal is designed to clarify and enhance the governance structures set forth in the Framework in a number of ways. The proposal would clarify and revise the roles of Model Owner and QRM. The proposal would revise MRGC's role as advisory and no-decision making one, and transfer MRGC's responsibilities to MVC. The proposal would transfer the responsibility for approval of Model Validations from MRC to MVC. The Clearing Agencies represent that MVC is composed of individuals with a high level of expertise relating to Model Validation, and that MVC has an independent reporting line to the Group Chief Risk Officer, without any potential conflict of reporting to any person that could be a Model Owner.[24] Thus, taken together, under the proposal, the governance arrangements set forth in the Framework would specify these particular lines of responsibility that ensure independence and competency of the group that manages model risk.

Second, the proposal incorporates the Model Risk Tolerance Statement in the Framework as one of the Clearing Agencies' internal policies and procedures to support the Framework. The Model Risk Tolerance Statement should provide additional specificity and clarity to the risk tolerance levels and help the Clearing Agencies to manage their models within more clearly defined risk tolerance levels. Third, the proposal makes other technical and clarifying changes to the text that should help facilitate the effective execution of the Framework by removing inconsistent use of terminology and adopting more accurate terminology.

With the proposed rule changes designed to enhance the Framework, the Clearing Agencies should be able to more effectively manage its quantitative models, and in turn, better evaluate and address risk presented by Clearing Agencies' members. By effectively evaluating and addressing risk presented by members, the Clearing Agencies should be able to better address their exposure to members and assure the safeguarding of securities and funds which are in Clearing Agencies' custody or control. Therefore, for the reasons stated above, the Commission believes that the proposed rule changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[25]

B. Consistency With Rules 17Ad–22(e)(2)(v)

Rule 17Ad–22(e)(2)(v) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[26]

As stated above, the proposal clarifies and specifies the governance arrangements relating to the management of the Clearing Agencies model risk management, including: (1) The officer responsible for supervising MVC would be elevated from Executive Director to Managing Director; (2) the officer responsible for supervising would report directly to the Group Chief Risk Officer rather than any person that is part of the development or operation of a model; (3) the MRGC would relinquish any decision making authority with regard to model risk management issues; (4) MVC would have the sole and exclusive authority to approve a model, and would oversee model performance monitoring activities; and (5) QRM would perform VaR and CFR backtesting. Such changes would clearly specify particular lines of responsibilities and a decision making process at each stage of the model risk management process. Because the proposal would specify clear and direct lines of responsibility, the Commission believes that the proposed changes to

[18] *See* DTC Notice of Filing, 82 FR at 22194; FICC Notice of Filing, 82 FR at 22231; NSCC Notice of Filing, 82 FR at 22225.

[19] *See id.*

[20] 15 U.S.C. 78s(b)(2)(C).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(2)(v), (e)(4)(vii), and (e)(7)(vii).

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] *See* DTC Notice of Filing, 82 FR at 22194; FICC Notice of Filing, 82 FR at 22230; NSCC Notice of Filing, 82 FR at 22224. MVC is functionally separate from all Clearing Agency areas that develop or operate models. *See* 2017 Framework Order, 82 FR at 41434.

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240.17Ad–22(e)(2)(v).

the Framework are consistent with Rule 17Ad–22(e)(2)(v) [27] under the Act.

C. Consistency With Rules 17Ad–22(e)(4)(vii) and (e)(7)(vii)

Rule 17Ad–22(e)(4)(vii) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by performing a model validation for its credit risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework.[28]

Rule 17Ad–22(e)(7)(vii) under the Act requires, in part, that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing basis, and its use of intraday liquidity by, at a minimum, performing a model validation for its liquidity risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework.[29]

Rule 17Ad–22(a)(9) under the Act defines a model validation as an evaluation of the performance of each material risk management model used by a covered clearing agency (and the related parameters and assumptions associated with such models), including initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements, performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated.[30]

The Framework provides a process for validation of the Clearing Agencies' credit and liquidity risk models. The proposal would enhance the Framework by clarifying and amending the governance relating to the model risk management of these models, including Model Validation, expanding internal policies and procedures to manage the models, and removing inconsistent and inaccurate terminology.

In particular, the proposal would state that MVC would have the sole and exclusive authority to approve a model and that it has an independent reporting line to the Group Chief Risk Officer. The Clearing Agencies represent that this change is to make clear that MVC would not have potential conflicts of interest by reporting to any person that could have been a part of the development or operation of a model. Also, the proposal would remove the MRGC's oversight authority regarding Model Validation and move that authority to MVC. The Clearing Agencies represent that MVC is composed of individuals with a high level of quantitative and technical expertise and knowledge.

The changes set forth in the proposal would clearly define the governance applicable to the Model Validation process and assign responsibilities to a group that is qualified and free from influence from the persons responsible for the development and operation of the Clearing Agencies' models. The Framework would continue to provide that Model Validations are performed annually. The Commission therefore believes that the proposed changes to the Framework are consistent with Rule 17Ad–22(e)(4)(vii) [31] and (e)(7)(vii) [32] under the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [33] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [34] that proposed rule changes SR–DTC–2020–008, SR–FICC–2020–004, SR–NSCC–2020–008, be, and hereby are, APPROVED.[35]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11285 Filed 5–26–20; 8:45 am]

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[27] 17 CFR 240.17Ad–22(e)(2)(v).

[28] 17 CFR 240.17Ad–22(e)(4)(vii).

[29] 17 CFR 240.17Ad–22(e)(7)(vii).

[30] 17 CFR 240.17Ad–22(a)(9).

[31] 17 CFR 240.17Ad–22(e)(4)(vii).

[32] 17 CFR 240.17Ad–22(e)(7)(vii).

[33] 15 U.S.C. 78q–1.

[34] 15 U.S.C. 78s(b)(2).

[35] In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88917; File No. SR–FINRA–2020–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Amend Certain Timing, Method of Service and Other Procedural Requirements in FINRA Rules During the Outbreak of the Coronavirus Disease (COVID–19)

May 20, 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 May 8, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to temporarily amend FINRA Rules 1012, 1015, 6490, 9132, 9133, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559, and 9630 primarily to provide FINRA with temporary relief from certain timing, method of service and other procedural requirements during the period in which FINRA's operations are impacted by the outbreak of the coronavirus disease (''COVID–19'').[3] The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] While the temporary rule change primarily provides FINRA with relief, it also requires applicants, respondents and other parties to file certain applications, documents or other information by electronic mail, unless FINRA and the relevant party agree to an alternative method of service. The rule change also temporarily provides an extension of time for a Requesting Party to file an appeal in connection with Rule 6490(e) and removes the requirement to send FINRA a duplicate hard copy of certain documents and filings. FINRA has proposed these temporary rule changes in an effort to provide consistent relief to both FINRA and the impacted party under those rules.

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. 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.

The outbreak of COVID–19 has caused substantial impacts on FINRA's operations. Specifically, FINRA employees, with limited exceptions, have been directed to work remotely and restrict certain in-person activities, consistent with the recommendations of public health officials.[4] FINRA faces challenges meeting certain procedural requirements and performing certain functions in this remote work environment. In particular, working remotely makes it exceedingly difficult to send and receive hard copy mail and conduct in-person meetings and hearings.

The rule changes will provide temporary relief from the timing, method of service and other procedural requirements described below during the period in which FINRA's operations are impacted by COVID–19. The rule changes would also require applicants, respondents and other parties to serve or file certain documents or other information by electronic mail, unless the parties agree to an alternative method, during this same time period. As proposed, these changes would be in place through June 15, 2020.[5]

The requested relief will help minimize the impact of the COVID–19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA Rule 1000, 6400, 9100, 9300, 9520, 9550 and 9600 Series contain some filing, service, timing and other procedural requirements that present unique challenges in the current remote work environment. In response to these challenges, FINRA proposed to make temporary amendments to these rule requirements to (i) allow, and in some instances require, FINRA to serve certain documents by electronic mail (or ''email''); (ii) require that applicants, respondents, and other parties file or serve documents by electronic mail in connection with specified proceedings and processes, unless the parties agree to an alternative method of service; (iii) provide extensions of time to FINRA staff, respondents and other parties in connection with certain adjudicatory and review processes; and (iv) allow for oral arguments before the National Adjudicatory Council (''NAC'') to be conducted by video conference.

a. Amendments To Allow or Require FINRA To Serve Documents by Electronic Mail

The current need for FINRA employees to work remotely and restrict certain in-person activities makes it difficult to send hard copy documents. FINRA's rules, with few exceptions, however, do not currently provide for service by electronic mail.[6] Continuing to require hard copy service despite the logistical and other challenges presented by the outbreak of COVID–19 could lead to significant delays in FINRA proceedings. Accordingly, FINRA proposed the rule amendments discussed below to allow, and in some instances require, FINRA to serve documents by electronic mail.

With respect to the temporary amendments that would permit FINRA to serve certain documents by electronic mail, it is FINRA's intent to elect service by electronic mail whenever possible. If FINRA has knowledge that the address utilized for service is not current or not functional (*i.e.,* FINRA receives a bounce back or other message indicating that there was a failure to deliver the electronic mail), FINRA will utilize other permissible methods of service.[7]

In addition, to the extent that an applicant, respondent or other party will suffer a hardship if FINRA elects service by electronic mail, FINRA encourages the applicant, respondent or other party to contact FINRA to discuss reasonable accommodations. FINRA noted that, in most cases, FINRA and the relevant party, or their counsel, will have already engaged in communications prior to the service of documents or other information under the rules that are the subject of this temporary proposed rule change. Accordingly, in most cases, FINRA will already have information regarding the relevant party, or their counsel's, preferred method of service.

The FINRA Rule 1000 Series (Member Application and Associated Person Registration) governs, among other things, the process for (i) applying for FINRA membership; (ii) FINRA members to seek approval of a change in ownership, control or business operations, and (iii) an applicant to request that FINRA's appellate body, the NAC, review a FINRA decision rendered under the 1000 Series. In connection with these processes, applicants and FINRA are required to file or serve certain documents using the prescribed methods set forth in FINRA Rule 1012(a), which do not include electronic mail.[8] In response to current conditions, FINRA proposes to temporarily amend Rule 1012(a)(4) to permit FINRA to serve documents under the Rule 1000 Series by electronic mail. The proposed rule change also temporarily amends FINRA Rule 1015(f)(1), which requires the NAC to serve a notice of a hearing before the NAC by facsimile or overnight courier, to allow service of the notice by electronic mail.[9]

The FINRA Rule 9000 Series, among other things, sets forth the procedure for FINRA proceedings for disciplining a member, associated person, or formerly associated person. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a rule specifically

[4] FINRA has noted that state imposed restrictions on business operations and other activities in response to the spread of COVID–19 continue and change rapidly. Some states have imposed significant limitations on business operations, and essential businesses have scaled back operations by, for example, reducing store hours in some locations. These developments may impact the ability of some individuals involved with FINRA proceedings to obtain and send necessary documents.

[5] If FINRA requires temporary relief from these rule requirements beyond June 15, 2020, FINRA may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules. The amended FINRA rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

[6] FINRA currently permits service by electronic mail under some of its rules. For example, FINRA Rule 6490(d)(5) (Processing of Company-Related Actions; Procedures for Reviewing Submissions; Notice Issuance) permits a notice under that provision to be issued by facsimile or electronic mail, or pursuant to Rule 9134.

[7] As indicated in the proposed rule text, and consistent with service by mail, FINRA will consider service by email complete upon sending of the relevant document or other information.

[8] FINRA Rule 1012(a) (General Provisions; Filing by Applicant or Service by FINRA) governs the filing and service requirements for the Rule 1000 Series.

[9] In an effort to acknowledge the same logistical and other challenges facing applicants, FINRA also proposed to amend Rule 1015(a) to temporarily suspend the requirement that the applicant simultaneously file by first-class mail a copy of the request for review pursuant to Rule 1015(a) to the district office where the applicant filed its application.

provides otherwise. FINRA Rules 9132(b),[10] Rule 9133(b),[11] and Rule 9146(l) [12] provide that the documents and other information governed by those rules be served pursuant to FINRA Rule 9134, which permits service on the parties using the following methods: (1) Personal service, (2) mail, or (3) courier; Rule 9134 does not permit service by electronic mail. The proposed rule change temporarily amends Rule 9132(b) to allow FINRA to serve the relevant documents or information by electronic mail and Rules 9133(b) and 9146(l) to require FINRA to serve documents by electronic mail, unless the parties agree to an alternative method of service.

The FINRA Rule 9300 Series sets forth the procedures for review of disciplinary proceedings by the NAC and FINRA Board and for applications for Commission review. FINRA Rules 9321,[13] 9341(c),[14] 9349(c),[15] and 9351(e) [16] require FINRA to serve documents in connection with those proceedings. Service under those rules is governed by Rule 9134, which does not permit electronic mail as a method of service. The proposed rule change temporarily amends Rules 9321, 9341(c), 9349(c), and 9351(e) to allow for electronic mail as a method of service.

The FINRA Rule 9520 Series sets forth the procedures for eligibility proceedings and review of those proceedings by the NAC and FINRA Board. FINRA Rules 9522(a)(4),[17] 9524(a)(3)(A) and (B),[18] Rule 9524(b)(3),[19] and Rule 9525(e) [20] require FINRA to serve documents in connection with those proceedings, but do not allow for electronic mail as a method of service. The proposed rule change temporarily amends Rules 9522(a)(4), 9524(a)(3)(A) and (B), 9524(b)(3), and Rule 9525(e) to allow for electronic mail as a method of service.

The FINRA Rule 9550 Series sets forth the procedures for expedited proceedings and the ability of the NAC to call for review a proposed decision prepared under the Rule 9550 Series. FINRA Rule 9559(h)(2) [21] sets forth the timing and method of service requirements for the parties' exchange of proposed exhibit and witness lists in advance of an expedited proceeding.[22] FINRA Rule 9559(q)(2) [23] requires the NAC to serve its decision when it issues one and FINRA Rule 9559(q)(5) requires the NAC to serve the decision on the parties and all members with which the respondent is associated. Rule 9559(q)(2) and (5) do not allow for electronic mail as a method of service. The proposed rule change temporarily amends Rule 9559(h)(2) to require FINRA to serve its exhibit and witness lists by electronic mail, unless the parties agree to an alternative method of service, and 9559(q)(2) and (5) to allow for electronic mail as a method of service.

The FINRA Rule 9600 Series sets forth the procedures for members to seek exemptive relief from a variety of FINRA rules. FINRA Rule 9630(e)(1) and (2) [24] require the NAC to serve its decision pursuant to Rule 9134, which does not allow for electronic mail as a method of service. The proposed rule change temporarily amends Rule 9630(e) to allow for electronic mail as a method of service.

FINRA believes the requested temporary relief to serve documents by electronic mail in connection with the above referenced rules is reasonably tailored to the needs and restraints on the organization's operations during the COVID–19 pandemic. The proposed rule change strikes an appropriate balance by seeking relief that will minimize disruptions to FINRA processes, and provide necessary accommodations, without compromising critical investor protection measures or fair processes. For example, FINRA is not seeking relief to permit service of complaints by electronic mail in FINRA disciplinary proceedings due to heightened fair process concerns. Further, as noted above, FINRA will use another permissible method of service if it has knowledge that the address used for service by electronic mail is not current or functional, or if FINRA is notified by the relevant party that service by electronic mail would cause a hardship. The proposed relief to serve some documents by electronic mail incorporated such considerations.

b. Amendments To Require Filing by Electronic Mail

FINRA's current remote work environment and related restrictions on accessing FINRA buildings poses significant logistical and other challenges on FINRA's ability to timely receive and process hard copy mail. In response, the proposed rule change also temporarily amends FINRA Rules 1012(a)(3),[25] 6490(e),[26] 9133(b), 9146(l), 9524(a)(3)(A) and (B), and 9559(h)(2) to require the applicant, respondent, or requesting party, depending on the rule, to file or serve certain documents and information by electronic mail, unless the parties agree to an alternative method of service. FINRA's intent is to accommodate an applicant, respondent or other party if service by electronic mail is not feasible. The requested relief will allow FINRA to minimize the logistical and other challenges posed by the current conditions and assist FINRA in maintaining fair review processes and proceedings.

c. Amendments To Provide Extensions of Time

Operating remotely, and with numerous restrictions in place, also makes it difficult for FINRA staff to meet certain deadlines related to the adjudicatory and review processes set forth in FINRA Rules 1015, 6490 and 9559. Accordingly, the proposed rule change requests temporary extensions of time under these Rules.

FINRA Rule 1015 governs the process by which an applicant can appeal an adverse decision rendered by FINRA pursuant to Rule 1014 or 1017 to the

[10] FINRA Rule 9132(b) (Service of Orders, Notices, and Decisions by Adjudicator; How Served).

[11] FINRA Rule 9133(b) (Service of Papers Other Than Complaints, Orders, Notices or Decisions; How Served).

[12] FINRA Rule 9146(l) (Motions; General).

[13] FINRA Rule 9321 (Transmission of Record).

[14] FINRA Rule 9341(c) (Oral Argument; Notice Regarding Oral Argument).

[15] FINRA Rule 9349(c) (National Adjudicatory Council Formal Consideration; Decision; Issuance of Decision After Expiration of Call for Review Period).

[16] FINRA Rule 9351(e) (Discretionary Review by FINRA Board; Issuance of Decision After Expiration of Call for Review Period).

[17] FINRA Rules 9522(a)(4) (Initiation of Eligibility Proceeding; Member Regulation Consideration; Service).

[18] FINRA Rule 9524(a)(3)(A) and (B) (National Adjudicatory Council Consideration; Transmission of Documents).

[19] FINRA Rule 9524(b)(3) (National Adjudicatory Council Consideration; Issuance of Decision After Expiration of Call for Review Period).

[20] FINRA Rule 9525(e) (Discretionary Review by the FINRA Board; Issuance of Decision).

[21] FINRA Rule 9559(h) (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series; Transmission of Documents). Email is currently permitted as a method of service under Rule 9559(h).

[22] As with the proposed temporary change to Rule 1015(a) noted *supra* in footnote 9, FINRA proposes to temporarily amend FINRA Rule 9559(h) to also suspend the requirements in Rule 9559(h)(1) and (2) that, if the specified documents are served by facsimile or email, they must also be served by either overnight courier or personal delivery.

[23] FINRA Rule 9559(q) (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series; Call for Review by the National Adjudicatory Council).

[24] FINRA Rule 9630(e) (Procedures for Exemptions; Appeal; Decision).

[25] FINRA Rule 1012(a)(3), as temporarily amended, will allow the applicant to file requested documents or information using a method other than electronic mail upon agreement with FINRA.

[26] FINRA Rule 6490(e) (Processing of Company-Related Actions; Request for an Appeal to Subcommittee of Uniform Practice Code Committee).

NAC. Rule 1015(f)(1) provides that if a hearing is requested by the applicant or directed, the hearing must be held within 45 days after the filing of the request with the NAC or service of the notice by the Subcommittee.[27] FINRA proposed to temporarily amend Rule 1015(f)(1) to require the hearing to take place within 135 days after the filing of the request with the NAC or service of the notice by the Subcommittee, providing a 90-day extension to the existing 45-day deadline. Rule 1015(i) (Subcommittee Recommendation) requires that the Subcommittee present its recommended decision in writing to the NAC within 60 days after the hearing held pursuant to 1015(f), and not later than seven days before the meeting of the NAC at which the membership proceeding shall be considered. The proposed rule change temporarily amends Rule 1015(i) to require the Subcommittee to present its decision in writing 150 days after the date of the hearing held pursuant to Rule 1015(f), providing a 90-day extension to the existing 60-day deadline.

Rule 6490 codifies the requirements in Exchange Act Rule 10b–17 for issuers of a class of publicly trading securities to provide timely notice to FINRA of certain corporate actions (*e.g.,* dividend or other distribution of cash or securities, stock split or reverse split, rights or subscription offering). FINRA reviews related documentation and, under certain circumstances, the documentation may not be processed if it is deemed deficient. Rule 6490(e) sets forth the process for appealing such a determination. Rule 6490(e) requires that a Requesting Party appeal an adverse determination within seven (7) calendar days of receiving notice of the determination under the Rule, otherwise the determination will constitute final FINRA action. Rule 6490(e) further requires that the Subcommittee tasked with reviewing appeals under this Rule to convene once each calendar month to consider all appeals received during the prior month. The proposed rule change will temporarily amend Rule 6490(e) to (i) extend the time for a Requesting Party to file an appeal from seven calendar days to 30 calendar days, and (ii) permit the Subcommittee to convene once every 90 days instead of monthly and review appeals from within the last 90 days rather than the prior month.

Rule 9559(q)(2) sets forth the deadlines for the Subcommittee of the NAC to review a proposed decision drafted by the Office of Hearing Officers in connection with an expedited proceeding and issue a recommendation to the NAC, if the proceeding is called for review. The Subcommittee of the NAC is required to meet and conduct its review of the proposed decision, and provide its recommendation to the NAC, no later than 40 and 60 days, respectively, after the call for review. The proposed rule change temporarily amends Rule 9559(q)(2) to require a Subcommittee of the NAC to meet and conduct its review within 70 days and make a recommendation to the NAC within 90 days, providing 30-day extensions to the existing deadlines. These extensions of time requested in connection with Rules 1015(f)(1) and (i), 6490(e), and 9559(q)(2) provide reasonable grace periods to adjust to current conditions, the remote work environment and the corresponding challenges, while maintaining fair and orderly adjudicatory and review processes under these Rules.

d. Amendment for In-Person Attendance Requirement

FINRA Rule 9341(d) [28] provides that oral arguments made in connection with the review of a FINRA disciplinary proceeding take place before the Subcommittee or, if applicable, the Extended Proceeding Committee and requires all members of the relevant Subcommittee or Extended Proceeding Committee to be present for the oral argument.[29] The proposed rule change amends Rule 9341(d) to temporarily permit oral arguments to be conducted by video conference. The requested relief is a reasonable accommodation to protect the health and safety of all parties participating in these adjudicatory processes while avoiding unnecessary delays to these proceedings.

FINRA would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change. FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of

Section 15A(b)(6) of the Act,[30] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act,[31] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change would grant FINRA, and in some cases another party to a proceeding, temporary modifications to its procedural requirements in order to allow FINRA to maintain fair processes and protect investors while operating in a remote work environment, and with corresponding restrictions on its activities. It is in the public interest, and consistent with the Act's purpose, for FINRA to receive this relief to specify filing and service methods, extend certain time periods, and modify the format of oral argument for FINRA disciplinary and eligibility proceedings and other review processes in order to cope with the current pandemic conditions. FINRA's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. As noted above, the proposed rule change strikes an appropriate balance by seeking needed temporary relief in connection with rules and requirements that do not raise heightened fairness concerns.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended solely to provide temporary relief from procedural requirements in FINRA rules

[27] FINRA Rule 1015(d) (Appointment of Subcommittee) requires that the NAC (or Review Subcommittee as defined in Rule 9120) appoint a Subcommittee to participate in the review of the appeal and provides that the Subcommittee shall be composed of two or more persons who shall be current or past members of the National Adjudicatory Council or former Directors or Governors.

[28] FINRA Rule 9341(d) (Oral Argument; Attendance Required).

[29] *See* FINRA Rule 9331 (Appointment of Subcommittee or Extended Proceeding Committee) provides that the NAC or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

[30] 15 U.S.C. 78*o*–3(b)(6).

[31] 15 U.S.C. 78*o*–3(b)(8).

that would otherwise impose unnecessary impediments to FINRA's operations and FINRA's investor protection goals. FINRA does not believe that the proposed rule change will have any material negative effect on members and will not impose any new costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[32] and Rule 19b–4(f)(6)[33] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, FINRA stated that the requested relief will help minimize the impact of the COVID–19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees. FINRA also stated that while social distancing requirements have been implemented across the United States to benefit the health and welfare of its citizens, certain internal processes, as well as interactions with member firms, required by FINRA rules are more efficiently and effectively implemented when physical proximity and full access to necessary products and services are unhampered. FINRA noted that the proposed rule change will provide temporary relief on many of these prescriptions to accommodate the impact that the outbreak has had on, among other things, FINRA employees' ability to interact internally, with committees and with member firms. FINRA believes that, given the impacts of the COVID–19 crisis, there is a significant benefit to quickly implementing this proposed rule change. The Commission also notes that the proposal provides only temporary relief from, as FINRA states, the timing, method of service and other procedural requirements, described above, during the period in which FINRA's operations are impacted by COVID–19. As proposed, these changes would be in place through June 15, 2020.[34] FINRA also noted that the amended rules will revert back to their current state at the conclusion of the temporary relief period and, if applicable, any extension thereof. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2020–015. 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–015 and should be submitted on or before June 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11287 Filed 5–26–20; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[34] As noted above, *see supra* note 5, FINRA states that if it requires temporary relief from the rule requirements identified in this proposal beyond June 15, 2020, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[35] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88910; File No. SR–FICC–2020–002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Amend the Government Securities Division Rulebook Relating to the Legal Entity Identifier Requirement

May 20, 2020.

I. Introduction

On March 25, 2020, Fixed Income Clearing Corporation (''FICC'') 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] proposed rule change SR–FICC–2020–002. The proposed rule change was published for comment in the **Federal Register** on April 9, 2020.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

FICC proposes to modify its Government Securities Division (''GSD'')[4] Rulebook (''Rules'')[5] to require: (1) Netting and CCIT Member applicants to obtain and provide a Legal Entity Identifier (''LEI'')[6] to FICC as part of its membership application and Netting and CCIT Members to have a current LEI on file with FICC at all times; and (2) Sponsoring Member applicants to provide FICC with an LEI for each Sponsored Member applicant as part of its Sponsoring Member application and Sponsoring Members to have a current LEI on file with FICC for each existing Sponsored Member and to provide an LEI for each newly added Sponsored Member it would like to sponsor into membership. Additionally, FICC proposes to require any Netting Member, CCIT Member, or Sponsoring Member who fails to maintain current LEIs on file to indemnify FICC for any losses and Legal Actions that arise due to that failure.

A. Background

The Office of Financial Research (''OFR'') of the U.S. Department of the Treasury has adopted a rule (''OFR Regulation'') establishing a data collection for centrally cleared transactions in the U.S. repurchase agreement (''repo'') market.[7] To facilitate this collection, OFR requires ''covered reporters,'' defined as certain central counterparties who clear repo transactions, to submit to OFR daily reports including trade and collateral information on all repo transactions cleared through any of its services. FICC meets the definition of a covered reporter because it acts as the central counterparty (''CCP'')[8] in repo transactions cleared through its services. FICC offers its repo transaction clearing services through its Netting System services and CCIT Services. To comply with this requirement, FICC must submit, as part of its daily reports, the LEI of each clearing member involved in each reported repo transaction.[9]

OFR states in the Release that the reporting requirement will enhance the ability of the Financial Stability Oversight Council (''Council''),[10] Council member agencies,[11] and OFR to identify and monitor risks to financial stability because the repo market serves a crucial role in providing short-term funding, among other critical functions, for U.S. markets.[12] Specifically, the Release explains that the LEI requirement will facilitate an understanding of repo market participants' exposures, concentrations, and network structures.[13]

B. Proposed Rule Changes

Currently, FICC does not require that its Members obtain LEIs or provide LEIs to FICC either as part of application materials or as a Member.[14] FICC proposes to add a new defined term to its Rules for a Legal Entity Identifier. FICC uses the terminology of the Global Legal Entity Identifier in defining LEI in its GSD Rules.[15] Moreover, to comply with the OFR Regulation, FICC proposes to modify the GSD Rules to require certain Member applicants and Members to obtain, provide, and maintain current LEIs on file with FICC in the two following areas.

(1) Netting and CCIT Member Applicants and Members

FICC proposes to amend the GSD Rules to include the following two requirements for its Netting Members and CCIT Members and for applicants to become such Members. First, FICC proposes to amend its GSD Rules to require each Netting Member applicant and each CCIT Member applicant to obtain and provide an LEI to FICC as part of its membership application. This change will be implemented upon Commission approval.

Second, FICC proposes to amend its GSD Rules to add language that would require each Netting Member and each CCIT Member to have a current LEI on file with FICC at all times. Existing Netting Members and CCIT Members will have 60 calendar days from the date of the Commission's approval to submit their LEIs to FICC.

Additionally, FICC proposes to provide that a Netting Member or CCIT

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 88557 (April 3, 2020), 85 FR 19979 (April 9, 2020) (SR–FICC–2020–002) (''Notice'').

[4] FICC operates two divisions, GSD and the Mortgage Backed Securities Division (''MBSD''). GSD provides trade comparison, netting, risk management, settlement, and central counterparty services for the U.S. Government securities market. MBSD provides the same services for the U.S. mortgage-backed securities market. GSD and MBSD maintain separate sets of rules, margin models, and clearing funds. The proposed rule change relates solely to GSD.

[5] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[6] A ''Legal Entity Identifier'' is a 20-character reference code used to uniquely identify legally distinct entities that engage in financial transactions. The Legal Entity Identifier is based on the ISO 17442 standard developed by the International Organization for Standardization and satisfies the standards implemented by the Global Legal Entity Identifier Foundation. *See https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei.*

[7] 84 FR 4975 (February 20, 2019) (hereinafter the ''Release''). The OFR Regulation is codified at 12 CFR part 1610.

[8] As a CCP, FICC interposes itself between counterparties to a repo transaction, acting functionally as the buyer to every seller and the seller to every buyer to ensure the performance of each contract. 17 CFR 240.17Ad–22(a)(2).

[9] In the Release, OFR recognizes that certain rule changes may be necessary for a covered reporter like FICC to comply with this requirement and notes that it expects such covered reporters to effectuate rulemaking, subject to any necessary regulatory approval, to require that its participants obtain and provide LEIs to meet a covered reporter's OFR reporting requirements. Release, *supra* note 7, at 4980–81.

[10] The Council was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Council is charged with identifying risks to the financial stability of the United States, among other things. *See https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc.*

[11] The Council member agencies are the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, National Credit Union Administration, Office of the Comptroller of the Currency, Securities and Exchange Commission, Treasury Department, and Consumer Financial Protection Bureau. *See https://www.treasury.gov/initiatives/fsoc/about/Pages/FSOC-Member-Agencies.aspx.*

[12] *See* Release, *supra* note 7, at 4975.

[13] *See id.* at 4980.

[14] *See* Notice, *supra* note 3, at 19980.

[15] *See supra* note 6. The Global Legal Entity Identifier Foundation was established by the Financial Stability Board in June 2014 to support the implementation and use of Legal Entity Identifiers. The Financial Stability Board is an international body that monitors and makes recommendations about the global financial system. *www.fsb.org.*

Member must indemnify FICC, among others (collectively, the ''LEI Indemnified Parties''), for any and all losses, liabilities, expenses, and Legal Actions [16] suffered or incurred by the LEI Indemnified Parties arising from a Netting Member's or CCIT Member's failure to have its current LEI on file with FICC. FICC states that the proposed indemnity clause is appropriate because, in fulfilling its regulatory obligations under the OFR Regulation, FICC would be relying upon Netting Members and CCIT Members to keep their LEI on file with FICC current.[17]

(2) Sponsoring Members Applicants and Members

FICC proposes to amend the GSD Rules to include the following three requirements for its Sponsoring Member applicants and Sponsoring Members. First, each Netting Member or CCIT Member who submits an application to FICC in order to become a Sponsoring Member must submit the LEIs of its Sponsored Member applicants as part of the Sponsoring Member application. This change will be implemented upon Commission approval.

Second, each Sponsoring Member must provide the LEI for each of its existing Sponsored Members so that FICC has a current LEI for each such Sponsored Member at all times. For existing Sponsored Members, Sponsoring Members will have 60 calendar days from the date of the Commission's approval to submit the LEIs to FICC. Third, each Sponsoring Member must provide the LEI for any new Sponsored Member it wishes to sponsor into membership as a Sponsored Member. This change will be implemented upon Commission approval.

Additionally, FICC proposes to include an indemnity clause, as described above, for Sponsoring Members because, like Netting Members and CCIT Members, FICC would be relying on the Sponsoring Members to keep Sponsored Member LEIs on file with FICC current.[18]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [19] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[20] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that clearing agency rules be designed to protect investors and the public interest.[21] As stated in Section II.A above, the OFR Regulation will enhance the ability of the Council to identify and monitor risks to financial stability because the repo market serves a crucial role in providing short-term funding, among other critical functions, for U.S. markets. Specifically, the LEI requirement will facilitate an understanding of repo market participants' exposures, concentrations, and network structures. Therefore, the Commission believes the proposed rule change could serve to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act [22] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [23] that proposed rule change SR–FICC–2020–002, be, and hereby is, APPROVED.[24]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

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[16] The proposed rule change would define ''Legal Action,'' to mean and include any claim, counterclaim, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation before any federal, state or foreign court or other tribunal, or any investigative or regulatory agency or self-regulatory organization. Notice, *supra* note 3, at 19980.

[17] *See id.*

[18] *See id.* at 19981.

[19] 15 U.S.C. 78s(b)(2)(C).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] *Id.*

[22] 15 U.S.C. 78q–1.

[23] 15 U.S.C. 78s(b)(2).

[24] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88918; File No. 4–762]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and MEMX LLC

May 20, 2020.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on April 16, 2020, the Financial Industry Regulatory Authority, Inc. (''FINRA'') and MEMX LLC (''MEMX'') (together with FINRA, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a plan for the allocation of regulatory responsibilities, dated April 16, 2020 (''17d–2 Plan'' or the ''Plan''). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[4] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act [5] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[5] 15 U.S.C. 78q(d)(1).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[8] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[9] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both MEMX and FINRA.[10] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''MEMX Certification of Common Rules,'' referred to herein as the ''Certification'') that lists every MEMX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to MEMX members that are also members of FINRA and the associated persons therewith (''Dual Members'').

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of MEMX that are substantially similar to the applicable rules of FINRA,[11] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (''Common Rules''). In the event that a Dual Member is the subject of an investigation relating to a transaction on MEMX, the plan acknowledges that MEMX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[12]

Under the Plan, MEMX would retain full responsibility for surveillance, examination, investigation and enforcement with respect to trading activities or practices involving MEMX's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any MEMX rules that are not Common Rules.[13]

The text of the proposed 17d–2 Plan is as follows:

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND MEMX LLC PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (''FINRA'') and MEMX LLC (''MEMX''), is made this 16th day of April, 2020 (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and MEMX may be referred to individually as a ''party'' and together as the ''parties.''

Whereas, FINRA and MEMX desire to reduce duplication in the examination and surveillance of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and MEMX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and MEMX hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*MEMX Rules*'' or ''*FINRA Rules*'' shall mean: (i) The rules of MEMX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean MEMX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination or surveillance for compliance with such provisions and rules would not require FINRA to

[10] The proposed 17d–2 Plan refers to these common members as ''Dual Members.'' *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[11] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either MEMX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that MEMX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

[12] *See* paragraph 6 of the proposed 17d–2 Plan.

[13] *See* paragraph 2 of the proposed 17d–2 Plan.

develop one or more new examination or surveillance standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, MEMX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca Inc., Investors' Exchange LLC and Long-Term Stock Exchange, Inc. effective August 1, 2019, as may be amended from time to time. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MEMX, (ii) incorporation by reference of MEMX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by MEMX, (iv) prior written approval of MEMX and (v) payment of fees or fines to MEMX.

(c) ''*Dual Members*'' shall mean those MEMX members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall be the date this Agreement is approved by the Commission.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities, surveillance responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory and Enforcement Responsibilities*. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, MEMX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are MEMX Rules are substantially similar to the corresponding FINRA Rules (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of MEMX or FINRA, MEMX shall submit an updated list of Common Rules to FINRA for review which shall add MEMX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete MEMX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be MEMX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and MEMX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the ''Retained Responsibilities'') the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving MEMX's own marketplace for rules that are not Common Rules;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any MEMX Rules that are not Common Rules, except for MEMX Rules for any MEMX member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for the MEMX and is a member of FINRA (''Router Member'') as provided in paragraph 6. As of the date of this Agreement, MEMX Execution Services LLC is the only Router Member.

3. *Dual Members*. Prior to the Effective Date, MEMX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge*. There shall be no charge to MEMX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as otherwise agreed by the parties, either herein or in a separate agreement.

5. *Applicability of Certain Laws, Rules, Regulations or Orders*. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule or order is inconsistent with this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. *Notification of Violations*.

(a) In the event that FINRA becomes aware of apparent violations of any MEMX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify MEMX of those apparent violations for such response as MEMX deems appropriate. With respect to apparent violations of any MEMX Rules by any Router Member, FINRA shall not make referrals to MEMX pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(b) In the event that MEMX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, MEMX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on MEMX, MEMX may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.*

(a) FINRA shall make available to MEMX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish MEMX any information it obtains about Dual Members which reflects adversely on their financial condition. MEMX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Statutory Disqualifications*. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep MEMX advised of its actions in this regard for such subsequent proceedings as MEMX may initiate.

9. *Customer Complaints*. MEMX shall forward to FINRA copies of all customer complaints involving Dual Members received by MEMX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. *Advertising*. FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. *No Restrictions on Regulatory Action*. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination*. This Agreement may be terminated by MEMX or FINRA at any time upon the approval of the Commission after six (6) month's written notice to the other party.

13. *Arbitration*. In the event of a dispute between the parties as to the operation of this Agreement, MEMX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. *Notification of Members*. MEMX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

15. *Amendment*. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

16. *Limitation of Liability*. Neither FINRA nor MEMX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or MEMX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or MEMX with respect to any of the responsibilities to be performed by each of them hereunder.

17. *Relief from Responsibility*. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and MEMX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve MEMX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

18. *Severability*. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

* * * * *

Exhibit 1

MEMX Certification of Common Rules

MEMX hereby certifies that the requirements contained in the rules listed below for MEMX are identical to, or substantially similar to, the comparable FINRA (NASD) Rules, Exchange Act provision or SEC rule identified (''Common Rules'').

Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MEMX, (ii) incorporation by reference of MEMX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by MEMX, (iv) prior written approval of MEMX and (v) payment of fees or fines to MEMX.

MEMX Rule	FINRA (NASD) Rule, Exchange Act Provision, SEC Rule
Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements #.	FINRA Rule 1240(a)(1)–(4) Continuing Education Requirements #;.
Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment.	FINRA By-Laws of the Corporation, Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification; FINRA Rule 1010(e) Electronic Filing Requirements for Uniform Forms.
Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member #.	FINRA By-Laws of the Corporation, Article IV, Section 1(c) Application for Membership and Article V, Sec. 2(c); FINRA Rule 1010(c) Electronic Filing Requirements for Uniform Forms.
Rule 3.1 Business Conduct of Members ^	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade ^.
Rule 3.2 Violations Prohibited ^ #	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and FINRA Rule 3110 Supervision ^.
Rule 3.3 Use of Fraudulent Devices ^	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices ^.
Rule 3.5 Communications with the Public	FINRA Rule 2210 Communications with the Public.
Rule 3.6 Fair Dealing with Customers	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices,^ [1] FINRA Rule 2111 Suitability.
Rule 3.7(a) Recommendations to Customers	FINRA Rule 2111(a) and SM .03 Suitability.
Rule 3.8(a) The Prompt Receipt and Delivery of Securities	FINRA Rule 11860 COD Orders.
Rule 3.8(b) The Prompt Receipt and Delivery of Securities	SEC Regulation SHO.
Rule 3.9 Charges for Services Performed	FINRA Rule 2122 Charges for Services Performed.
Rule 3.10 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity.
Rule 3.11 Publication of Transactions and Quotations #	FINRA Rule 5210 Publication of Transactions and Quotations.
Rule 3.12 Offers at Stated Prices	FINRA Rule 5220 Offers at Stated Prices.
Rule 3.13 Payments Involving Publications that Influence the Market Price of a Security.	FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security.
Rule 3.14 Disclosure on Confirmations	FINRA Rule 2232(a) Customer Confirmations and SEC Rule 10b–10 Confirmation of Transactions.
Rule 3.15 Disclosure of Control	FINRA Rule 2262 Disclosure of Control Relationship With Issuer.
Rule 3.16 Discretionary Accounts	FINRA Rule 3260 Discretionary Accounts.
Rule 3.17 Customer's Securities or Funds	FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Improper Use.
Rule 3.21 Communications with Customers	FINRA Rule 2210 Communications with the Public.
Rule 3.18 Prohibition Against Guarantees	FINRA Rule 2150(b) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Prohibition Against Guarantees.
Rule 3.19 Sharing in Accounts; Extent Permissible	FINRA Rule 2150(c)(1) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Sharing in Accounts; Extent Permissible.
Rule 3.21 Customer Disclosures	FINRA Rule 2265 Extended Hours Trading Risk Disclosure.
Rule 3.20 Influencing or Rewarding Employees of Others; Gratuities	FINRA Rule 3220 Influencing or Rewarding Employees of Others.
Rule 3.26 Telemarketing and Interpretations and Policies .01	FINRA Rule 3230 Telemarketing.
Rule 4.1 Requirements #	Section 17 of the Exchange Act and rules thereunder and FINRA Rule 4511(a) and (c) General Requirements [2].
Rule 4.3 Record of Written Complaints	FINRA Rule 4513 Records of Written Customer Complaints.
Rule 5.1 Written Procedures #	FINRA Rule 3110(b)(1) Supervision-Written Procedures ^.
Rule 5.2 Responsibility of Members	FINRA Rule 3110 (a)(4), (b)(4) and (b)(7) Supervision—Supervisory System/Written Procedures—Review of Correspondence and Internal Communications ^.
Rule 5.3 Records	FINRA Rule 3110 Supervision ^.
Rule 5.4 Review of Activities	FINRA Rule 3110(c) and (d) Supervision—Internal Inspections/Transaction Review and Investigation ^.
Rule 5.6 Anti-Money Laundering Compliance Program #	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
Rule 9.3 Predispute Arbitration Agreements	FINRA Rule 2268 Requirements When Using Predispute Arbitration Agreements for Customer Accounts.
Rule 11.16(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility.	FINRA Rule 6190(a) & (b) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility.
Rule 11.10(a)(5) Order Execution-Short Sales # ^^	FINRA Rule 6182 Trade Reporting of Short Sales ^^.
Rule 12.2 Fictitious Transactions	FINRA Rule 6140 Other Trading Practices and FINRA Rule 5210 Supplementary Material .02 Self-Trades.
Rule 12.3 Excessive Sales By A Member	FINRA Rule 6140(c) Other Trading Practices.
Rule 12.4 Manipulative Transactions	FINRA Rule 6140 Other Trading Practices.
Rule 12.5 Dissemination of False Information	FINRA Rule 6140(e) Other Trading Practices.
Rule 12.6 Prohibition Against Trading Ahead of Customer Orders #**	FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders **.
Rule 12.9 Trade Shredding	FINRA Rule 5290 Order Entry and Execution Practices.
Rule 12.11 Best Execution and Interpositioning **	FINRA Rule 5310 Best Execution and Interpositioning **.
Rule 12.13 Trading Ahead of Research Reports **	FINRA Rule 5280 Trading Ahead of Research Reports **.
Rule 12.14 Front Running of Block Transactions **	FINRA Rule 5270 Front Running of Block Transactions **.

MEMX Rule	FINRA (NASD) Rule, Exchange Act Provision, SEC Rule
Rule 13.3(a), (b)(i), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials.	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.

[1] FINRA shall not have Regulatory Responsibilities regarding .01 of MEMX Rule 3.6.

[2] FINRA shall not have Regulatory Responsibilities regarding requirements to keep records ''in conformity with . . . Exchange Rules;'' responsibility for such requirement remains with MEMX.

In addition, the following provisions shall be part of this 17d–2 Agreement:

SEA Rules:

- SEA Rule 200 of Regulation SHO—Definition of Short Sales and Marking Requirements **
- SEA Rule 201 of Regulation SHO—Circuit Breaker **
- SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements **
- SEA Rule 204 of Regulation SHO—Close-Out Requirement **
- SEA Rule 101 of Regulation M—Activities by Distribution Participants **
- SEA Rule 102 of Regulation M—Activities by Issuers and Selling Security Holders During a Distribution **
- SEA Rule 103 of Regulation M—Nasdaq Passive Market Making **
- SEA Rule 104 of Regulation M—Stabilizing and Other Activities in Connection with an Offering **
- SEA Rule 105 of Regulation M—Short Selling in Connection With a Public Offering **
- SEA Rule 604 of Regulation NMS—Display of Customer Limit Orders **
- SEA Rule 606 of Regulation NMS—Disclosure of Routing Information **
- SEA Rule 610(d) of Regulation NMS—Locking or Crossing Quotations **
- SEA Rule 611 of Regulation NMS—Order Protection Rule **
- SEA Rule 10b–5 Employment of Manipulative and Deceptive Devices ^
- SEA Rule 17a–3/17a–4—Records to Be Made by Certain Exchange Members, Brokers, and Dealers/Records to Be Preserved by Certain Exchange Members, Brokers, and Dealers ^

^ FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., and Investors' Exchange LLC and the Long-Term Stock Exchange, Inc. effective August 1, 2019, as may be amended from time to time.

** FINRA shall perform the surveillance responsibilities for the double star rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement.

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act[14] and Rule 17d–2 thereunder,[15] after June 11, 2020, the Commission may, by written notice, declare the plan submitted by MEMX and FINRA, File No. 4–762, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve MEMX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–762 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–762. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of MEMX and FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–762 and should be submitted on or before June 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11283 Filed 5–26–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78q(d)(1).

[15] 17 CFR 240.17d–2.

[16] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public meeting on June 1, 2020, at 9:30 a.m. (ET).

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting

on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 9:30 a.m. and will be open to the public via webcast. The Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: On May 8, 2020, the Commission issued notice of the Committee meeting (Release No. 34–88842), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee.

The agenda for the meeting will include panel discussions and potential recommendations from the subcommittees, including potential recommendations concerning internal fund crosses and credit ratings, as well as a panel discussing the role of bond pricing services.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: May 21, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–11411 Filed 5–22–20; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16412 and #16413; Oregon Disaster Number OR–00100]

Presidential Declaration Amendment of a Major Disaster for the State of Oregon

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of OREGON (FEMA–4519–DR), dated 04/03/2020.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 02/05/2020 through 02/09/2020.

DATES: Issued on 05/14/2020.

Physical Loan Application Deadline Date: 07/02/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 01/04/2021.

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 State of OREGON, dated 04/03/2020, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 07/02/2020.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–11308 Filed 5–26–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11126]

Certification Pursuant To Section 6(a) Of the Nicaragua Human Rights and Anticorruption Act Of 2018

By virtue of the authority vested in me as the Deputy Secretary of State, and pursuant to section 6(a) of the Nicaragua Human Rights and Anticorruption Act of 2018 (Pub. L. 115–335) and Department of State Delegation of Authority 245–2, I hereby certify that the Government of Nicaragua is not taking effective steps to:

(a) Strengthen the rule of law and democratic governance, including the independence of the judicial system and electoral council;

(b) Combat corruption, including by investigating and prosecuting cases of public corruption;

(c) Protect civil and political rights, including the rights of freedom of the press, speech, and association, for all people of Nicaragua, including political opposition parties, journalists, trade unionists, human rights defenders, indigenous peoples, and other civil society activists;

(d) Investigate and hold accountable officials of the Government of Nicaragua and other persons responsible for the killings of individuals associated with the protests in Nicaragua that began on April 18, 2018; or to

(e) Hold free and fair elections overseen by credible domestic and international observers.

This determination shall be published in the **Federal Register** and, along with the accompanying report, shall be submitted to Congress.

Dated May 12, 2020.

Stephen E. Biegun,

Deputy Secretary of State.

[FR Doc. 2020–11380 Filed 5–22–20; 4:15 pm]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 11127]

Certification Pursuant to Sections 7045(a)(1)(B) and 7045(a)(2)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020

Pursuant to section 7045(a)(1)(B) and section 7045(a)(2)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, Pub. L. 116–94) and Delegation of Authority 245–2, I hereby certify that the central government of El Salvador is:

(a) Combating corruption and impunity, including prosecuting corrupt government officials;

(b) Implementing reforms, policies, and programs to increase transparency and strengthen public institutions;

(c) Protecting the rights of civil society, opposition political parties, and the independence of the media;

(d) Providing effective and accountable law enforcement and security for its citizens, and upholding due process of law;

(e) Implementing policies to reduce poverty and promote equitable economic growth and opportunity;

(f) Supporting the independence of the judiciary and of electoral institutions;

(g) Improving border security;

(h) Combating human smuggling and trafficking and countering the activities of criminal gangs, drug traffickers, and transnational criminal organizations; and

(i) Informing its citizens of the dangers of the journey to the southwest border of the United States.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated May 14, 2020.

Stephen E. Biegun,

Deputy Secretary of State.

[FR Doc. 2020–11379 Filed 5–22–20; 4:15 pm]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 11124]

Certification Pursuant to Sections 70454(a)(1)(B) and 7045(a)(2)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020

Pursuant to section 7045(a)(1)(B) and section 7045(a)(2)(A) of the Department

of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, Pub. L. 116–94) and Delegation of Authority 245–2, I hereby certify that the central government of Guatemala is:

(a) Combating corruption and impunity, including prosecuting corrupt government officials;

(b) Implementing reforms, policies, and programs to increase transparency and strengthen public institutions;

(c) Protecting the rights of civil society, opposition political parties, and the independence of the media;

(d) Providing effective and accountable law enforcement and security for its citizens, and upholding due process of law;

(e) Implementing policies to reduce poverty and promote equitable economic growth and opportunity;

(f) Supporting the independence of the judiciary and of electoral institutions;

(g) Improving border security;

(h) Combating human smuggling and trafficking and countering the activities of criminal gangs, drug traffickers, and transnational criminal organizations; and

(i) Informing its citizens of the dangers of the journey to the southwest border of the United States.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: May 14, 2020.

Stephen E. Biegun,

Deputy Secretary of State.

[FR Doc. 2020–11383 Filed 5–22–20; 4:15 pm]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice:11125]

Certification Pursuant to Section 7045(a)(2)(A) of the Department Of State, Foreign Operations, and Related Programs Appropriations Act, 2020

Pursuant to section 7045(a)(1)(B) and section 7045(a)(2)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, Pub. L. 116–94), per delegation of authority 245–2, I hereby certify that the central government of Honduras is:

(a) Combating corruption and impunity, including prosecuting corrupt government officials;

(b) Implementing reforms, policies, and programs to increase transparency and strengthen public institutions;

(c) Protecting the rights of civil society, opposition political parties, and the independence of the media;

(d) Providing effective and accountable law enforcement and security for its citizens, and upholding due process of law;

(e) Implementing policies to reduce poverty and promote equitable economic growth and opportunity;

(f) Supporting the independence of the judiciary and of electoral institutions;

(g) Improving border security;

(h) Combating human smuggling and trafficking and countering the activities of criminal gangs, drug traffickers, and transnational criminal organizations; and

(i) Informing its citizens of the dangers of the journey to the southwest border of the United States.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated May 7, 2020.

Stephen E. Biegun,

Deputy Secretary of State.

[FR Doc. 2020–11382 Filed 5–22–20; 4:15 pm]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for the Office of Management and Budget To Provide Emergency Clearance of a New Collection of Information Titled 'Large Civil Aircraft Dispute Portal'

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a request for emergency clearance of an information collection and a request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is submitting a request to the Office of Management and Budget (OMB) for emergency review and clearance of a new information collection request (ICR) titled *Large Civil Aircraft Dispute Portal* under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations.

DATES: Submit comments no later than June 9, 2020.

ADDRESSES: Submit comments about the ICR, including the title *Large Civil Aircraft Dispute Portal,* to *www.reginfo.gov/public/do/PRAMain.* Find this ICR by selecting 'Currently under Review—Open for Public Comments' or by using the search function.

FOR FURTHER INFORMATION CONTACT: USTR Associate General Counsel Megan Grimball at (202) 395–5725.

SUPPLEMENTARY INFORMATION:

A. Comments

Submit written comments and suggestions to OMB addressing one or more of the following four points:

(1) Whether the ICR is necessary for the proper performance of USTR's functions, including whether the information will have practical utility.

(2) The accuracy of USTR's estimate of the burden of the ICR, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the ICR.

(4) Ways to minimize the burden of the ICR 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.

B. Overview of This Information Collection

Title: Large Civil Aircraft Dispute Portal.

OMB Control Number: N/A.

Form Number(s): Large Civil Aircraft Dispute (LCA) Form.

Description: Following an investigation, and nearly 15 years of litigation, the U.S. Trade Representative determined that the European Union (EU) and certain member States or former member States denied U.S. rights under the World Trade Organization (WTO) Agreement and failed to implement WTO Dispute Settlement Body recommendations concerning certain subsidies to the EU large civil aircraft industry. Pursuant to sections 301(a), 301(c), 304(a)(1)(B), and 306(b) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2411(a), 2411(c), 2414(a)(1)(B), and 2416(b)), the U.S. Trade Representative determined to take action in the form of additional duties on products of certain EU member States, at levels of 10 or 25 percent *ad valorem,* as specified in the list of products included in Annex A of the October 9 notice, effective October 18, 2019 (retaliation list). *See* 84 FR 54245 (October 9, 2019).

You can find background on the proceedings in this investigation in prior notices including 84 FR 15028 (April 12, 2019), 84 FR 32248 (July 5, 2019), 84 FR 54245 (October 9, 2019), 84 FR 55998 (October 18, 2019), 84 FR 67992 (December 12, 2019), 85 FR 10204 (February 21, 2020), and 85 FR 14517 (March 12, 2020).

Section 306(b)(2)(B) of the Trade Act requires the U.S. Trade Representative to revise the retaliation list unless certain conditions are met. Under section 306(c), the U.S. Trade Representative must make revisions 120 days after he took action, and every 180 days thereafter unless certain conditions are met. Before making revisions, section 306(d) requires the U.S Trade Representative to seek public comments.

The U.S. Trade Representative announced the beginning of the 120-day review of the action on December 12, 2019. *See* 84 FR 67992 (December 12 notice). The December 12 notice specifically requested public comments on:

- Whether the U.S. Trade Representative should remove products of specific EU member States from the list of products subject to additional duties or should remain on the list.
- if a product remains on the list, whether the U.S. Trade Representative increase the current rate of additional duty to as high as 100 percent.
- whether the U.S. Trade Representative should add additional EU products to the list. USTR received nearly 26,000 comments in response to the December 12 notice. The U.S. Trade Representative announced certain revisions to the action being taken in the investigation on February 14, 2020. *See* 85 FR 10204 (February 21, 2020), and 85 FR 14517 (March 12, 2020).

Unless certain statutory conditions are met, the next 180-day revision is required on or about August 12, 2020. USTR anticipates receiving at least as many public comments as it received in response to the initial 120-day review. To assist in timely and comprehensive review and public availability of comments in response to notices of periodic revisions, USTR is establishing the Large Civil Aircraft Dispute Portal and requiring use of the LCA Form attached to this notice. In compliance with statutory requirements, USTR anticipates that it will begin accepting comments regarding the next possible revision around June 23, 2020. USTR will ask the public to provide comments on the same issues described in the December 12 notice.

Affected Public: Those interested in commenting on whether certain products of EU member States (or former member States) classified in certain enumerated subheadings of the Harmonized Tariff Schedule of the United States should be subject to additional duties of up to 100 percent.

Frequency of Submission: One submission per periodic revision notice.

Respondent Universe: Same as 'Affected Public.'

Reporting Burden:

Total Estimated Responses: 25,000 comments in response to each periodic revision notice.

Total Estimated Annual Burden: USTR estimates that the average time to prepare and submit a comment regarding whether a particular product should be subject to additional duties will take approximately 120 minutes and will cost about $200 per submission. The burden estimate includes all costs to prepare and submit a comment. The total time burden for comments is 50,000 hours, and the estimated total cost is $5,000,000.

Status: Emergency review. Pursuant to 5 CFR 1320.13, USTR is requesting emergency processing for this ICR because it cannot reasonably comply with normal clearance procedures. USTR carefully evaluated the cost and complexity of establishing its own portal to receive and evaluate public comments based on the level of public interest in response to the first revision notice, the difficulties in processing the comments using *Regulations.gov*, and USTR's experience in handling a large volume of public input in connection with the Section 301 Portal. USTR made the determination to move forward with the Large Civil Aircraft Dispute Portal as quickly as possible in advance of the expected next revision round. To meet the statutory schedule for revisions, USTR must open the Large Civil Aircraft Dispute Portal on or about June 23, 2020. Upon OMB approval of this emergency clearance request, USTR will follow the normal clearance procedures for the ICR.

Janice Kaye,

Chief Counsel for Administrative Law.

Review of Action: Enforcement of U.S. World Trade Organization Rights in Large Civil Aircraft Dispute Form

1. Submitter Information

Full Organization Legal Name **(Public)**	
Commenter First Name **(Public)**	
Commenter Last Name **(Public)**	
Commenter Email Address **(BCI)**	

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? **(Public)**

Note: If you are submitting on behalf of an organization or industry, provide the information below.

Third Party Organization Type **(Public)**	
Third Party Firm; Association Name **(Public)**	
Third Party Representative **(BCI)**	
Third Party Email Address **(BCI)**	

2. Product Details

a) Select one or more product categories applicable to or covered by your comment. **(Public)**

Submitter will have the option to select one or more general product categories from a pre-filled list.

b) What specific product(s) are applicable to or covered by your comment? **(Public)**

Submitter may enter their own product names.

c) Provide the HTSUS subheading or the statistical reporting number applicable to the specific product(s). **(Public)**

Submitter will have the option to select one or more HTSUS codes from a pre-filled list and/or enter their own.

d) What is the current or former EU member State(s) applicable to or covered by your comment? (*i.e.*, the origin of product.) **(Public)**

Submitter may select one or more applicable current or former EU member State(s) from a drop down menu.

3. Respond to the questions below if the product(s) you identified in Question 2 is currently subject to additional duties. (Annex I to the Federal Register notice lists products currently subject to additional duties.) If the product(s) you identified in Question 2 is not currently subject to additional duties, move to Question 4.

a) With respect to product(s) identified in your response to Question 2, what is your recommendation as to whether additional duties should be maintained? (Public)

*Submitter may select the applicable recommendation (*dropdown):*
Maintain current level of additional duties on product(s); Remove additional duties from product(s); Maintain additional duties on product, but modify current rate of additional duties; N/A

b) If you recommend the rate of additional duty be modified, you may provide a recommendation as to the revised rate of additional duty (as high as 100 percent).

4. Respond to the questions below if the product(s) you identified in Question 2 is not currently subject to additional duties. (Annex II to the Federal Register notice lists products for which additional duties of up to 100 percent previously had been proposed, but for which no additional duties are currently imposed.)

a) With respect to products listed in Annex II, what is your recommendation as it relates to the inclusion of the specific product(s) on a revised list of products subject to additional duties? (Public)

*Submitter may select the applicable recommendation (*dropdown):*
Support Imposition of Additional Duties; Oppose Imposition of Additional Duties; N/A

b) You may provide a recommendation as to the rate of additional duty to be imposed (as high as 100 percent). (Public)

5. Please comment on whether maintaining or imposing additional duties on a specific product of one or more specific EU member State (or former member State) would be appropriate to enforce U.S. WTO rights or to obtain the elimination of the WTO-inconsistent measures, and/or would be likely to result in the implementation the DSB recommendations in the Large Civil Aircraft dispute or in achieving a mutually satisfactory solution. (Public)

6. Please comment on whether maintaining or imposing additional duties on specific products of one or more specific EU member States (or former member

States) would cause disproportionate economic harm to U.S. interests, including small or medium size businesses and consumers. (Public)

7. Use the field below to provide any additional information in support of your comment, taking account of the instructions provided in Section B of the Federal Register notice. (Public)

8. You may upload additional attachments in support of your comment. Please specify whether the attachment is Public or contains Business Confidential Information. (Submitter Determines Public or BCI)

*Fields designated as BCI will not be visible to the public.

[FR Doc. 2020–11430 Filed 5–22–20; 4:15 pm]
BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee: Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces a meeting of the Commercial Space Transportation Advisory Committee for June 22, 2020.

DATES: The June 22, 2020 meeting will be held from 8:45 a.m. to 12:00 p.m. Eastern Time. Requests for accommodations to a disability must be received by June 15, 2020.

Requests to speak during the meeting must be submitted by June 15, 2020, to DOT and include a written copy of their remarks. Requests to submit written materials to be reviewed during the meeting must be received by DOT no later than June 15, 2020.

Notices for the September 2020 and March 2021 meetings will be published in the **Federal Register** at least 15 calendar days before the day of the meeting.

ADDRESSES: The June 15, 2020 meeting will be an internet-only meeting. No physical meeting is planned. Instructions on how to attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC internet website at: *https://www.faa.gov/space/additional_information/comstac/.*

FOR FURTHER INFORMATION CONTACT: James Hatt, Designated Federal Officer, U.S. Department of Transportation, at *james.a.hatt@faa.gov.* Any committee related request should be sent to the person listed in this section.

SUPPLEMENTAL INFORMATION:

I. Background

The Commercial Space Transportation Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 92–463. Since its inception, COMSTAC has provided information, advice, and recommendations to the U.S. Department of Transportation through FAA regarding technology, business, and policy issues relevant to oversight of the U.S. commercial space transportation sector.

II. Agenda

At the June 22, 2020 meeting, the agenda will cover the following topics:

Secretary of Transportation Elaine Chao Welcome Remarks
FAA Administrator Steve Dickson Welcome Remarks
FAA Associate Administrator for Commercial Space Transportation, Gen. Wayne Monteith Welcome Remarks
Committee Member Introductions
FAA/AST Updates
AST's Priorities for 2020–2021
Public Comments/Other Business

III. Public Participation

The June 22, 2020 meeting is open to the public. The meeting can be viewed by the public using the internet website link posted above. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by June 15, 2020.

There will be approximately thirty minutes allotted for oral comments from members of the public joining a COMSTAC meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA Office of Commercial Space Transportation may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to COMSTAC members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, this 21 day of May 2020.

James A. Hatt,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2020–11323 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2020–31]

Petition for Exemption; Summary of Petition Received; Airlines for America

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of the Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary are intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 3, 2024.

ADDRESSES: Send comments identified by docket number FAA–2020–0492 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *Deana.Stedman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on May 20, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2020–0492.

Petitioner: Airlines for America.

Sections of 14 CFR Affected: §§ 91.9(a) and (b), 121.153(a), 121.337(b)(9)(iii).

Description of Relief Sought: Airlines for America petitions for relief from 14 CFR 91.9(a) and (b), 121.153(a), and 121.337(b)(9)(iii) to allow its member airlines to transport cargo, subject to the FAA's conditions, on the floor of the main deck of transport category airplanes without revenue passengers onboard. COVID–19 has dramatically reduced the demand for commercial air travel. Due to this extreme reduction in demand, passenger carriers now have the capacity to carry cargo, including critical medical cargo, in-cabin. The relief that would be provided by this exemption would also support the need to replace the cargo capacity provided on airplanes normally flown by passenger carriers.

[FR Doc. 2020–11288 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0033]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 17, 2020, BNSF Railway Company (BNSF) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215, Railroad Freight Car Safety Standards, and part 232, Brake System Safety Standards For Freight And Other Non-Passenger Trains And Equipment; End-Of-Train Devices. FRA assigned the petition Docket Number FRA–2020–0033.

Specifically, BNSF requests relief from 49 CFR 215.13, *Pre-departure inspection,* which requires an inspection when combining two separate consists including one or more cars and one or more locomotives that have been properly inspected and tested in compliance with all applicable regulations, meaning that both consists have had a Class I brake test (§ 232.205), Class IA brake test (§ 232.207), or have been designated as extended haul trains and are compliant with all requirements of § 232.213. BNSF states that the requested relief will allow combining two existing and operating trains without additional inspections, besides a Class III brake test. It further states that the relief will allow subsequent separation of two trains without additional inspections, besides a Class III brake test, provided that a record of the original consist remains intact.

In support of its petition, BNSF states that trains to be combined will include both trains operating with head-end locomotives and trains operating with locomotives equipped with LOCOTROL or Radio Controlled Distributed Power Technology (DP), which was developed by GE Transportation Systems. DP technology allows locomotives to be placed strategically in a train and controlled remotely by a leading locomotive at the head of the train. Once trains are combined, BNSF will operate the combined train as a DP train (if it is longer than 10,000 feet) until the train is separated or reaches its destination. The combined train will be allowed one pick-up and/or set-out with the inclusion of the separating event, and the air slips for both trains that were combined will be maintained from the point of combining through the duration of the trip.

BNSF explains that an additional inspection when combining trains is redundant because each train to be combined has had a brake test and inspection and a § 215.13 pre-departure inspection. Further, BNSF states that the combined train will continue to receive designated inspection(s) as required or pre-designated prior to the combining event and that no cars will exceed the

brake test mileage for which they were originally inspected.

BNSF states that the requested relief will reduce exposure to potential hazards faced by train crews or mechanical inspectors when walking both sides of a pre-tested train being combined. It also contends that the relief will encourage greater utilization of trains under DP configuration across its network, which may improve engineers' ability to control in train forces and improves overall braking characteristics by having multiple locations within a train with cut-in brake valves. This allows brake pipe reductions to occur simultaneously at multiple points within a train promoting smoother brake applications and keeping in train forces at a minimum. These benefits are also gained with an emergency brake application which propagates more rapidly when occurring simultaneously from multiple points within the train.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 26, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2020–11338 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0076]

Request for Comments of a Previously Approved Information Collection, Approval of Underwriters of Marine Hull Insurance

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 16, 2020.

DATES: Comments must be submitted on or before June 26, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mike Yarrington, 202–366–1915, Director, Office of Marine Insurance, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Approval of Underwriters of Marine Hull Insurance.

OMB Control Number: 2133–0517.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Applicants will be required to submit financial data upon which MARAD approval would be based. This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

Respondents: Marine insurance brokers and underwriters of marine insurance.

Affected Public: Business or other for profit.

Total Estimated Number of Responses: 66.

Frequency of Collection: Annually.

Estimated Time per Respondent: .05–1 hr.

Total Estimated Number of Annual Burden Hours: 49.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93)

Dated: May 21, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–11310 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before June 26, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Application To Use Last In, First Out (LIFO) Inventory Method.

OMB Control Number: 1545–0042.

Type of Review: Extension without change of a currently approved collection.

Description: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the LIFO inventory method or to extend the LIFO method to additional goods. The Internal Revenue Service uses Form 970 to determine if the election was properly made.

Form: Form 970.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 2,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 21 hours, 6 minutes.

Estimated Total Annual Burden Hours: 42,220.

2. Title: Requirements for qualified domestic trust.

OMB Control Number: 1545–1443.

Type of Review: Extension without change of a currently approved collection.

Description: The regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under Section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT'S). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Form: None.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 4,390.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 4,390.

Estimated Time per Response: 1 hour, 23 minutes.

Estimated Total Annual Burden Hours: 6,070 hours.

3. Title: Wage and Investment Strategies and Solutions Behavioral Laboratory Customer Surveys and Support.

OMB Control Number: 1545–2274.

Type of Review: Extension without change of a currently approved collection.

Description: As outlined in the IRS Strategic Plan, the Agency is working towards allocating IRS resources strategically to address the evolving scope and increasing complexity of tax administration. In order to do this, the IRS must realize their operational efficiencies and effectively manage costs by improving enterprise-wide resource allocation and streamlining processes using feedback from various behavioral research techniques.

To assist the Agency in accomplishing the goal outlined in the Strategic Plan, the Wage and Investment Division continuously maintains a ''customer-first'' focus through routinely soliciting information concerning the needs and characteristics of its customers and implementing programs based on the information received. W&I Strategies and Solutions (WISS), is developing the implementation of a Behavioral Laboratory to identify, plan and deliver business improvement processes that support fulfillment of the IRS strategic goals.

The collection of information through the Behavioral Laboratory is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with the commitment to improving taxpayer service delivery. Improving agency programs requires ongoing assessment of service delivery. WISS, through the Behavioral Laboratory, will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback provided by taxpayers and IRS employees.

Form: None.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 150,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 150,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 150,000 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 21, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–11349 Filed 5–26–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

ACTION: Notice; request for membership applications.

Pursuant to United States Code, Title 31, section 5135(b), the United States Mint is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) as a member representing the interests of the general public in the coinage of the United States. The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in

which a commemorative coin designation is made.

- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of 11 voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of his or her education, training, or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government. The individual must be a U.S. citizen.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately four to six times per year. The United States Mint is responsible for providing the necessary support, technical services, and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications and why they would be an appropriate choice to represent the general public's thoughts on United States coinage and medals. The United States Mint is interested in candidates who, in addition to their general interest in numismatics, have a demonstrated interest and commitment to actively participate in meetings and activities, and a demonstrated understanding of the role of the CCAC and the obligations of a Special Government Employee; possess demonstrated leadership skills in their fields of expertise or discipline; possess a demonstrated desire for public service and have a history of honorable professional and personal conduct, as well as successful standing in their communities; and who are free of professional, political, or financial interests that could negatively affect their ability to provide impartial advice.

Application Deadline: 5 p.m. (EDT), Friday, June 19, 2020.

Receipt of Applications: Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing his or her reasons for seeking and qualifications for membership, by email to *info@ccac.gov.* The deadline to email submissions is no later than 5 p.m. (EDT) on Friday, June 19, 2020. Because of the COVID–19 national emergency, the United States Mint will not be accepting applications by mail.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; *jennifer.warren@usmint.treas.gov* or 202–354–7208.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2020–11271 Filed 5–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee June 23, 2020, Telephonic Public Meeting

ACTION: Notice of meeting.

Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) telephonic public meeting scheduled for June 23, 2020.

Date: June 23, 2020.

Time: 9:00 a.m. to 4:00 p.m. EDT.

Location: This meeting will occur *via teleconference.* Interested members of the public may dial in to listen to the meeting at (888) 330–1716 and Access Code: 1137147.

Subject: Review and discussion of candidate designs for the 2021 Christa McAuliffe Silver Dollar Commemorative Coin; new reverse designs for the American Eagle Gold and American Eagle Silver Coins; and candidate designs for the Larry Doby Congressional Gold Medal, the 2021 United States Marine Corps Silver Medal, the Secretary Mnuchin Secretary of the Treasury Medal, and the President Trump Presidential Medal.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and location.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in listening in to the provided call number, this is a reminder that the public attendance is for listening purposes only. Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW, Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2020–11278 Filed 5–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Agency Information Collection Activity Under OMB Review: Proposed Information Collection (Application for Burial Benefits)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the

information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0003.''

SUPPLEMENTARY INFORMATION:

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21P–530EZ.

OMB Control Number: 2900–0003.

Type of Review: Reinstatement of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for veterans, service personnel, and their dependents and/or beneficiaries. Information is requested by this form under the authority of 38 U.S.C. Chapter 23 ''Burial Benefits,'' including 38 U.S.C. 2302, 2303, 2304, 2307, and 2308. VA uses the information provided on the form to evaluate the respondent's eligibility for monetary burial benefits, including the burial allowance, plot or internment allowance, and transportation reimbursement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 15039 on Monday, March 16, 2020. Reinstatement with change is needed because the program office was in discussions on use of form and/or change in format and no decision was made; however, decision was made to continue usage with changes.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,037.50 hours.

Estimated Average Burden per Respondent: 30 minutes (0.50 hours).

Frequency of Response: One time.

Estimated Number of Respondents: 2,075. *

*This total was derived from a query of our claims database and represents the actual number of each form received in on an average year.

Authority: 38 U.S.C. 2302, 2303, 2304, 2307, and 2308.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–11305 Filed 5–26–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Wednesday,

No. 102 May 27, 2020

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of Massachusetts; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA065]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Mayflower Wind Energy LLC (Mayflower) for authorization to take marine mammals incidental to site characterization surveys off the coast of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0521) and along a potential submarine cable route to landfall at Falmouth, Massachusetts. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than June 26, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On January 17, 2020, NMFS received a request from Mayflower for an IHA to take marine mammals incidental to site characterization surveys in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0521; Lease Area) and a submarine export cable route connecting the Lease Area to landfall in Falmouth, Massachusetts. A revised application was received on April 9, 2020. NMFS deemed that request to be adequate and complete. Mayflower's request is for take of a small number of 14 species of marine mammals by Level B harassment only. Neither Mayflower nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Mayflower proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) and geotechnical surveys, in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental

Shelf #OCS–A 0521 (Lease Area) and along a potential submarine cable route to landfall at Falmouth, Massachusetts.

The purpose of the proposed surveys is to acquire geotechnical and HRG data on the bathymetry, seafloor morphology, subsurface geology, environmental/biological sites, seafloor obstructions, soil conditions, and locations of any man-made, historical, or archaeological resources within the Lease Area and export cable route to support development of offshore wind energy facilities. Up to three survey vessels may operate concurrently as part of the proposed surveys, but the three vessels will spend no more than a combined total of 215 days at sea. Underwater sound resulting from Mayflower's proposed site characterization surveys has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The total duration of geophysical survey activities would be approximately 215 survey-days. This schedule is based on 24-hour operations in the offshore, deep-water portion of the Lease Area, and 12-hour operations in shallow-water and nearshore areas of the export cable route. The surveys are expected to occur between June and September 2020.

Specific Geographic Region

Mayflower's survey activities would occur in the Northwest Atlantic Ocean approximately 60 kilometers (km) south of Martha's Vineyard, Massachusetts. All survey effort would occur within U.S. Federal and state waters. Surveys would occur within the Lease Area and along a potential submarine cable route connecting the Lease Area and landfall at Falmouth, Massachusetts (see Figure 1 in Mayflower's IHA application).

Detailed Description of Specific Activity

Mayflower's proposed marine site characterization surveys include HRG and geotechnical survey activities. These survey activities would occur within the Lease Area and within an export cable route between the Lease Area and Falmouth, Massachusetts. The Lease Area is approximately 515.5 square kilometers (km^2; 127,388 acres) and lies approximately 20 nautical miles (38 km south-southwest of Nantucket. Water depths in the Lease Area are approximately 38–62 meters (m). For the purpose of this IHA the Lease Area and export cable route are collectively referred to as the Project Area.

The proposed HRG and geotechnical survey activities are described below.

Geotechnical Survey Activities

Mayflower's proposed geotechnical survey activities would include the following:

- Sample boreholes and vibracores to determine geological and geotechnical characteristics of sediments; and
- Seabed core penetration tests (CPTs) to determine stratigraphy and in situ conditions of the sub-surface sediments.

Geotechnical investigation activities are anticipated to be conducted from up to two vessels, each equipped with dynamic positioning (DP) thrusters. Impacts to the seafloor from this equipment will be limited to the minimal contact of the sampling equipment, and inserted boring and probes.

In considering whether marine mammal harassment is an expected outcome of exposure to a particular activity or sound source, NMFS considers the nature of the exposure itself (*e.g.,* the magnitude, frequency, or duration of exposure), characteristics of the marine mammals potentially exposed, and the conditions specific to the geographic area where the activity is expected to occur (*e.g.,* whether the activity is planned in a foraging area, breeding area, nursery or pupping area, or other biologically important area for the species). We then consider the expected response of the exposed animal and whether the nature and duration or intensity of that response is expected to cause disruption of behavioral patterns (*e.g.,* migration, breathing, nursing, breeding, feeding, or sheltering) or injury.

Geotechnical survey activities would be conducted from drill ships equipped with DP thrusters. DP thrusters would be used to position the sampling vessel on station and maintain position at each sampling location during the sampling activity. Sound produced through use of DP thrusters is similar to that produced by transiting vessels and DP thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. NMFS does not believe acoustic impacts from DP thrusters are likely to result in take of marine mammals in the absence of activity- or location-specific circumstances that may otherwise represent specific concerns for marine mammals (*i.e.,* activities proposed in area known to be of particular importance for a particular species), or associated activities that may increase the potential to result in take when in concert with DP thrusters. In this case, we are not aware of any such circumstances. Therefore, NMFS believes the likelihood of DP thrusters used during the proposed geotechnical surveys resulting in harassment of marine mammals to be so low as to be discountable. As DP thrusters are not expected to result in take of marine mammals, these activities are not analyzed further in this document.

Field studies conducted off the coast of Virginia to determine the underwater noise produced by CPTs and borehole drilling found that these activities did not result in underwater noise levels that exceeded current thresholds for Level B harassment of marine mammals (Kalapinski, 2015). Given the small size and energy footprint of CPTs and boring cores, NMFS believes the likelihood that noise from these activities would exceed the Level B harassment threshold at any appreciable distance is so low as to be discountable. Therefore, geotechnical survey activities, including CPTs, vibracores, and borehole drilling, are not expected to result in harassment of marine mammals and are not analyzed further in this document.

Geophysical Survey Activities

Mayflower has proposed that HRG survey activities would be conducted continuously 24 hours per day in the deep-water portion of the Project Area, and 12 hours per day in the shallow-water portion of the survey area. Based on this operation schedule, the estimated total duration of the proposed activities would be a combined total of 215 survey days. This includes 90 days of surveys in the Lease Area and deep-water section of the export cable route, 95 days in the shallow-water section of the cable route, and 30 days in the very shallow section of the cable route (waters less than 5 m deep) (see Table 1). These estimated durations include potential weather down time.

TABLE 1—SUMMARY OF PROPOSED HRG SURVEY SEGMENTS

Survey area	Operating schedule	Duration (survey days)
Lease Area and deep-water section of cable route	24 hours/day	90

TABLE 1—SUMMARY OF PROPOSED HRG SURVEY SEGMENTS—Continued

Survey area	Operating schedule	Duration (survey days)
Shallow-water section of cable route	12 hours/day (daylight only)	95
Very shallow cable route	12 hours/day (daylight only)	30
All areas combined		215

The HRG survey activities will be supported by vessels of sufficient size to accomplish the survey goals in each of the specified survey areas. Surveys in each of the identified survey areas will be executed by a single vessel during any given campaign (*i.e.,* no more than one survey vessel would operate in the Lease Area and deep-water section of the cable route at any given time, but there may be one survey vessel operating in the Lease Area and deep-water cable route, one vessel in the shallow-water section of the cable route, and one vessel in the very shallow waters of the cable route operating concurrently, for a total of three vessels conducting HRG surveys). HRG equipment will either by mounted to or towed behind the survey vessel at a typical survey speed of approximately 3 knots (kn; 5.6 km per hour). The geophysical survey activities proposed by Mayflower would include the following:

- Seafloor imaging (sidescan sonar) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the seafloor. The sonar device emits conical or fan-shaped pulses down toward the seafloor in multiple beams at a wide angle, perpendicular to the path of the sensor through the water. The acoustic return of the pulses is recorded in a series of cross-track slices, which can be joined to form an image of the sea bottom within the swath of the beam. They are typically towed beside or behind the vessel or from an autonomous vehicle;
- Multibeam echosounder (MBES) to determine water depths and general bottom topography. MBES sonar systems project sonar pulses in several angled beams from a transducer mounted to a ship's hull. The beams radiate out from the transducer in a fan-shaped pattern orthogonally to the ship's direction;
- Medium penetration sub-bottom profiler (sparkers) to map deeper subsurface stratigraphy as needed. Sparkers create acoustic pulses from 50 Hz to 4 kHz omni-directionally from the source that can penetrate several hundred meters into the seafloor. Typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals;
- Parametric sub-bottom profiler to provide high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. Typically mounted on the hull of the vessel or from a side pole; and
- Ultra-short baseline (USBL) positioning and Global Acoustic Positioning System (GAPS) to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and the equipment transponder necessary to produce the acoustic profile. It is a two-component system with a hull or pole mounted transceiver and one to several transponders either on the seabed or on the equipment.

Table 2 identifies the representative survey equipment that may be used in support of planned geophysical survey activities that operate below 180 kilohertz (kHz) and have the potential to cause acoustic harassment to marine mammals. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives.

TABLE 2—SUMMARY OF HRG SURVEY EQUIPMENT PROPOSED FOR USE BY MAYFLOWER

HRG equipment category	Specific HRG equipment	Operating frequency range (kHz)	Source level (dB rms)	Beamwidth (degrees)	Typical pulse duration (ms)	Pulse repetition rate (Hz)
Sparker	Geomarine Geo-Spark 800 J system.	0.25 to 5	203	180	3.4	2
Sub-bottom profiler	Edgetech 3100 with SB–2–16S towfish.	2 to 16	179	65	10	10
	Innomar SES–2000 Medium-100 Parametric.	85 to 115	241	2	2	40

The deployment of HRG survey equipment, including the equipment planned for use during Mayflower's proposed activity, produces sound in the marine environment that has the potential to result in harassment of marine mammals. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's

website. (*https://www.fisheries.noaa.gov/find*-species).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the 2018 Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Hayes *et al.,* 2019a), available online at*: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region* or and draft 2019 Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Hayes *et al.* 2019b) available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY MAYFLOWER'S PROPOSED ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance [3]	PBR [4]	Annual M/SI [4]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)							
Family Balaenidae:							
North Atlantic right whale.	*Eubalaena glacialis*	Western North Atlantic	E/D; Y	428 (0; 418; n/a)	535 (0.45) *	0.9	5.56
Family Balaenopteridae (rorquals):							
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; N	1,396 (0; 1,380; See SAR).	1,637 (0.07) *	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D; Y	7,418 (0.25; 6,029; See SAR).	4,633 (0.08)	12	2.35
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6292 (1.015; 3,098; see SAR) 236.	717 (0.30) *	6.2	1
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	24,202 (0.3; 18,902; See SAR).	2,112 (0.05) *	1189	8
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)							
Family Physeteridae:							
Sperm whale	*Physeter macrocephalus*	NA	E; Y	4349 (0.28;3,451; See SAR).	5,353 (0.12)	6.9	0
Family Delphinidae:							
Long-finned pilot whale.	*Globicephala melas*	Western North Atlantic	-/-; Y	5,636 (0.63; 3,464)	18,977 (0.11) [5]	35	38
Bottlenose dolphin	*Tursiops spp*	Western North Atlantic Offshore.	-/-; N	62,851 (0.23; 51,914; See SAR).	97,476 (0.06) [5]	591	28
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,825 (0.21; 145,216; See SAR).	86,098 (0.12)	1,452	419
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	Western North Atlantic	-/-; N	92,233 (0.71; 54,433; See SAR).	37,180 (0.07)	544	26
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,493 (0.19; 30,289; See SAR).	7,732 (0.09)	303	54.3
Family Phocoenidae (porpoises):							
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy.	-/-; N	95,543 (0.31; 74,034; See SAR).	45,089 (0.12) *	851	217
Order Carnivora—Superfamily Pinnipedia							
Family Phocidae (earless seals):							
Gray seal [6]	*Halichoerus grypus*	Western North Atlantic	-/-; N	27,131 (0.19; 23,158, 2016).	N/A	1,389	5,688
Harbor seal	*Phoca vitulina*	Western North Atlantic	−/−; N	75,834 (0.15; 66,884, 2018).	N/A	345	333

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (−) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP). Annual M/SI, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 SARs (Hayes *et al.,* 2019).

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016, 2017, 2018) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016, 2017, 2018) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] 8 NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

As indicated above, all 14 species (with 14 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. All species that could potentially occur in the proposed survey areas are included in Table 4 of the IHA application. However, the temporal and/or spatial occurrence of several species listed in Table 4 in the IHA application is such that take of these species is not expected to occur. The blue whale (*Balaenoptera musculus*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whale (*Mesoplodon* spp.), dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), and striped dolphin (*Stenella coeruleoalba*), typically occur further offshore than the Project Area, while short-finned pilot whales (*Globicephala macrorhynchus*) and Atlantic spotted dolphins (*Stenella frontalis*) are typically found further south than the Project Area (Hayes *et al.,* 2019b). There are stranding records of harp seals (*Pagophilus groenlandicus*) in Massachusetts, but the species typically occurs north of the Project Area and appearances in Massachusetts usually occur between January and May, outside of the proposed survey dates (Hayes *et al.,* 2019b). As take of these species is not anticipated as a result of the proposed activities, these species are not analyzed further.

The following subsections provide additional information on the biology, habitat use, abundance, distribution, and the existing threats to the non-ESA-listed and ESA-listed marine mammals that are both common in the waters of the outer continental shelf (OCS) of Southern New England and have the likelihood of occurring, at least seasonally, in the Project Area and are, therefore, expected to potentially be taken by the proposed activities.

North Atlantic Right Whale

The Western Atlantic stock of North Atlantic right whales ranges primarily from calving grounds in coastal waters of the southeastern United States to feeding grounds in New England waters and the Canadian Bay of Fundy, Scotian Shelf, and Gulf of St. Lawrence (Hayes *et al.,* 2019). Surveys indicate that there are seven areas where NARWs congregate seasonally: The coastal waters of the southeastern United States, the Great South Channel, Jordan Basin, Georges Basin along the northeastern edge of Georges Bank, Cape Cod and Massachusetts Bays, the Bay of Fundy, and the Roseway Basin on the Scotian Shelf (Hayes *et al.* 2018). The closest of these seven areas is the Great South Channel, which lies east of the Project Area, though none of these areas directly overlaps the Project Area.

NMFS has designated two critical habitat areas for the NARW under the ESA: the Gulf of Maine/Georges Bank region, and the southeast calving grounds from North Carolina to Florida. NMFS's regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. All vessels greater than 19.8 m (65 ft) in overall length must operate at speeds of 10 knots (5.1 m/s) or less within these areas during specific time periods. The Lease Area is located approximately 15 km southeast of the Block Island Sound SMA, which is active between November 1 and April 30 each year. The Great South Channel SMA lies to the northeast of the Lease Area and is active April 1 to July 31. NOAA Fisheries may also establish Dynamic Management Areas (DMAs) when and where NARWs are sighted outside SMAs. DMAs are generally in effect for two weeks. During this time, vessels are encouraged to avoid these areas or reduce speeds to 10 knots (5.1 m/s) or less while transiting through these areas.

LaBrecque *et al.* 2015 identified ''biologically important areas (BIAs)'' for cetaceans on the U.S. East Coast, including reproductive, feeding, and migratory areas, as well as areas where small and resident populations reside. The Project Area is encompassed by a right whale BIA for migration from March to April and from November to December. A feeding BIA for right whales from April to June was identified northeast of the Project Area, east of Cape Cod.

The western North Atlantic population demonstrated overall growth of 2.8 percent per year from 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.* 2017). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. However, in 2019 at least seven right whale calves were identified while ten calves have been recorded in 2020. Data indicates that the number of adult females fell from 200 in 2010 to 186 in 2015 while males fell from 283 to 272 in the same time period (Pace *et al.,* 2017). In addition, elevated North Atlantic right whale mortalities have occurred since June 7, 2017. A total of 30 confirmed dead stranded whales (21 in Canada; 9 in the United States), have been documented to date. This event has been declared an Unusual Mortality Event (UME), with human interactions (*i.e.,* fishery-related entanglements and vessel strikes) identified as the most likely cause. More information is available online at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event.*

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated

the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the Project Area. The best estimate of population abundance for the West Indies DPS is 12,312 individuals, as described in the NMFS Status Review of the Humpback Whale under the Endangered Species Act (Bettridge *et al.,* 2015).

Humpback whales in the Gulf of Maine stock typically feed in the waters between the Gulf of Maine and Newfoundland during spring, summer, and fall, but have been observed feeding in other areas, such as off the coast of New York (Sieswerda et al. 2015). Humpback whales are frequently piscivorous when in New England waters, feeding on herring (*Clupea harengus*), sand lance (*Ammodytes* spp.), and other small fishes, as well as euphausiids in the northern Gulf of Maine (Paquet *et al.* 1997). During winter, the majority of humpback whales from North Atlantic feeding areas (including the Gulf of Maine) mate and calve in the West Indies, where spatial and genetic mixing among feeding groups occurs, though significant numbers of animals are found in mid- and high-latitude regions at this time and some individuals have been sighted repeatedly within the same winter season, indicating that not all humpback whales migrate south every winter (Waring *et al.,* 2017).

Kraus *et al.* (2016) observed humpback whales in the RI/MA & MA WEAs and surrounding areas during all seasons. Humpback whales were observed most often during spring and summer months, with a peak from April to June. Calves were observed 10 times and feeding was observed 10 times during the Kraus *et al.* (2016) study. That study also observed one instance of courtship behavior. Although humpback whales were rarely seen during fall and winter surveys, acoustic data indicate that this species may be present within the Massachusetts Wind Energy Area (WEA) year-round, with the highest rates of acoustic detections in winter and spring (Kraus *et al.* 2016).

A humpback whale BIA for feeding has been identified northeast of the Lease Area in the Gulf of Maine, Stellwagen Bank, and the Great South Channel from March through December (LaBrecque *et al.,* 2015).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. The event has been declared a UME. Partial or full necropsy examinations have been conducted on approximately half of the 111 known cases. A portion of the whales have shown evidence of pre-mortem vessel strike; however, this finding is not consistent across all of the whales examined so more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More detailed information is available at*: https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2019-humpback-whale-unusual-mortality-event-along-atlantic-coast* (accessed January 9, 2020). Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006.

Fin Whale

The fin whale is the second largest baleen whale and is widely distributed in all the world's oceans, but is most abundant in temperate and cold waters (Aguilar and García-Vernet 2018). Fin whales are presumed to migrate seasonally between feeding and breeding grounds, but their migrations are less well defined than for other baleen whales. In the North Atlantic, some feeding areas have been identified but there are no known wintering areas (Aguilar and García-Vernet 2018). Fin whales are found in the summer from Baffin Bay, Spitsbergen, and the Barents Sea south to North Carolina and the coast of Portugal (Rice 1998). Apparently not all individuals migrate, because in winter they have been sighted from Newfoundland to the Gulf of Mexico and the Caribbean Sea, and from the Faroes and Norway south to the Canary Islands (Rice 1998). Fin whales off the eastern United States, Nova Scotia, and the southeastern coast of Newfoundland are believed to constitute a single stock under the present International Whaling Commission (IWC) management scheme (Donovan 1991), which has been called the Western North Atlantic stock.

Kraus *et al.* (2016) suggest that, compared to other baleen whale species, fin whales have a high multi-seasonal relative abundance in the Rhode Island/Massachusetts and Massachusetts Wind Energy Areas (RI/MA & MA WEAs) and surrounding areas. Fin whales were observed in the MA WEA) in spring and summer. This species was observed primarily in the offshore (southern) regions of the RI/MA & MA WEAs during spring and was found closer to shore (northern areas) during the summer months (Kraus *et al.* 2016). Calves were observed three times and feeding was observed nine times during the Kraus *et al.* (2016) study. Although fin whales were largely absent from visual surveys in the RI/MA & MA WEAs in the fall and winter months (Kraus *et al.* 2016), acoustic data indicated that this species was present in the RI/MA & MA WEAs during all months of the year.

The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2017). New England waters represent a major feeding ground for fin whales. The Lease Area is flanked by two BIAs for feeding fin whales—the area to the northeast is considered a BIA year-round, while the area off the tip of Long Island to the southwest is a BIA from March to October (LaBrecque *et al.* 2015).

Sei Whale

Sei whales occur worldwide, with a preference for oceanic waters over shelf waters (Horwood 2018). The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern United States and northeastward to south of Newfoundland. NOAA Fisheries considers sei whales occurring from the U.S. East Coast to Cape Breton, Nova Scotia, and east to 42° W as the Nova Scotia stock of sei whales (Waring *et al.* 2016; Hayes *et al.* 2018). In the Northwest Atlantic, it is speculated that the whales migrate from south of Cape Cod along the eastern Canadian coast in June and July, and return on a southward migration again in September and October (Waring *et al.* 2014; 2017).

Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). Kraus et al. (2016) observed sei whales in the RI/MA and MA WEAs and surrounding areas only between the months of March and June during the 2011–2015 NLPSC aerial survey. The number of sei whale observations was less than half that of other baleen whale species in the two seasons in which sei whales were observed (spring and summer). This species demonstrated a distinct seasonal habitat use pattern that was consistent

throughout the study. Calves were observed three times and feeding was observed four times during the Kraus et al. (2016) study. Sei whales were not observed in the MA WEA and nearby waters during the 2010–2017 Atlantic Marine Assessment Program for Protected Species (AMAPPS) shipboard and aerial surveys. However, there were observations during the 2016 and 2017 summer surveys that were identified as being either a fin or sei whale. A BIA for feeding for sei whales occurs east of the Lease Area from May through November (LaBrecque *et al.* 2015).

Minke Whale

Minke whales have a cosmopolitan distribution that spans ice-free latitudes (Stewart and Leatherwood 1985). The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45 °W) to the Gulf of Mexico (Waring *et al.,* 2017). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in which spring to fall are times of relatively widespread and common occurrence, and when the whales are most abundant in New England waters, while during winter the species appears to be largely absent (Waring *et al.,* 2017).

Kraus *et al.* (2016) observed minke whales in the RI/MA & MA WEAs and surrounding areas primarily from May to June. This species demonstrated a distinct seasonal habitat usage pattern that was consistent throughout the study. Though minke whales were observed in spring and summer months in the MA WEA, they were only observed in the lease areas in the spring. Minke whales were not observed between October and February, but acoustic data indicate the presence of this species in the proposed Project Area in winter months. A BIA for feeding for minke whales occurs east of the Lease Area from March through November (LaBrecque *et al.,* 2015).

Since January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. Partial or full necropsy examinations have been conducted on more than 60 percent of the 79 known cases. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease. These findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. Exclusive Economic Zone (EEZ) occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.* 2015). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. Sperm whales are somewhat migratory; however, their migrations are not as specific as seen in most of the baleen whale species. In the North Atlantic, there appears to be a general shift northward during the summer, but there is no clear migration in some temperate areas (Rice 1989). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras. Their distribution is typically associated with waters over the continental shelf break and the continental slope and into deeper waters (Whitehead *et al.* 1991). Sperm whale concentrations near drop-offs and areas with strong currents and steep topography are correlated with high productivity. These whales occur almost exclusively found at the shelf break, regardless of season.

Kraus *et al.* (2016) observed sperm whales four times in the RI/MA & MA WEAs during the summer and fall from 2011 to 2015. Sperm whales, traveling singly or in groups of three or four, were observed three times in August and September of 2012, and once in June of 2015.

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). They are generally found along the edge of the continental shelf (a depth of 330 to 3,300 feet (100 to 1,000 meters)), choosing areas of high relief or submerged banks in cold or temperate shoreline waters. In the western North Atlantic, long-finned pilot whales are pelagic, occurring in especially high densities in winter and spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.* 2002). They frequently travel into the central and northern Georges Bank, Great South Channel, and Gulf of Maine areas during the late spring and remain through early fall (May and October) (Payne and Heinemann 1993).

Note that long-finned and short-finned pilot whales overlap spatially along the mid-Atlantic shelf break between New Jersey and the southern flank of Georges Bank (Payne and Heinemann 1993, Hayes *et al.* 2017) Long-finned pilot whales have occasionally been observed stranded as far south as South Carolina, and short-finned pilot whale have stranded as far north as Massachusetts (Hayes *et al.* 2017). The latitudinal ranges of the two species therefore remain uncertain. However, south of Cape Hatteras, most pilot whale sightings are expected to be short-finned pilot whales, while north of approximately 42° N, most pilot whale sightings are expected to be long-finned pilot whales (Hayes *et al.* 2017). Based on the distributions described in Hayes *et al.* (2017), pilot whale sightings in the Project Area would most likely be long-finned pilot whales.

Kraus *et al.* (2016) observed pilot whales infrequently in the RI/MA & MA WEAs and surrounding areas. Effort-weighted average sighting rates for pilot whales could not be calculated. No pilot whales were observed during the fall or winter, and these species were only observed 11 times in the spring and three times in the summer.

Atlantic White-Sided Dolphin

White-sided dolphins are found in cold temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2017). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine

(Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities.

Kraus *et al.* (2016) suggest that Atlantic white-sided dolphins occur infrequently in the RI/MA & MA WEAs and surrounding areas. Effort-weighted average sighting rates for Atlantic white-sided dolphins could not be calculated, because this species was only observed on eight occasions throughout the duration of the study (October 2011 to June 2015). No Atlantic white-sided dolphins were observed during the winter months, and this species was only sighted twice in the fall and three times in the spring and summer.

Common Dolphin

The common dolphin is one of the most abundant and widely distributed cetaceans, occurring in warm temperate and tropical regions worldwide from about 60° N to 50° S (Perrin 2018). These dolphins occur in groups of hundreds or thousands of individuals and often associate with pilot whales or other dolphin species (Perrin 2018). Until recently, short-beaked and long-beaked common dolphins were thought to be separate species but evidence now suggests that this character distinction is based on ecology rather than genetics (Perrin 2018) and the Committee on Taxonomy now recognizes a single species with three subspecies of common dolphin. The common dolphins occurring in the Project Area are expected to be short-beaked common dolphins (*Delphinus delphis delphis;* Perrin 2018) and would belong to the Western North Atlantic stock (Hayes *et al.,* 2018).

In the North Atlantic, short-beaked common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). This species is found between Cape Hatteras and Georges Bank from mid-January to May, although they migrate onto the northeast edge of Georges Bank in the fall where large aggregations occur (Kenney and Vigness-Raposa 2009), where large aggregations occur on Georges Bank in fall (Waring *et al.* 2007).

Kraus *et al.* (2016) suggested that short-beaked common dolphins occur year-round in the RI/MA & MA WEAs and surrounding areas. Short-beaked common dolphins were the most frequently observed small cetacean species within the Kraus *et al.* (2016) study area. Short-beaked common dolphins were observed in the RI/MA & MA WEAs in all seasons but were most frequently observed during the summer months, with peak sightings in June and August. Short-beaked common dolphins were observed in the MA WEA and nearby waters during all seasons of the 2010–2017 AMAPPS surveys.

Bottlenose Dolphin

There are two distinct bottlenose dolphin ecotypes in the western North Atlantic: the coastal and offshore forms (Waring *et al.,* 2015). The migratory coastal morphotype resides in waters typically less than 65.6 ft (20 m) deep, along the inner continental shelf (within 7.5 km (4.6 miles) of shore), around islands, and is continuously distributed south of Long Island, New York into the Gulf of Mexico. This migratory coastal population is subdivided into 7 stocks based largely upon spatial distribution (Waring *et al.* 2015). Generally, the offshore migratory morphotype is found exclusively seaward of 34 km (21 miles) and in waters deeper than 34 m (111.5 feet). This morphotype is most expected in waters north of Long Island, New York (Waring *et al.* 2017; Hayes *et al.* 2017; 2018). Bottlenose dolphins encountered in the Project Area would likely belong to the Western North Atlantic Offshore stock (Hayes *et al.* 2018). It is possible that a few animals could be from the Northern Migratory Coastal stock, but they generally do not range farther north than New Jersey.

Kraus *et al.* (2016) observed common bottlenose dolphins during all seasons within the RI/MA & MA WEAs. Common bottlenose dolphins were the second most commonly observed small cetacean species and exhibited little seasonal variability in abundance. Common bottlenose dolphins were observed in the MA WEA and nearby waters during spring, summer, and fall of the 2010–2017 AMAPPS surveys.

Risso's Dolphins

Risso's dolphins are distributed worldwide in tropical and temperate seas (Jefferson *et al.,* 2008, 2014), and in the Northwest Atlantic occur from Florida to eastern Newfoundland (Leatherwood *et al.* 1976; Baird and Stacey 1991). Off the northeastern U.S. coast, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras northward to Georges Bank during spring, summer, and autumn (CETAP 1982; Payne *et al.,* 1984). In winter, the range is in the mid-Atlantic Bight and extends outward into oceanic waters (Payne *et al.,* 1984).

Risso's dolphins appear to prefer steep sections of the continental shelf edge and deep offshore waters 100–1,000 m deep (Hartman 2018). They are deep divers, feeding primarily on deep mesopelagic cephalopods such as squid, octopus, and cuttlefish, and likely forage at night (Hartman 2018).

Kraus *et al.* (2016) results suggest that Risso's dolphins occur infrequently in the RI/MA & MA WEAs and surrounding areas. Risso's dolphins were observed in the MA WEA and nearby waters during spring and summer of the 2010–2017 AMAPPS surveys.

Harbor Porpoise

The harbor porpoise inhabits cool temperate to subarctic waters of the Northern Hemisphere, generally within shallow coastal waters of the continental shelf but occasionally travel over deeper, offshore waters (Jefferson *et al.,* 2008). They are usually seen in small groups of one to three but occasionally form much larger groups (Bjørge and Tolley 2018).

There are likely four populations in the western North Atlantic: Gulf of Maine/Bay of Fundy, Gulf of St. Lawrence, Newfoundland, and Greenland (Gaskin 1984, 1992; Hayes *et al.,* 2019). In the Project Area, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2017). During fall (October–December) and spring (April–June) harbor porpoises are widely dispersed from New Jersey to Maine. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada. They are seen from the coastline to deep waters (>1800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2017).

Kraus *et al.* (2016) indicate that harbor porpoises occur within the RI/MA & MA WEAs in fall, winter, and spring. Harbor porpoises were observed in groups ranging in size from three to 15 individuals and were primarily observed in the Kraus *et al.* (2016) study area from November through May, with very few sightings during June through September. Harbor porpoises were observed in the MA WEA and nearby waters during spring and fall of the 2010–2017 AMAPPS surveys.

Harbor Seal

The harbor seal has a wide distribution throughout coastal waters between 30° N and ~80° N (Teilmann and Galatius 2018). Harbor seals are

year-round inhabitants of the coastal waters of eastern Canada and Maine (Katona *et al.* 1993), and occur seasonally along the coasts from southern New England to New Jersey from September through late May (Barlas 1999; Katona *et al.,* 1993; Schneider and Payne 1983; Schroeder 2000). A northward movement from southern New England to Maine and eastern Canada occurs prior to the pupping season, which takes place from mid-May through June (Kenney 1994; Richardson 1976; Whitman and Payne 1990; Wilson 1978). Harbor seals are generally present in the Project Area seasonally, from September through May (Hayes *et al.,* 2019).

Kraus et al. (2016) observed harbor seals in the RI/MA and MA WEAs and surrounding areas during the 2011–2015 NLPSC aerial survey, but this survey was designed to target large cetaceans so locations and numbers of seal observations were not included in the study report. Harbor seals have five major haulout sites in and near the RI/MA and MA WEAs: Monomoy Island, the northwestern side of Nantucket Island, Nomans Land, the north side of Gosnold Island, and the southeastern side of Naushon Island (Payne and Selzer 1989). Harbor seals were observed in the MA WEA and nearby waters during spring, summer, and fall of the 2010–2017 AMAPPS surveys.

Gray Seal

Gray seals are found throughout the temperate and subarctic waters of the North Atlantic (King 1983). In the northwestern Atlantic, they occur from Labrador sound to Massachusetts (King 1983). Gray seals often haul out on remote, exposed islands, shoals, and unstable sandbars (Jefferson *et al.,* 2008). Though they spend most of their time in coastal waters, gray seals can dive to depths of 300 m (984 ft) and frequently forage on the outer continental shelf (Jefferson *et al.,* 2008).

Gray seals in the Project Area belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2017). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2017). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2017). In U.S. waters, gray seals currently pup at four established colonies from late December to mid-February: Muskeget and Monomoy Islands in Massachusetts, and Green and Seal Islands in Maine (Hayes *et al.,* 2019). Pupping was also observed in the early 1980s on small islands in Nantucket-Vineyard Sound and since 2010, pupping has been documented at Nomans Island in Massachusetts (Hayes *et al.,* 2019). The distributions of individuals from different breeding colonies overlap outside of the breeding season. Gray seals may be present in the Project Area year-round (Hayes *et al.,* 2018).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, seals showing clinical signs of stranding have occurred as far south as Virginia, although not in elevated numbers. Therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Between July 1, 2018 and March 13, 2020, a total of 3,152 seal strandings have been recorded as part of this designated Northeast Pinniped UME. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus. Additional testing to identify other factors that may be involved in this UME are underway. More information is available at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids,

especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fourteen marine mammal species (12 cetacean and two pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), five are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average. Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a

result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Potential Effects of Underwater Sound

For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that HRG surveys may result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall

et al. 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Animals in the Project Area during the proposed survey are unlikely to incur TTS due to the characteristics of the sound sources, which include relatively low source levels and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the majority of the geophysical survey equipment proposed for use makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995;

Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent

days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

We expect that some marine mammals may exhibit behavioral responses to the HRG survey activities in the form of avoidance of the area during the activity, especially the naturally shy harbor porpoise, while others such as delphinids might be attracted to the survey activities out of curiosity. However, because the HRG survey equipment operates from a moving vessel, and the maximum radius to the Level B harassment threshold is relatively small, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated impacts within the Project Area.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from Mayflower's use of HRG survey equipment. Commenters on previous IHAs involving HRG surveys have referenced a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring is likely very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic

stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

NMFS does not expect that the generally short-term, intermittent, and transitory HRG activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment if disrupting behavioral patterns. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Marine mammal communications would not likely be masked appreciably by the HRG equipment given the directionality of the signals (for most geophysical survey equipment types proposed for use (Table 1) and the brief period when an individual mammal is likely to be within its beam.

Vessel Strike

Vessel strikes of marine mammals can cause significant wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus 2001; Laist *et al.,* 2001; Vanderlaan and Taggart 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC 2003). An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus 2001; Laist *et al.,* 2001; Jensen and Silber 2003; Vanderlaan and Taggart 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kn). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical surveys. Marine mammals would be able to easily avoid the survey vessel due to the slow vessel speed. Further, Mayflower would implement measures (*e.g.,* protected species monitoring, vessel speed restrictions and separation distances; see *Proposed Mitigation*) set forth in the BOEM lease to reduce the risk of a vessel strike to marine mammal species in the Project Area.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals, but may have potential minor and short-term impacts to food sources such as forage fish. The proposed activities could affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the proposed Project Area with the exception of feeding BIAs for right, humpback, fin, and sei whales and a migratory BIA for right whales which were described previously. The HRG survey equipment will not contact the substrate and does not represent a

source of pollution. Impacts to substrate or from pollution are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. The duration of fish avoidance of an area after HRG surveys depart the area is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of the proposed HRG survey, the fact that the proposed survey is mobile rather than stationary, and the relatively small areas potentially affected. The areas likely impacted by the proposed activities are relatively small compared to the available habitat in the Atlantic Ocean. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Based on the information discussed herein, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally

harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 µPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving) and 120 dB rms for continuous sources (*e.g.,* vibratory driving). Mayflower's proposed activity includes the use of impulsive sources (geophysical survey equipment), and therefore use of the 160 dB re 1 µPa (rms) threshold is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Mayflower's proposed activity includes the use of impulsive sources.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups were calculated. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

These thresholds are provided in Table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$*:* 219 dB; $L_{E,LF,24h}$*:* 183 dB	*Cell 2:* $L_{E,LF,24h}$*:* 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$*:* 230 dB; $L_{E,MF,24h}$*:* 185 dB	*Cell 4:* $L_{E,MF,24h}$*:* 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$*:* 202 dB; $L_{E,HF,24h}$*:* 155 dB	*Cell 6:* $L_{E,HF,24h}$*:* 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$*:* 218 dB $L_{E,PW,24h}$*:* 185 dB	*Cell 8:* $L_{E,PW,24h}$*:* 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$*:* 232 dB; $L_{E,OW,24h}$*:* 203 dB	*Cell 10:* $L_{E,OW,24h}$*:* 219 dB.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 2 shows the HRG equipment types that may be used during the proposed surveys and the sound levels associated with those HRG equipment types. Tables 2 and 4 of Appendix B in the IHA application shows the literature sources for the sound source levels that are shown in Table 2 and that were incorporated into the modeling of Level B isopleth distances to the Level B harassment threshold.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Mayflower that has the potential to result in harassment of marine mammals, sound produced by the Geomarine Geo-Spark 400 tip sparker would propagate furthest to the Level B harassment threshold (Table 6); therefore, for the purposes of the exposure analysis, it was assumed the Geomarine Geo-Spark 400 tip sparker would be active during the entire duration of the surveys. Thus the distance to the isopleth corresponding to the threshold for Level B harassment for the Geomarine Geo-Spark 400 tip sparker (estimated at 141 m; Table 6) was used as the basis of the take calculation for all marine mammals. Note that this results in a conservative estimate of the total ensonified area resulting from the proposed activities as Mayflower may not operate the Geomarine Geo-Spark 400 tip sparker during the entire proposed survey, and for any survey segments in which it is not ultimately operated, the distance to the Level B harassment threshold would be less than 141 m (Table 6). However, as Mayflower cannot predict the precise number of survey days that will require the use of the Geomarine Geo-Spark 400 tip sparker, it was assumed that it would be operated during the entire duration of the proposed surveys.

TABLE 6—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

Sound source	Radial distance to level A harassment threshold (m) *				Radial distance to level B harassment threshold (m)
	Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Phocid pinnipeds (underwater)	All marine mammals
Innomar SES–2000 Medium-100 Parametric	<1	<1	60	<1	116

TABLE 6—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS—Continued

Sound source	Radial distance to level A harassment threshold (m) *				Radial distance to level B harassment threshold (m)
	Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Phocid pinnipeds (underwater)	All marine mammals
Edgetech 2000–DSS	<1	<1	3	<1	5
Geomarine Geo-Spark 400 tip sparker (800 Joules)	<1	<1	8	<1	141

* Distances to the Level A harassment threshold based on the larger of the dual criteria (peak SPL and SEL_{cum}) are shown. For all sources the SEL_{cum} metric resulted in larger isopleth distances.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 5), were also calculated. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* the metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Modeling of distances to isopleths corresponding to the Level A harassment threshold was performed for all types of HRG equipment proposed for use with the potential to result in harassment of marine mammals. Mayflower used a new model developed by JASCO to calculate distances to Level A harassment isopleths based on both the peak SPL and the SEL_{cum} metric. For the peak SPL metric, the model is a series of equations that accounts for both seawater absorption and HRG equipment beam patterns (for all HRG sources with beam widths larger than 90°, it was assumed these sources were omnidirectional). For the SEL_{cum} metric, a model was developed that accounts for the hearing sensitivity of the marine mammal group, seawater absorption, and beam width for downwards-facing transducers. Details of the modeling methodology for both the peak SPL and SEL_{cum} metrics are provided in Appendix A of the IHA application. This model entails the following steps:

1. Weighted broadband source levels were calculated by assuming a flat spectrum between the source minimum and maximum frequency, weighted the spectrum according to the marine mammal hearing group weighting function (NMFS 2018), and summed across frequency;

2. Propagation loss was modeled as a function of oblique range;

3. Per-pulse SEL was modeled for a stationary receiver at a fixed distance off a straight survey line, using a vessel transit speed of 3.5 knots and source-specific pulse length and repetition rate. The off-line distance is referred to as the closest point of approach (CPA) and was performed for CPA distances between 1 m and 10 km. The survey line length was modeled as 10 km long (analysis showed longer survey lines increased SEL by a negligible amount). SEL is calculated as $SPL + 10 \log_{10} T/15$ dB, where T is the pulse duration;

4. The SEL for each survey line was calculated to produce curves of weighted SEL as a function of CPA distance; and

5. The curves from Step 4 above were used to estimate the CPA distance to the impact criteria.

We note that in the modeling methods described above and in Appendix A of the IHA application, sources that operate with a repetition rate greater than 10 Hz were assessed with the non-impulsive (intermittent) source criteria while sources with a repetition rate equal to or less than 10 Hz were assessed with the impulsive source criteria. NMFS does not necessarily agree with this step in the modeling assessment, which results in nearly all HRG sources being classified as impulsive; however, we note that the classification of the majority of HRG sources as impulsive results in more conservative modeling results. Thus, we have assessed the potential for Level A harassment to result from the proposed activities based on the modeled Level A zones with the acknowledgement that these zones are likely conservative.

Modeled isopleth distances to Level A harassment thresholds for all types of HRG equipment and all marine mammal functional hearing groups are shown in Table 6. The dual criteria (peak SPL and SEL_{cum}) were applied to all HRG sources using the modeling methodology as described above, and the largest isopleth distances for each functional hearing group were then carried forward in the exposure analysis to be conservative. For all HRG sources, the SEL_{cum} metric resulted in larger isopleth distances. Distances to the Level A harassment threshold based on the larger of the dual criteria (peak SPL and SEL_{cum}) are shown in Table 6.

Modeled distances to isopleths corresponding to the Level A harassment threshold are very small (<1 m) for three of the four marine mammal functional hearing groups that may be impacted by the proposed activities (*i.e.,* low frequency and mid frequency cetaceans, and phocid pinnipeds; see Table 6). Based on the very small Level A harassment zones for these functional hearing groups, the potential for species within these functional hearing groups to be taken by Level A harassment is considered so low as to be discountable. For harbor porpoises (a high frequency specialist), the largest modeled distance to the Level A harassment threshold for the high frequency functional hearing group was 60 m (Table 6). However, as noted above, modeled distances to isopleths corresponding to the Level A harassment threshold are assumed to be conservative. Further, the Innomar source uses a very narrow beam width (two degrees) and the distances to the Level A harassment isopleths are eight meters or less for the other two sources. Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source, and mitigation measures—including a 100-m exclusion zone for harbor porpoises—are expected to minimize the potential for close approach or longer duration exposure to active HRG

sources. In addition, harbor porpoises are a notoriously shy species which is known to avoid vessels, and would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment). Therefore, we have determined that the potential for take by Level A harassment of harbor porpoises is so low as to be discountable. As NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the proposed surveys is so low as to be discountable, we therefore do not propose to authorize the take by Level A harassment of any marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the proposed survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. More information, including the model results and supplementary information for each model, is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* Marine mammal density estimates in the project area (animals/km^2) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018). The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016).

For the exposure analysis, density data from Roberts *et al.* (2016, 2017, 2018) were mapped using a geographic information system (GIS). These data provide abundance estimates for species or species guilds within 10 km x 10 km grid cells (100 km^2) on a monthly or annual basis, depending on the species. In order to select a representative sample of grid cells in and near the Project Area, a 10-km wide perimeter around the Lease Area and an 8-km wide perimeter around the cable route were created in GIS (ESRI 2017). The perimeters were then used to select grid cells near the Project Area containing the most recent monthly or annual estimates for each species in the Roberts *et al.* (2016, 2017, 2018) data. The average monthly abundance for each species in each survey area (deep-water and shallow-water) was calculated as the mean value of the grid cells within each survey portion in each month (June through September), and then converted for density (individuals/km^2) by dividing by 100 km^2 (Tables 7 and 8).

Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. Because the seasonality and habitat use by gray seals roughly overlaps with that of harbor seals in the survey areas, it was assumed that modeled takes of seals could occur to either of the respective species, thus the total number of modeled takes for seals was applied to each species.

TABLE 7—AVERAGE MONTHLY DENSITIES FOR SPECIES IN THE LEASE AREA AND DEEP-WATER SECTION OF THE CABLE ROUTE

Species	Estimated monthly density (individuals/km^2)			
	June	July	August	September
Fin whale	0.0032	0.0033	0.0029	0.0025
Humpback whale	0.0014	0.0011	0.0005	0.0011
Minke whale	0.0024	0.0010	0.0007	0.0008
North Atlantic right whale	0.0012	0.0000	0.0000	0.0000
Sei whale	0.0002	0.0001	0.0000	0.0001
Atlantic white-sided dolphin	0.0628	0.0446	0.0243	0.0246
Bottlenose dolphin	0.0249	0.0516	0.0396	0.0494
Harbor porpoise	0.0188	0.0125	0.0114	0.0093
Pilot whale	0.0066	0.0066	0.0066	0.0066
Risso's dolphin	0.0002	0.0005	0.0009	0.0007
Common dolphin	0.0556	0.0614	0.1069	0.1711
Sperm whale	0.0001	0.0004	0.0004	0.0002
Seals (harbor and gray)	0.0260	0.0061	0.0033	0.0040

TABLE 8—AVERAGE MONTHLY DENSITIES FOR SPECIES IN THE SHALLOW-WATER SECTION OF THE CABLE ROUTE

Species	Estimated monthly density (individuals/km^2)			
	June	July	August	September
Fin whale	0.0003	0.0003	0.0003	0.0003
Humpback whale	0.0001	0.0001	0.0000	0.0001
Minke whale	0.0002	0.0000	0.0000	0.0000
North Atlantic right whale	0.0000	0.0000	0.0000	0.0000
Sei whale	0.0000	0.0000	0.0000	0.0000
Atlantic white-sided dolphin	0.0010	0.0006	0.0005	0.0008
Bottlenose dolphin	0.2308	0.4199	0.3211	0.3077
Harbor porpoise	0.0048	0.0023	0.0037	0.0036

TABLE 8—AVERAGE MONTHLY DENSITIES FOR SPECIES IN THE SHALLOW-WATER SECTION OF THE CABLE ROUTE—Continued

Species	Estimated monthly density (individuals/km²)			
	June	July	August	September
Pilot whale	0.0000	0.0000	0.0000	0.0000
Risso's dolphin	0.0000	0.0000	0.0000	0.0000
Common dolphin	0.0003	0.0002	0.0006	0.0009
Sperm whale	0.0000	0.0000	0.0000	0.0000
Seals (harbor and gray)	0.2496	0.0281	0.0120	0.0245

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel. Mayflower estimates that the proposed survey vessel in the Lease Area and deep-water sections of the cable route will achieve a maximum daily trackline of 110 km per day and the proposed survey vessels in the shallow-water section of the cable route will achieve a maximum of 55 km per day during proposed HRG surveys. This distance accounts for survey vessels traveling at roughly 3 knots and accounts for non-active survey periods.

Based on the maximum estimated distance to the Level B harassment threshold of 141 m (Table 6) and the maximum estimated daily track line distance of 110 km, an area of 31.1 km² would be ensonified to the Level B harassment threshold each day in the Lease Area and deep-water section of the cable route during Mayflower's proposed surveys. During 90 days of anticipated survey activity over the four month period (June through September), approximately 22.5 days of survey activity are expected each month, for an average of 699.4 km² ensonified to the Level B harassment threshold in the Lease Area and deep-water section of the cable route each month of survey activities.

Similarly, based on the maximum estimated distance to the Level B harassment threshold of 141 m (Table 6) and the maximum estimated daily track line distance of 55 km, an area of 15.6 km² would be ensonified to the Level B harassment threshold each day in the shallow-water section of the cable route. During 125 days of anticipated survey activity over the four month period (June through September), approximately 31.3 days of survey activity (split among two vessels) are expected each month, for an average of 486.6 km² ensonified to the Level B harassment threshold in the shallow-water section of the cable route each month of survey activities.

As described above, this is a conservative estimate as it assumes the HRG sources that result in the greatest isopleth distances to the Level B harassment threshold would be operated at all times during all 215 vessel days.

The estimated numbers of marine mammals that may be taken by Level B harassment were calculated by multiplying the monthly density for each species in each survey area (Table 7 and 8) by the respective monthly ensonified area within each survey section. The results were then summed to determine the total estimated take (Table 9).

TABLE 9—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

Species	Calculated take by survey region		Total calculated takes by level B harassment	Proposed takes by level A harassment	Proposed takes by level B harassment [b]	Total proposed instances of take as a percentage of population [a]
	Lease area and deep-water cable route	Shallow-water cable route				
Fin whale	8.3	0.6	8.9	0	9	0.3
Humpback whale	2.9	0.2	3.1	0	4	0.2
Minke whale	3.4	0.2	3.6	0	4	0.1
North Atlantic right whale	0.9	0	0.9	0	[c] 3	0.8
Sei whale	0.3	0	0.3	0	[c] 2	0.4
Atlantic white-sided dolphin	109.3	1.4	110.7	0	111	0.1
Bottlenose dolphin	115.7	622.6	738.3	0	739	1.0
Harbor porpoise	36.4	7	43.4	0	44	0.1
Pilot whale	18.4	0	18.4	0	19	0.1
Risso's dolphin	1.7	0	1.7	0	[b] 6	0.1
Common dolphin	276.3	1	277.2	0	278	0.2
Sperm whale	0.8	0	0.8	0	[c] 2	0.0

TABLE 9—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION—Continued

Species	Calculated take by survey region		Total calculated takes by level B harassment	Proposed takes by level A harassment	Proposed takes by level B harassment [b]	Total proposed instances of take as a percentage of population [a]
	Lease area and deep-water cable route	Shallow-water cable route				
Seals (harbor and gray)	40.4	152.8	193.2	0	194	0.7

[a] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 3. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For bottlenose dolphins and seals, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so the abundance estimate used to estimate percentage of stock taken for bottlenose dolphins is derived from NMFS SARs (Hayes *et al.,* 2019). For seals, NMFS proposes to authorize 194 takes of seals as a guild by Level B harassment and assumes take could occur to either species. For the purposes of estimating percentage of stock taken, the NMFS SARs abundance estimate for gray seals was used as the abundance of gray seals is lower than that of harbor seals (Hayes *et al.,* 2019).

[b] Proposed take equal to calculated take rounded up to next integer, or mean group size.

[c] Proposed take increased to mean group size (Palka *et al.,* 2017; Kraus *et al.,* 2016).

Using the take methodology approach described above, the take estimates for Risso's dolphin, sei whale, North Atlantic right whale, and sperm whale were less than the average group sizes estimated for these species (Table 9). However, information on the social structures of these species indicates these species are likely to be encountered in groups. Therefore it is reasonable to conservatively assume that one group of each of these species will be taken during the proposed survey. We therefore propose to authorize the take of the average group size for these species to account for the possibility that the proposed survey encounters a group of either of these species (Table 9).

As described above, NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the proposed surveys is so low as to be discountable; therefore, we do not propose to authorize take of any marine mammals by Level A harassment.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Proposed Mitigation Measures

NMFS proposes the following mitigation measures be implemented during Mayflower's proposed marine site characterization surveys.

Marine Mammal Exclusion Zones, Buffer Zone and Monitoring Zone

Marine mammal exclusion zones (EZ) would be established around the HRG survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- A 500-m EZ would be required for North Atlantic right whales; and
- A 100-m EZ would be required for all other marine mammals (with the exception of certain small dolphin species specified below).

If a marine mammal is detected approaching or entering the EZs during the proposed survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs would visually monitor a 200 m Buffer Zone. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the Buffer Zone (but outside the EZs) would be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The Buffer Zone is not applicable when the EZ is greater than 100 meters. PSOs would also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone. In addition, any marine mammals observed within 141 m of the active HRG equipment operating at or below 180 kHz would be documented by PSOs as taken by Level B harassment. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

Visual Monitoring

A minimum of one NMFS-approved PSO must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior

to and during nighttime ramp-ups of HRG equipment. Visual monitoring would begin no less than 30 minutes prior to ramp-up of HRG equipment and would continue until 30 minutes after use of the acoustic source ceases or until 30 minutes past sunset. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. Visual PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs would estimate distances to marine mammals located in proximity to the vessel and/or relevant using range finders. It would be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Position data would be recorded using hand-held or vessel global positioning system (GPS) units for each confirmed marine mammal sighting.

Pre-Clearance of the Exclusion Zones

Prior to initiating HRG survey activities, Mayflower would implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.,* before ramp-up of HRG equipment begins), the Buffer Zone would also act as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs would ensure that no marine mammals are observed within 200 m of the survey equipment (500 m in the case of North Atlantic right whales). HRG equipment would not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator would notify a designated PSO of the proposed start of HRG survey equipment as agreed upon with the lead PSO; the notification time should not be less than 30 minutes prior to the planned initiation of HRG equipment order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance. A PSO conducting pre-clearance observations would be notified again immediately prior to initiating active HRG sources.

If a marine mammal were observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinoids that approach the vessel (*e.g.,* bow ride). PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Project Area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).

Shutdown Procedures

If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. When shutdown is called for by a PSO, the acoustic source would be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty would have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for large whales).

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.,* the animal is not required to fully exit the Buffer Zone where applicable) or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement would be waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, and Tursiops)* under certain circumstances. If a delphinid(s) from these genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed survey equipment, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs would use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (141 m), shutdown would occur.

Vessel Strike Avoidance

Vessel strike avoidance measures would include, but would not be limited to, the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators and crew will maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;

• All survey vessels, regardless of size, must observe a 10-knot speed restriction in DMAs designated by NMFS for the protection of North Atlantic right whales from vessel strikes. Note that this requirement includes vessels, regardless of size, to adhere to a 10 knot speed limit in DMAs, not just vessels 65 ft or greater in length;

• All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;

• All vessels will maintain a separation distance of 500 m (1,640 ft) or greater from any sighted North Atlantic right whale;

• If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500-m (1,640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 100 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m;

• All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean. Any vessel underway remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped; and

• All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped.

Project-specific training will be conducted for all vessel crew prior to the start of survey activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey activities.

Passive Acoustic Monitoring

Vineyard Wind would also employ passive acoustic monitoring (PAM) to support monitoring during night time operations to provide for acquisition of species detections at night. While PAM is not typically required by NMFS for HRG surveys, it may a provide additional benefit as a mitigation and monitoring measure to further limit potential exposure to underwater sound at levels that could result in injury or behavioral harassment.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

As described above, visual monitoring would be performed by qualified and NMFS-approved PSOs. Mayflower would use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course appropriate for their designated task. Mayflower would provide resumes of all proposed PSOs (including alternates) to NMFS for review and approval prior to the start of survey operations.

During survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty and conducting visual observations at all times on all active survey vessels during daylight

hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and nighttime ramp-ups of HRG equipment. Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all survey vessels.

PSOs would be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of marine mammals. Position data would be recorded using hand-held or vessel GPS units for each sighting. Observations would take place from the highest available vantage point on the survey vessel. General 360-degree scanning would occur during the monitoring periods, and target scanning by the PSO would occur when alerted of a marine mammal presence.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals estimated to have been taken during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In addition to the final technical report, Mayflower will provide the reports described below as necessary during survey activities. In the unanticipated event that Mayflower's activities lead to an injury (Level A harassment) of a marine mammal, Mayflower would immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources Permits and Conservation Division and the NMFS Northeast Regional Stranding Coordinator. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the event. NMFS would work with Mayflower to minimize reoccurrence of such an event in the future. Mayflower would not resume activities until notified by NMFS.

In the event that Mayflower personnel discover an injured or dead marine mammal, Mayflower would report the incident to the OPR Permits and Conservation Division and the NMFS Northeast Regional Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Mayflower would report the incident to the NMFS OPR Permits and Conservation Division and the NMFS Northeast Regional Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 3, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. NMFS does not anticipate that serious injury or mortality would result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the *Potential Effects* section, non-auditory physical effects and vessel strike are not expected to occur. We expect that potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). As described above, Level A harassment is not expected to result given the nature of the operations, the anticipated size of the Level A harassment zones, the density of marine mammals in the area, and the required shutdown zones.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where the survey is occurring. We expect that any avoidance of the survey area by marine mammals would be temporary in nature and that any marine mammals that avoid the survey area during the survey activities would not be permanently displaced. Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

Regarding impacts to marine mammal habitat, prey species are mobile, and are broadly distributed throughout the Project Area and the footprint of the activity is small; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the availability of similar habitat and resources in the surrounding area the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. The HRG survey equipment itself will not result in physical habitat disturbance. Avoidance of the area around the HRG survey activities by marine mammal prey species is possible. However, any avoidance by prey species would be expected to be short term and temporary.

ESA-listed species for which takes are authorized are North Atlantic right, fin, sei, and sperm whales, and these effects are anticipated to be limited to lower level behavioral effects. The proposed survey is not anticipated to affect the fitness or reproductive success of individual animals. Since impacts to individual survivorship and fecundity are unlikely, the proposed survey is not expected to result in population-level effects for any ESA-listed species or alter current population trends of any ESA-listed species.

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. NMFS has rigorously assessed potential impacts to right whales from this survey. We have established a 500-m shutdown zone for right whales which is precautionary considering the Level B harassment isopleth for the largest source utilized (*i.e.,* GeoMarine Geo-Source 400 tip sparker) is estimated to be 141 m.

The proposed Project Area encompasses or is in close proximity to feeding BIAs for right whales (February-April), humpback whales (March-December), fin whales (March-October), and sei whales (May-November) as well as a migratory BIA for right whales (March-April and November-December. Most of these feeding BIAs are extensive and sufficiently large (705 km^2 and 3,149 km^2 for right whales; 47,701 km^2 for humpback whales; 2,933 km^2 for fin whales; and 56,609 km^2 for sei whales), and the acoustic footprint of the proposed survey is sufficiently small, that feeding opportunities for these whales would not be reduced appreciably. Any whales temporarily displaced from the proposed Project Area would be expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the biologically important feeding habitat. In addition, any displacement of whales from the BIA or interruption of foraging bouts would be expected to be temporary in nature. Therefore, we do not expect impacts to whales within feeding BIAs to to effect the fitness of any large whales.

A migratory BIA for North Atlantic right whales (effective March-April and November-December) extends from Massachusetts to Florida (LaBrecque, *et al.,* 2015). Off the south coast of Massachusetts and Rhode Island, this BIA extends from the coast to beyond the shelf break. The fact that the spatial acoustic footprint of the proposed survey is very small relative to the spatial extent of the available migratory habitat means that right whale migration is not expected to be impacted by the proposed survey. Required vessel strike avoidance measures will also decrease risk of ship strike during migration. NMFS is expanding the standard avoidance measures by requiring that all vessels, regardless of size, adhere to a 10 knot speed limit in any established DMAs. Additionally, limited take by Level B harassment of North Atlantic right whales has been proposed as HRG survey operations are required to shut down at 500 m to minimize the potential for behavioral harassment of this species.

As noted previously, there are several active UMEs occurring in the vicinity of Mayflower's proposed surveys. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains stable. Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. Elevated North Atlantic right whale mortalities began in June 2017, primarily in Canada. Overall, preliminary findings support human interactions, specifically vessel strikes or rope entanglements, as the cause of death for the majority of the right whales. Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2018). For gray seals, the population abundance in the United States is over 27,000, with an estimated abundance including seals in Canada of approximately 505,000, and abundance is likely increasing in the U.S. Atlantic EEZ as well as in Canada (Hayes *et al.,* 2018).

Direct physical interactions (ship strikes and entanglements) appear to be responsible for many of the UME humpback and right whale mortalities recorded. The proposed HRG survey will require ship strike avoidance measures which would minimize the risk of ship strikes while fishing gear and in-water lines will not be employed as part of the survey. Furthermore, the proposed activities are not expected to promote the transmission of infectious disease among marine mammals. The survey is not expected to result in the deaths of any marine mammals or combine with the effects of the ongoing UMEs to result in any additional impacts not analyzed here. Accordingly, Mayflower did not request, and NMFS is not proposing to authorize, take of marine mammals by serious injury, or mortality.

The required mitigation measures are expected to reduce the number and/or severity of takes by giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and preventing animals from being exposed to sound levels that have the potential to cause injury (Level A harassment) and more severe Level B harassment during HRG survey activities, even in the biologically important areas described above. No Level A harassment is anticipated or authorized.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or decreased foraging (if such activity were occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity and with no lasting biological consequences. Since both the source and the marine mammals are mobile, only a smaller area would be ensonified by sound levels that could result in take for only a short period. Additionally, required mitigation measures would reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed to be authorized;
- No Level A harassment (PTS) is anticipated;
- Any foraging interruptions are expected to be short term and unlikely to be cause significantly impacts;
- Impacts on marine mammal habitat and species that serve as prey species for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the Project Area;
- Survey activities would occur in such a comparatively small portion of the biologically important area for north Atlantic right whale migration, that any avoidance of the Project Area due to activities would not affect migration. In addition, mitigation measures to shut down at 500 m to minimize potential for Level B behavioral harassment would limit both the number and severity of take of the species;
- Similarly, due to the relatively small footprint of the survey activities in relation to the size of a biologically important areas for right, humpback, fin, and sei whales foraging, the survey activities would not affect foraging success of this species; and
- Proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize the intensity of potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the Mayflower's proposed HRG surveys will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The numbers of marine mammals that we authorize to be taken, for all species and stocks, would be considered small relative to the relevant stocks or populations (less than one third of the best available population abundance for all species and stocks) (see Table 9). In fact, the total amount of taking proposed for authorization for all species is 1 percent or less for all affected stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the

anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is proposing to authorize the incidental take of four species of marine mammals listed under the ESA: The North Atlantic right, fin, sei, and sperm whale. The Permits and Conservation Division has requested initiation of Section 7 consultation with NMFS GARFO for the issuance of this IHA. NMFS will conclude the ESA section 7 consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Mayflower for conducting marine site characterization surveys offshore of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0521) and along a potential submarine cable route to landfall at Falmouth, Massachusetts for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed HRG survey. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: May 19, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–11203 Filed 5–26–20; 8:45 am]

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Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Parts 2520 and 2560
Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2520 and 2560

RIN 1210–AB90

Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is adopting in this document a new, additional safe harbor for employee benefit plan administrators to use electronic media, as a default, to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 (ERISA). The rule allows plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website, or to furnish disclosures via email. Individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely. The Department expects the rule to enhance the effectiveness of ERISA disclosures and significantly reduce the costs and burden associated with furnishing many of the recurring and most costly disclosures. In addition to benefiting workers, this rule will immediately assist employers and the retirement plan industry as they face a number of economic challenges due to the COVID–19 emergency, including logistical and other impediments to compliance with ERISA's disclosure requirements.

DATES:

Effective date: The final rule is effective on July 27, 2020.

Applicability date: The final rule is applicable on July 27, 2020.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis or Kristen Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

(1) Original Delivery Standards for ERISA Disclosures

The Employee Retirement Income Security Act of 1974 (ERISA) and regulations thereunder provide general standards for the delivery of all information required to be furnished to participants, beneficiaries, and other individuals under Title I of ERISA.[1] Plan administrators must use delivery methods reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals.[2] For example, in-hand delivery to an employee at his or her workplace is acceptable, as is material sent by first class mail. In response to developing internet, email, and similar technologies, the Department of Labor (Department) first amended ERISA's delivery standards in 2002 by establishing a safe harbor for the use of electronic media to furnish disclosures (the 2002 safe harbor).[3] The 2002 safe harbor was not and is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard. However, plan administrators who satisfy the conditions of a safe harbor are assured that the general delivery requirements have been satisfied.

The 2002 safe harbor, which is set forth in paragraph (c) of § 2520.104b–1, applies only to two categories of participants and beneficiaries: First, employees who are ''wired at work''—those with the ability to effectively access electronic disclosures at any location where they are reasonably expected to perform their employment duties and for whom access to the employer's electronic information system is an integral part of those duties; and second, individuals entitled to documents under Title I of ERISA who do not fit into the first category, but who affirmatively consent to receive documents electronically. The 2002 safe harbor also specifies additional requirements that must be satisfied in order to furnish ERISA disclosures electronically. The preamble to the Department's proposal of this regulation included a comprehensive summary of the 2002 safe harbor's requirements.[4] As explained in detail below, the new, additional safe harbor adopted today does not supersede the 2002 safe harbor; the 2002 safe harbor remains in place as another option for plan administrators.

In addition to the 2002 safe harbor, the Department occasionally has issued interpretive guidance allowing different electronic delivery methods in limited circumstances. For example, Field Assistance Bulletin 2006–03 (FAB 2006–03) allows plan administrators who meet specified criteria to provide continuous website access to pension benefits statement information required by ERISA section 105.[5] Similarly, Field Assistance Bulletin 2008–03 (FAB 2008–03), which provides supplementary interpretive guidance on the Department's qualified default investment alternative (QDIA) regulation,[6] allows plan administrators who want to send required QDIA notices electronically to rely on either the Department's 2002 safe harbor or the regulations issued by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) at 26 CFR 1.401(a)–21 relating to use of electronic media.[7] The impact of this final rule on these Field Assistance Bulletins and other interpretive guidance is discussed below, in the section titled ''*Transition Issues*.''

(2) Regulatory Background

The Department is issuing a final rule today following an extensive and thorough evaluation not only of the public record for this regulatory initiative, but also of other agencies' disclosure rules; economic and policy research concerning electronic disclosure; and information submitted by, and recommendations of, a variety of stakeholders. This evaluation has been ongoing, as electronic disclosures and modes of delivery have developed over time and as the Department over the years has released additional disclosure requirements and interpretive guidance following issuance of the 2002 safe harbor. The Department consistently receives feedback about compliance with the 2002 safe harbor and suggestions for how the safe harbor could be improved, sometimes in response to other regulatory projects, sometimes in response to ERISA Advisory Council proceedings, and otherwise. A first formal step, however, was the Department's 2011 publication of a Request for Information (RFI) Regarding Electronic Disclosure [8] in response to Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued on January 18, 2011.[9] The RFI asked 30 questions soliciting views, suggestions, and comments from employee benefit plan stakeholders, their representatives, and the general public on whether and how to expand

[1] *See* 29 CFR 2520.104b–1.

[2] *See* 29 CFR 2520.104b–1(b)(1).

[3] *See* 29 CFR 2520.104b–1(c).

[4] 84 FR 56894, 56895 (Oct. 23, 2019).

[5] Field Assistance Bulletin No. 2006–03 (Dec. 20, 2006).

[6] *See generally* 29 CFR 2550.404c–5.

[7] *See* Field Assistance Bulletin No. 2008–03, (Q&A7), quoting 72 FR 60458 (Oct. 24, 2007).

[8] 76 FR 19286 (Apr. 7, 2011).

[9] *See* 76 FR 3821 (Jan. 21, 2011). The Executive Order stresses the importance of achieving regulatory goals through the most innovative and least burdensome tools available.

or modify the 2002 safe harbor. The Department carefully evaluated responses to this RFI to better understand the benefits, challenges, and costs of electronic delivery and other disclosure-related issues.[10]

Since publication of the 2011 RFI, the Department has analyzed whether there are more effective ways to regulate the disclosure and delivery of information to ERISA plan participants and beneficiaries. Stakeholders routinely ask the Department to recognize ongoing changes in technology, as some other federal agencies have done, and to take advantage of those changes by updating and modernizing ERISA's electronic delivery standards in the 2002 safe harbor. The Department has had numerous discussions with staff of other federal government agencies after reviewing their guidance and standards for electronic delivery of required information, including the Treasury Department, IRS, and the Securities and Exchange Commission (SEC). The preamble to the Department's proposed regulation discussed at length the Department's review of these agencies' guidance, all of which informed the Department in publishing the proposed rule, as did standards and practices of the Social Security Administration, the Comptroller of the Currency, and the Federal Thrift Savings Plan (TSP).[11] Commenters agreed that it is important for the Department to continue coordinating with other agencies, especially the Treasury Department, IRS, and SEC.[12] Plan administrators and service providers may have to comply with other federal and state requirements in administering their plans, and commenters therefore encouraged as much coordination as possible to limit the regulatory burden that may result from inconsistent standards.

The Department also met with stakeholders and reviewed recent studies and policy and economic analyses concerning disclosure practices, as well as changes in internet access and usage across different populations. Entities such as the ERISA Advisory Council[13] and the U.S. Government Accountability Office[14] also have made recommendations to the Department concerning possible changes to ERISA's electronic delivery rules to improve participants' disclosure experience and reduce administrative burdens. And the Department continues to closely monitor Congressional interest in expanding the use of electronic media for ERISA disclosures.[15]

A final important development, prior to the Department's issuance of the proposed regulation in October 2019, was the President's issuance of Executive Order 13847 on August 31, 2018.[16] In relevant part, the Order instructed the Department, in consultation with the Treasury Department, to review whether regulatory or other actions could be taken to improve the effectiveness of required disclosures and ease the costs and regulatory burdens given the number and complexity of ERISA notices. In compliance with the Order, the Department worked with Treasury Department staff throughout the regulatory process and, within the required one-year period, completed a review of actions that could be taken ''to make retirement plan disclosures required under ERISA and the Internal Revenue Code of 1986 more understandable and useful for participants and beneficiaries, while also reducing the costs and burdens they impose on employers and other plan fiduciaries responsible for their production and distribution.'' [17] The Order directed that the Department consider proposing appropriate regulations or other guidance, if a determination is made that action should be taken. The Department's proposed regulation, issued October 23, 2019 and finalized herein, directly responds to the mandate set forth in Executive Order 13847.[18]

In the preamble to the proposal, the Department described in detail the standard of the Treasury Department and the IRS for notices using electronic media, which was issued in 2006 at 26 CFR 1.401(a)–21.[19] Affected parties, including the ERISA Advisory Council, had previously encouraged the

[10] The Department received approximately 78 comments on the 2011 RFI, which are available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB50.*

[11] 84 FR 56894, at 56897 *et seq.*

[12] One commenter recommended that the Department coordinate with the Federal Communications Commission (FCC) to ensure that the use of smartphones to comply with this rule will not conflict with FCC guidance. The FCC was included as part of the Executive Order 12866 review process and raised no objection to the requirements of this final rule.

[13] *See, e.g., Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors,* ERISA Advisory Council (Nov. 2017); 2009 ERISA Advisory Council Report on Promoting Retirement Literacy and Security by Streamlining Disclosures, at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2009-promoting-retirement-literacy-and-security-by-streamlining-disclosures-to-participants-and-beneficiaries;* 2007 ERISA Advisory Council Working Group Report on Participant Benefit Statements, at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2007-participant-benefit-statements;* and 2006 ERISA Advisory Council Report Working Group on Prudent Investment Process, at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2006-prudent-investment-process.*

[14] *See* GAO–14–92, Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved, p. 40, GAO (Nov. 2013), *https://www.gao.gov/assets/660/659211.pdf.*

[15] For example, the Setting Every Community Up for Retirement Enhancement Act of 2019, enacted December 20, 2019, Public Law 116–94 (''SECURE Act''), reflects Congressional interest in expanding electronic delivery of ERISA disclosures and other information. Specifically, section 101(c) of the SECURE Act, which amended section 3 of ERISA, requires the terms of a pooled employer plan to provide that certain disclosures and other information may be provided in electronic form. *See also* Joint Committee on Taxation, *Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as Passed by the House on July 28, 2006, and as considered by the Senate on Aug. 3, 2006* (JCX–38–06), Aug. 3, 2006 (regulations relating to the furnishing of pension benefit statements, ''could permit current benefit statements to be provided on a continuous basis through a secure plan website for a participant or beneficiary who has access to the website''); Secretary of Labor's 2018 Testimony before the Senate Appropriations Subcommittees on Labor, Health and Human Services, Education, Review of the FY 2019 Dept. of Labor Budget Request, Senate, 115th Cong. (April 12, 2018), *https://www.appropriations.senate.gov/hearings/review-of-the-fy2019-dept-of-labor-budget-request;* and 2017 and 2018 legislative activity concerning the Receiving Electronic Statements to Improve Retiree Earnings Act (RETIRE) Act, at H.R. 4610 (Dec. 11, 2017) and S. 3795 (Dec. 19, 2018).

[16] E.O. 13847, *Strengthening Retirement Security in America,* 83 FR 45321 (Sept. 6, 2018).

[17] *Id.*

[18] A few commenters suggested that the proposed regulation inadequately responded to the Executive Order 13847, because the proposal focused on delivery, as opposed to other methods of improving the effectiveness of disclosures. The Department does not agree with these commenters. At the outset, the Executive Order does not require the Department to issue any proposed or final rule, but only to review policies and, if warranted, ''consider proposing appropriate regulations or guidance.'' *Id.* section 2(c). The Executive Order also does not create any enforceable rights against the Department. *See id.* section 3(c). Regardless, the Department is confident that the new safe harbor substantially responds to both prongs of the Executive Order. As discussed in the Regulatory Impact Analysis section of this document, a notice-and-access framework will significantly reduce plan costs. Further, a notice-and-access framework also facilitates, among other things, interactivity, just-in-time notifications, layered or nested information, word and number searching, engagement monitoring, anytime or anywhere access, and potentially improved visuals, tutorials, assistive technology for those with disabilities, and translation software, even though this rule does not mandate such practices. These features may be used to improve participants' and beneficiaries' disclosure experiences. Further, the RFI (published with the proposed rule) solicited information, data, and ideas on additional measures (beyond the electronic delivery safe harbor in 29 CFR 2520.104b–31) that the Department could take in the future (either as part of finalizing the proposal in this document, or a separate regulatory or appropriate guidance initiative) to improve the effectiveness of ERISA disclosures, especially with respect to design and content of ERISA disclosures.

[19] 84 FR 56894 at 56897, 56898.

Department to allow plan administrators to rely on this standard, which they generally interpret as more flexible than the Department's 2002 safe harbor, when furnishing ERISA disclosures.[20] The Department has, in limited circumstances and pursuant to temporary guidance, allowed plan administrators to rely on the Treasury Department's electronic media regulation for applicable notices at 26 CFR 1.401(a)–21(c) as an alternative to reliance on the 2002 safe harbor.[21] In light of Executive Order 13847 requiring consultation with the Treasury Department, the preamble to the proposal explained that the Department's new proposed safe harbor was intended to align with the Treasury Department's electronic media regulation. The Department invited interested parties to share their views on whether this objective is desirable and what other steps might be needed to achieve it. Commenters consistently took the position that it was unclear whether an ''intention to align'' meant that a plan administrator's use of the notice-and-access framework in the proposal for Code disclosures would satisfy the applicable Treasury Department electronic media regulations. Commenters encouraged the Department to obtain confirmation of this position from the Treasury Department to eliminate any uncertainty.[22] The Department provided these comments to the Treasury Department for its consideration. The Treasury Department and the IRS have indicated that they intend to issue additional guidance relating to the use of electronic delivery for participant notices. This final rule is considered to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the Regulatory Impact Analysis, below.

(3) Purpose of Regulatory Action

The Department's principal objective in finalizing this rule is to carefully update, based on a comprehensive public record, ERISA's electronic delivery rules for required disclosures to better leverage ongoing improvements in online and mobile-based technology and communications and to provide a structure that will be appealing to, and workable for, today's workers. In doing so, the Department believes the framework of this final rule strikes an appropriate balance between competing policy goals—on the one hand taking advantage of the innovations and reduced costs that may be achieved through enhanced use of electronic communication, and on the other hand ensuring suitable safeguards for participants and beneficiaries who may be less ready to move to electronic communication (or who simply prefer paper).

The final rule reflects the Department's reliance on a wide variety of sources of evidence concerning individuals' access to, and use of, electronic media in the United States:

- A 2019 survey found that 90 percent of U.S. adults use the internet, representing a substantial increase from 2000 when 52 percent of U.S. adults reported using the internet.[23]
- A 2017 survey by the U.S. Census Bureau estimated that 87 percent of the U.S. population lives in a home with a broadband internet subscription.[24]
- A 2019 survey found that among non-broadband users, 45 percent cite their smartphone as a reason for not subscribing to high-speed internet service at home.[25]
- A 2018 study concluded that 93 percent of households owning defined contribution accounts had access to, and used, the internet in 2016.[26]
- A 2015 survey of retirement plan participants' online habits indicated that 99 percent reported having internet access at home or work, and 88 percent of respondents reported accessing the internet on a daily basis.[27]
- A 2015 report observed that smartphones are used for much more than calling, texting, or basic internet browsing. Based on surveys, the report notes that 62 percent of smartphone owners have used their smartphones in the past year to look up information about a health condition; 57 percent, to do online banking; 44 percent, to look up real estate listings; 43 percent, to look up information about a job; 40 percent, to look up government services or information; 30 percent, to take a class or find education content; and 18 percent, to submit a job application.[28] The Department believes that these trends have continued to the present and will into the future, increasing the number of individuals for whom electronic delivery of ERISA disclosures is appropriate or preferred.

(4) 2019 Proposed Regulation and Request for Information

In October 2019, the Department published in the **Federal Register** a proposed rule and RFI intended to expand the methods by which required ERISA disclosures may be furnished electronically.[29] The proposal would allow plan administrators who satisfy certain conditions to notify participants and beneficiaries that certain disclosures will be made available on a website, while preserving the right of these individuals to opt out of electronic delivery and to request paper copies of disclosures. The Department invited interested persons to submit comments on the proposed rule and RFI and, in response to this invitation, the Department received 257 written comments from a variety of parties, including plan sponsors and fiduciaries, plan service and investment providers, and employee benefit plan and participant representatives, as well as 210 submissions in response to a petition. These comments are available for review on the ''Public Comments'' page under the ''Laws and Regulations'' tab of the Department's Employee

[20] For example, in comments submitted to the ERISA Advisory Council in 2017, the Department was encouraged to adopt the Treasury Department's approach. *See* Groom Law Group, statement to the ERISA Advisory Council, June 7, 2017, p. 4, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans-levine-and-winters-written-statement-06-07.pdf.*

[21] *See, e.g.,* Field Assistance Bulletin No. 2006–03 (Dec. 20, 2006), providing for ''the furnishing of pension benefit statements in accordance with the provisions of [26 CFR] 1.401(a)–21, as good faith compliance with the requirement to furnish pension benefit statements to participants and beneficiaries'' under ERISA.

[22] A few commenters suggested that the Treasury Department also should explicitly adopt a notice-and-access framework. The Department provided these comments to the Treasury Department for its consideration.

[23] Monica Anderson, Andrew Perrin, et al, *10% of Americans don't use the internet. Who are they?,* Pew Research Center (Apr. 22, 2019). Available at *https://www.pewresearch.org/fact-tank/2019/04/22/some-americans-dont-use-the-internet-who-are-they/.*

[24] ''Types of internet Subscriptions by Selected Characteristics,'' U.S. Census Bureau American Community Survey 1-Year Estimates (Table S2802) (2017).

[25] *See* Monica Anderson, *Mobile Technology and Home Broadband 2019,* Pew Research Center (June 13, 2019), *https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/06/PI_2019.06.13_Mobile-Technology-and-Home-Broadband_FINAL2.pdf.*

[26] Peter Swire and DeBrae Kennedy-May, ''Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time has Come to Prefer Electronic Delivery—2018 Update,'' (April 2018), p. 19., *See Also* ICI Research Perspective, ''Ownership of Mutual Funds, Shareholder Sentiment, and Use of the internet, 2018'' (November 2018), finding among households with defined contribution plans, 92% had access to the internet in 2016 and 93% had access in 2018.

[27] 2015 Telephone Survey Conducted by Greenwald & Associates for the SPARK Institute. *Improving Outcomes with Electronic Delivery of Retirement Plan Documents,* Quantria Strategies, (June 2015), *https://www.sparkinstitute.org/content-files/improving_outcomes_with_electronic_delivery_of_retirement_plan_documents.pdf.*

[28] Aaron Smith, *Smartphone Use in 2015,* Pew Research Center, (April 1, 2015), *https://www.pewresearch.org/internet/2015/04/01/us-smartphone-use-in-2015/.*

[29] 84 FR 56894 (Oct. 23, 2019).

Benefits Security Administration website.[30] This Notice includes a detailed discussion of the provisions of the final rule, the public comments received by the Department, and how these comments impacted the Department's decision-making when adopting the final rule.

The Department also issued the RFI on electronic disclosure based on the Department's conclusion, at the time the proposed rule was published, that further information from stakeholders is necessary before proposing any substantive regulatory additions, deletions, or changes to ERISA's disclosures themselves, as opposed to changes in the means of delivery for such disclosures. The RFI, which was included in the preamble to the proposed rule (as opposed to being a stand-alone document), contained a series of questions to elicit views from all interested parties on additional ways to improve the usefulness and effectiveness of ERISA disclosures, for example with respect to the design or content of disclosures. The Department is analyzing responses to the RFI to determine whether regulatory or other action, in addition to today's final rule on electronic delivery of disclosures, should be taken to further enhance the effectiveness of ERISA's disclosures.[31]

B. Final Rule—Alternative Method for Disclosure Through Electronic Media

The Department is amending part 2520 by adding a new section, § 2520.104b–31, entitled ''Alternative method for disclosure through electronic media.'' This section is a regulatory safe harbor that provides a new, optional method for compliance with ERISA's general standard for furnishing or delivering disclosures to participants and beneficiaries. A number of commenters on the proposed rule asked about the relationship between the new safe harbor and the existing 2002 electronic delivery safe harbor. Some commenters indicated satisfaction with the existing safe harbor. The new safe harbor is an additional method of delivery and does not substantively change the 2002 safe harbor.[32] Plan administrators, therefore, have additional flexibility with the rule in selecting the electronic delivery method that works best for the plan and its participants and beneficiaries. Plan administrators who wish to continue to rely on the 2002 safe harbor for electronic delivery, or to furnish paper documents by hand-delivery or by mail, can continue doing so.

Most commenters on the rule, as a general matter, believe that the new framework is a welcome addition to the 2002 safe harbor, which they argue is difficult for them to satisfy with respect to many participants and beneficiaries. In support of this position, these commenters cited with approval the many prior recommendations of the ERISA Advisory Council, the U.S. Government Accountability Office, and other parties.[33] These commenters also argue that electronic disclosure is both feasible and preferred; that paper disclosure is very costly; that participants' disclosure experiences can be improved online; that data obtained online enables plans to improve disclosures; that online activity may improve participants' savings rates and retirement outcomes; that participants can access information online at any time; and that web-based disclosures have the capacity to serve diverse populations better than traditional paper disclosures.

Commenters who object to the new safe harbor, on the whole, believe that the 2002 safe harbor is sufficient on its own and is a preferable rule because it retains paper delivery as the default.[34] The principal argument of these commenters against the proposal is that some participants and beneficiaries lack reasonable access to the internet and others simply prefer paper, and the proposed rule, if finalized, would fail to adequately protect the interests of both categories of individuals. The Department disagrees with this argument. The statistics cited above, under the heading ''*Purpose of Regulatory Action,*'' show nearly universal access to the internet among individuals who participate in an ERISA covered plan. These statistics also demonstrate significant and upward trends in both access to, and usage of, the internet by individuals covered by ERISA plans, including for banking, research, and other non-browsing functions. Despite these statistics, however, the Department understands that some people prefer paper documents for a variety of legitimate personal reasons, including improved reading comprehension, distrust of electronic storage solutions, computer illiteracy, difficulty navigating websites, username and password fatigue or forgetfulness, and the cost of computer hardware and establishing and maintaining access to the internet or managing files electronically. The final rule, therefore, honors the preference of these individuals by including several key provisions to ensure that if covered individuals desire paper documents, plans must accommodate these individuals with minimal friction. The first, and perhaps most important, of these conditions in the final rule is the provision that guarantees covered individuals a right to request and receive paper copies of specific covered documents or to globally opt out of electronic delivery altogether. This provision alone addresses commenters' major concerns with a plan administrator's decision to change the default mode of delivery from paper to electronic media. Second, not only are plan administrators prohibited from charging covered individuals a fee in connection with their exercise of these rights, plan administrators also are prohibited from having procedurally cumbersome or complex processes for exercising these rights. Thus, a covered individual's decision to receive paper disclosures must be respected and cannot be met with economic or procedural hindrances. Finally, the final rule mandates that covered individuals

[30] *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB90.* A few commenters on the proposal requested an extension, arguing that the 30-day comment period for the proposed rule was unreasonable and insufficient to adequately address the many complex issues presented by the proposal. One commenter further requested that the Department hold a hearing on the proposal prior to issuing final guidance. The Department declined these requests, in part because so few commenters raised the objections, and also because most issues relevant to electronic disclosure have been analyzed and reviewed by the Department and the public for many years, especially after the 2011 RFI and temporary guidance issued by the Department. A substantial and comprehensive public record exists, supplemented and updated with comments on the proposed rule. The Department disagrees that a public hearing is necessary to supplement an already comprehensive public record. The scope and depth of the public record that has been developed belies arguments that a 30-day comment period was insufficient.

[31] Review of comments on the RFI also is responsive to Executive Order 13847, which directed the Department to improve the effectiveness of plan disclosures, in addition to exploring reductions in employer costs and administrative burden, through expanded use of electronic delivery. *See generally* E.O. 13847, 83 FR 45321 (Sept. 6, 2018).

[32] In response to comments, non-substantive conforming amendments are being made to the 2002 safe harbor to facilitate the new safe harbor. For example, in response to commenters' requests, the Department is adding a cross reference to the new safe harbor in paragraph (f) of § 2520.104b–1 to improve regulatory clarity. Similar conforming amendments were made to §§ 2520.101–3(b)(3) and 2560.503–1.

[33] These recommendations also are set forth in the preamble to the proposed rule. *See* 84 FR 56899, 56900.

[34] One of these commenters requested that, to prevent the misuse of any cost savings attributable to this final rule, the Department require plan administrators to document all savings attributable to their reliance on this safe harbor and apply these savings directly to participants' accounts or benefits. Such a request is beyond the scope of this safe harbor and ERISA's disclosure requirements, which are the subject of this rulemaking.

receive multiple reminders, on different mediums, of these rights. Thus, a participant's initial decision against opting out of electronic delivery is not permanent and can be revisited with each reminder or at any time. Collectively these three provisions protect individuals' preference for paper by guaranteeing a right to it and by barring plan administrators from imposing unreasonable burdens on exercising this right.

The final rule adopted today is fundamentally similar to the proposed rule, although modifications were made to reflect a variety of comments from affected parties. As in the proposal, the final rule establishes a safe harbor for compliance with ERISA's general standard for delivery of disclosures to participants and beneficiaries.[35] The general scope of the safe harbor relief is set forth in paragraph (a) of the final rule. Paragraphs (b) through (k) of the final rule set forth the detailed conditions to receiving the relief, and paragraph (l) contains the effective and applicability date. The detailed conditions are discussed below along with public comments on the proposal. The safe harbor applies only to ''covered individuals'' and only with respect to ''covered documents.'' Over 10 years, the new safe harbor will save plans approximately $3.2 billion net, annualized to $349 million per year (using a 3 percent discount rate).[36]

(1) Covered Individual

Paragraph (b) of the final safe harbor defines a ''covered individual'' for purposes of the rule as a participant, beneficiary, or other individual entitled to covered documents and who—when he or she begins participating in the plan, as a condition of employment, or otherwise—provides the ''employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing)'' with an electronic address. This includes an email address or internet-connected mobile- computing-device (*e.g.,* smartphone) number, and is intended to be broad enough to encompass new and changing technology.

The existence of an electronic address for notification to a covered individual is critical to the effective implementation of a notice-and-access framework, much like a mailing address is critical to delivery of a paper document. The existence of a valid email address is similarly essential for a plan administrator who will deliver ERISA disclosures by complying with the requirements of new paragraph (k) of this final rule, which allows plan administrators to send documents via email. The final rule continues to require, as a condition of reliance on the safe harbor, including the new paragraph (k), that a plan administrator possess an electronic address that enables electronic communication with a covered individual.

The final rule offers plan administrators a variety of ways to comply with the condition to obtain an electronic address for each covered individual. This provision, for example, is satisfied if the company provides plan participants an electronic address because of their employment. This requirement also is satisfied if an employee provides a personal electronic address to the plan administrator or plan sponsor, for example, as part of the job application process or on other human resource documents. In addition, a plan administrator or service provider can request an electronic address in plan enrollment paperwork or to establish a plan participant's online access to plan documents and account information.

A few commenters raised a pragmatic concern with the use of electronic addresses that are phone numbers (as opposed to an email, for instance). They asked what would happen if a notice of internet availability (hereinafter ''NOIA'') inadvertently is sent to a landline number, rather than a smartphone or similar number. It is not always readily apparent, given a ten-digit phone number, whether the number belongs to a landline or not. Exacerbating this potential problem, a plan administrator who sends an NOIA to a landline may not receive a bounce-back or any other notification that the recipient's phone address is a landline that cannot receive text messages. If the plan administrator did receive such a notification, it would trigger the substantive protections in paragraph (f)(4) of the safe harbor, which require a plan administrator to take curative steps if the electronic address of a covered individual is invalid or inoperable. The inability of an electronic address to receive, for example, a text message that is intended to be an NOIA, would mean that the address is in fact inoperable for purposes of the rule. Some phone carriers offer a landline service that converts a text message into a voice message, instead of returning a bounce-back notification. ERISA generally mandates that disclosures be in writing. Thus, the Department does not consider receipt of a voice-based message to be operable for purposes of this rule; the electronic address must be able to accept text (rather than audio) messaging. To address this concern, the final rule clarifies that an electronic address that will be used to satisfy paragraph (b) for a covered individual must be an address at which the individual may receive and inspect a written NOIA. Plan administrators who use internet-connected mobile computing device numbers, as opposed to email addresses, for example, will have to take steps to confirm with plan participants and beneficiaries, or through other reasonable means, such as using mobile phone carriers' validator services, to distinguish landline numbers from mobile or similar numbers that enable the receipt and inspection of written messages.

The final rule continues to recognize the validity of employer-assigned electronic addresses. Paragraph (b) of the proposal, in relevant part, provides that ''if an electronic address is assigned by an employer to an employee for this purpose, the employee is treated as if he or she provided the electronic address.'' The proposal specifically solicited comments on whether this provision of the proposal, as distinguished from the provision authorizing participants to affirmatively provide a personal electronic address to receive covered documents, should impose additional or different conditions to ensure that participants receive their disclosures.

Many commenters supported the proposal's recognition of the validity of employer-assigned electronic addresses. These commenters believe the provision is a common-sense technique to facilitate default electronic delivery: Employers routinely assign employees electronic addresses as part of their employment, for a variety of business purposes including human resource management, work-related assignments, and routine communications. Commenters also noted that the Department's 2002 safe harbor allows for electronic delivery of disclosures to employer-assigned electronic addresses without the affirmative consent of participants, and called attention to the lack of reported problems or harm to participants caused by or attributable to that provision in the 2002 safe harbor.

Other commenters, however, raised objections to the proposal's recognition of the validity of employer-assigned

[35] Commenters have asked about the application of ERISA's fiduciary standards and other statutory requirements to electronic disclosure in varying contexts. This safe harbor addresses only a plan administrator's compliance with ERISA's standard for the furnishing of covered documents to covered individuals. It neither addresses nor supplants more general fiduciary or other statutory obligations under ERISA.

[36] *See* the Regulatory Impact Analysis in Section D of this preamble for a fuller discussion of net cost savings.

electronic addresses. These commenters were particularly concerned about the language in the proposal that permitted an employer-assigned address to be created *solely for purposes* of using the proposed safe harbor. These commenters were concerned that ineffective disclosure will result if employers, or service providers or third-party technology firms hired by employers, create and assign electronic addresses with unclear or unfamiliar URL components solely to comply with the new safe harbor. In these circumstances, such attenuated or ambiguous electronic addresses (*e.g.,* email accounts) may be unfamiliar to, ignored, overlooked, or forgotten by covered individuals. One commenter asserted that an employer-assigned electronic address for purposes of this rule could, in some jurisdictions, constitute a breach of fiduciary duty.

Based on these concerns, the Department eliminated the phrase ''for this purpose'' from the final rule. Paragraph (b) now provides that participants will be treated as if they provided an electronic address to an employer if the electronic address is assigned by an employer to an employee ''for employment-related purposes that include but are not limited to the delivery of covered documents.'' Thus, to satisfy the rule's definition of a covered individual, the electronic address assigned by an employer for an employee must be assigned for some employment-related purpose other than the delivery of covered documents under the new safe harbor. An employer could not, for example, establish for an employee a personal electronic address (*e.g.,* a Google or Yahoo email account) that will be used by the plan's administrator only to send notices required by this safe harbor. The employer-assigned address must have an employment-related purpose other than to comply with the safe harbor. Whether such an assignment meets ERISA's furnishing standard is a matter to be determined based on the facts and circumstances of the particular situation.

Although the safe harbor recognizes the validity of employer-assigned electronic addresses, it does not permit plan administrators to assign them. A few commenters explicitly agreed with the Department's concern, expressed in the preamble to the proposal, about the assignment of electronic addresses by plan administrators and third-party service providers. These believe that misuse could result from allowing these individuals and entities to assign electronic addresses, for example, citing a practice under which a plan's service provider would use commercial locator services or similar people-finder tools to acquire electronic addresses of plan participants. The Department agrees, and paragraph (b) of the final rule continues to prohibit plan administrators or their service providers from assigning electronic addresses under the new safe harbor. To ensure effective access to electronic media, paragraph (b) confers this authority only on an employer with respect to its employees. Accordingly, in response to one commenter's request for clarification, a plan administrator could not use a commercial locator service to acquire, and then use, personal electronic addresses under this safe harbor.

Similarly, a few commenters raised concerns about application of the proposed safe harbor to spouses, divorced spouses, and other beneficiaries who may be entitled to disclosures under ERISA. Specifically, these commenters believe that it would be inappropriate for employers to assign electronic addresses for disclosure of covered documents to these individuals, because, unlike employees participating in an employer's plan, spouses and other beneficiaries may not have any real relationship with the employer. The Department agrees with this concern. Although paragraph (b) of the final rule allows employers to assign electronic addresses for their employees, employers cannot assign electronic addresses for non-employee spouses or other beneficiaries of their plans' participants. For a spouse or other beneficiary that is entitled to ERISA disclosures to be a covered individual for purposes of the final rule, the spouse or other beneficiary must affirmatively provide (or must have provided) the employer, plan sponsor, or administrator (or appropriate designee) with an electronic address; otherwise the plan administrator cannot furnish disclosures to these individuals pursuant to this rule.

The definition of ''covered individual'' in the final rule does not exclude participants in multiemployer plans. Commenters representing multiemployer plans requested confirmation that these individuals could be covered individuals for purposes of paragraph (b) of the rule. Their concern stemmed from the proposal's use of the phrase ''as a condition of employment,'' as a predicate for providing the plan administrator an electronic address because, according to the commenters, multiemployer plan sponsors do not have the ability to establish employment conditions, unlike plan sponsors generally. In this regard, they argue, multiemployer plans are very different from single-employer plans. The Department confirms for affected parties that the final rule's definition of covered individual in paragraph (b) is intended to include multiemployer plan participants. This necessarily follows from paragraph (c) of the final rule, which defines the scope of ''covered documents'' to include all pension benefit plans under ERISA. If the Department had intended to exclude from this safe harbor a subset of pension plans, such as multiemployer plans, the exclusion would have been set forth in paragraph (c) of the final rule. Nevertheless, the Department has slightly rephrased paragraph (b) to clarify that providing an electronic address as a condition of employment is only one way that an individual might supply an electronic address. The individual might supply it as part of their initial participation in the plan, or they might supply it otherwise: Through other means and for other reasons. In addition, in response to one commenter's question regarding the source of an electronic address, the definition of ''covered individual'' includes multiemployer plan participants who provide their electronic addresses directly to the plan administrator, as well as plan participants whose personal or employer-assigned electronic address is provided to the plan administrator by an employer.

(2) Covered Documents

(i) Employee Pension Benefit Plans

Paragraph (c) of the proposal defined the ''covered documents'' to which the rule would apply. It provided that the safe harbor may be used by the administrator of a pension benefit plan, as defined in ERISA section 3(2), to furnish any document that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of ERISA, except for any document that must be furnished only upon request. The proposal clarified that a plan administrator would not be required to furnish all of these documents, as applicable for a particular plan, pursuant to the safe harbor if the plan administrator prefers a different method of furnishing for some of the documents. The Department requested comments generally as to whether the scope of covered documents is appropriate, and specifically whether certain employee pension benefit plan disclosures are better suited for such electronic disclosure.

Commenters generally supported the scope of the definition of covered documents as including disclosures for pension benefit plans. The final rule does, however, include two minor revisions. First, in response to numerous commenters, the Department added the words ''or information'' to this paragraph to clarify that certain ''information'' required to be disclosed pursuant to 29 CFR 2550.404a–5, the Department's participant-level fee disclosure regulation, is covered by the final rule. Second, the Department added the word ''only'' to this paragraph to clarify the scope of the definition's exception for documents that must be furnished upon request (the exception now applies to documents ''that must be furnished *only* upon request,'' emphasis added).

Commenters disagreed about this exception. Some commenters argued that the final rule should not exempt documents that are available upon request by a covered individual, particularly if the individual agrees or has not objected to the rule's method for delivery. Other commenters did not object to the exception, but requested that it be revised to ensure that the safe harbor's exclusion from covered documents is limited to documents that are available *only* upon request. Under ERISA, some documents must be furnished automatically and others only upon request by an eligible person.[37] However, these commenters point out that in certain cases (including pursuant to this safe harbor) participants may request copies of many different documents—even documents that must be furnished automatically, such as the summary plan description (SPD). The Department's intention, as reflected in the preamble to the proposed regulation and unchanged for purposes of the final rule, is that the exception applies to documents that are furnished only upon request (*i.e.,* the exception does not apply to, and therefore the final rule includes as covered documents, documents for which the plan administrator has an affirmative obligation to furnish but that are also, for various reasons, requested by covered individuals).[38] The 2002 safe harbor, if satisfied, remains available for plan administrators to furnish ERISA disclosures that are excluded from this safe harbor.

(ii) Employee Welfare Benefit Plans

The proposed safe harbor did not apply to employee welfare benefit plans, as defined in section 3(1) of ERISA, such as plans providing disability benefits or group health plans. The Department instead reserved paragraph (c)(2) of the proposal so that it could continue to study the future application of the new safe harbor to documents that must be furnished to participants and beneficiaries of employee welfare benefit plans. In the proposal, the Department noted that this reservation accords with Executive Order 13847, which focuses the Department's review on retirement plan disclosures. The Department further explained that it does not interpret the Order's directive as limiting the Department's ability to take future action with respect to employee welfare benefit plans, especially to the extent similar policy goals, including the reduction of plan administrative costs and improvement of disclosures' effectiveness, may be achieved. The Department noted in the preamble of the proposal that welfare plan disclosures, such as group health plan disclosures, may raise different considerations, such as pre-service claims review and access to emergency and urgent health care. Moreover, the Department shares interpretive jurisdiction over many group health plan disclosures with the Treasury Department and the Department of Health and Human Services. In considering any possible new electronic delivery safe harbor for group health plan disclosures in the future, the Department would consult with these other Departments.

Many commenters agreed with the Department's reasoning as set forth in the preamble to the proposed rule. These commenters urged the Department not to include welfare plans in the final rule, the most common reason being that welfare plans present unique issues as compared to other types of employee benefit plans. These commenters also acknowledged the necessity of the tri-agency consultation process for any such rule.

Other commenters, by contrast, encouraged the Department to expand the final rule to apply to disclosures for welfare plans or begin immediately the formal process of doing so. These commenters argued that there is no sound legal or policy basis for excluding welfare plans, and that significant additional reductions in regulatory costs and burdens would follow if the safe harbor were expanded to cover welfare benefit plans, especially group health plans. A few of these commenters estimated that even extending the safe harbor only to routine health care denials (*e.g.,* ''Explanation of Benefits'' or ''EOBs'') would save millions of dollars annually for health plan administration.

The Department understands that there could be significant cost savings if the safe harbor were extended to cover welfare plan disclosures. At the same time, such an extension warrants careful consideration and analysis that goes beyond the scope of this final rule. The Department, therefore, has decided not to expand the scope of the final rule to cover welfare benefit plans at this time. The Department will continue exploring whether, and under what circumstances, to extend the safe harbor in the final rule to welfare benefit plans, and may undertake rulemaking in the future.

(3) Notice of Internet Availability

As a general rule, the proposal required that plan administrators furnish to each covered individual an NOIA for each covered document in accordance with the requirements of this section. A special rule, in paragraph (i) and discussed below, allowed plan administrators to combine the content of the required notices for certain covered documents. Paragraph (d) of the final rule, as in the proposal, continues to require that plan administrators furnish an NOIA and sets forth the conditions for satisfying this requirement, as modified to reflect the Department's response to commenters' views on the notice requirement.

(i) Timing of Notice of Internet Availability

Paragraph (d)(2) of the final rule continues to provide that the plan administrator must furnish an NOIA at the time the covered document is made available on the website described in paragraph (e). One commenter argued that, due to the flexibility of online posting, covered documents should be posted earlier than required by law, for example that any disclosures affecting covered individuals' benefits should be posted as soon as reasonably possible after the decision affecting benefits is made. The Department disagrees that it would be appropriate, in a rule focused on the acceptable methods for

[37] *See, e.g.,* 29 U.S.C. 1024(b)(4) for the general requirement that upon written request of any participant or beneficiary, plan administrators must furnish plan documents including the latest updated SPD, latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. *See also* 29 U.S.C. 1021(k) with respect to multiemployer plan information provided to participants and beneficiaries upon written request.

[38] 84 FR 56894, 56901 n. 63 (''The proposed safe harbor does not apply to documents that are furnished only upon request.'').

delivering required ERISA disclosures, to alter the timing requirements for the disclosures themselves. As set forth in the preamble to the proposal, the rule is not intended to alter the substance or timing of any of ERISA's required disclosures. The rule merely expands the possible delivery methods for disclosures. ERISA and the regulations thereunder include thoughtfully prescribed timelines for each required disclosure; the Department maintains that any changes to those substantive, legal standards would have to be made on a disclosure-by-disclosure basis, subject to the regulatory process, including public notice and comment. The Department does agree with this commenter, however, that, for similar reasons, it would not be necessary or appropriate to include any extensions to the timing requirements for covered documents that are posted online.

As in the proposal, the final rule continues to allow plan administrators to furnish a combined NOIA each plan year for more than one covered document. If a combined NOIA was furnished in the prior plan year, the next plan year's combined NOIA must be furnished no more than 14 months later. As discussed below, however, the covered documents that may be combined pursuant to paragraph (i) of the final rule have changed. The final rule continues to provide plan administrators with a 14-month period to comply with the annual NOIA requirement. The Department does not want plan administrators to have to push back the date of furnishing from year to year to avoid the risk that they run afoul of a strict 12-month requirement, and the Department acknowledges that actual disclosure dates can vary slightly from year to year. The two-month grace period should offer sufficient flexibility without compromising individuals' receipt of an NOIA on a periodic, essentially annual, basis. The Department did not receive any comments disagreeing with this approach or arguing that different timing requirements would be preferable.

The Department also reminds plan administrators that if they choose to furnish a consolidated NOIA once a year under paragraph (i) of the rule, doing so will not change the date on which the covered documents must be made available on the website. Each covered document described in the consolidated NOIA must be made available on the website no later than the date it must be furnished to participants and beneficiaries by law.

(ii) Content of Notice of Internet Availability

Paragraph (d)(3)(i) through (vii) of the proposal listed the content requirements for the NOIA. Paragraph (d)(3)(i) of the proposal required a prominent statement, for example as a title, legend, or subject line that reads, ''Disclosure About Your Retirement Plan.'' Paragraph (d)(3)(ii) required this statement: ''Important information about your retirement plan is available at the website address below. Please review this information.'' Paragraph (d)(3)(iii) required a brief description of the covered document. Paragraph (d)(3)(iv) required ''the internet website address where the covered document is available.'' Paragraph (d)(3)(v) required a statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right. Paragraph (d)(3)(vi) required a statement of the right to opt out of receiving covered documents electronically, and an explanation of how to exercise this right. Finally, paragraph (d)(3)(vii) required a telephone number to contact the plan administrator or other designated representative of the plan.

The Department requested comments on these content requirements and whether the NOIA would adequately serve its intended purpose, which is to provide very concise and clear notification to covered individuals about covered documents available on the website. As a general matter, some commenters believe that the content requirements are excessive, while others merely stated that the Department should be less prescriptive about the content requirements, and allow plan administrators greater flexibility for innovation. Commenters also provided significant feedback on specific content provisions in the proposal. Although not all of these suggestions were implemented in the final rule, the Department is persuaded by commenters that its intention for the NOIA may be better achieved by adopting some revisions to the NOIA's content requirements. Due to these revisions, the Department also restructured paragraph (d)(3), making non-substantive changes to the lettering and numbering of subsections. The following paragraphs set forth commenters' views with respect to each of the specific NOIA content provisions and, where applicable, changes that have been made for purposes of the final rule.

The Department has adopted the first two content requirements today with only minor revision from the proposed rule. As in paragraph (d)(3)(i) of the proposal, now (d)(3)(i)(A) in the final rule, the NOIA must include a prominent statement—for example as a title, legend, or subject line—that reads: ''Disclosure About Your Retirement Plan.'' Commenters did not object to this statement or its prominence. The statement required by paragraph (d)(3)(ii) of the proposal, now (d)(3)(i)(B) in the final rule, has been revised to be technologically neutral. As finalized, the NOIA must include the following statement: ''Important information about your retirement plan is now available. Please review this information.'' A few commenters disagreed with the use of the word ''Important'' and the Department's provision of required language for this statement. As one commenter explained, the word ''important'' may become meaningless as NOIAs are regularly received. The Department disagrees that the use of the word ''Important'' is problematic. Even as covered individuals become accustomed to this framework for disclosure and receive notices over time, there is no harm in highlighting what the Department believes to be ''important'' retirement plan information; federal law, after all, does require disclosure of this information for a reason. The Department also is not persuaded that the rule's required language for the statement in (d)(3)(i)(B) is problematic, especially as revised to more broadly apply to different electronic delivery methods. Very few commenters objected to this language, and a number of commenters expressly stated that they would not object to model language for some of the safe harbor's notice requirements. The statement is brief and straightforward, and plan administrators often prefer to have specific guidance when making such statements to reduce risk that language drafted at their discretion will be insufficient.

The Department has decided to make a few revisions to paragraph (d)(3)(iii) of the proposal, now (d)(3)(i)(C), in response to public comments. An NOIA, under the final rule, must include ''[a]n identification of the covered document by name (for example, a statement that reads: 'your Quarterly Benefit Statement is now available') and a brief description of the covered document if identification only by name would not reasonably convey the nature of the covered document.'' Many commenters on the proposal requested additional guidance on what would be expected as a ''brief description'' of a covered document and worried that this

requirement could result in too much information on what is supposed to be a very short notice. Suggestions included requiring that the brief description be limited to no more than a sentence or two, or even consolidating the first few content requirements and merely requiring identification of the covered document. The Department agrees that it may not always be necessary, to the extent the nature of a covered document is clear by its name, to include a brief description and that inconsistent application of the standard could result in longer, and more complex, NOIAs. The final rule requires a brief description only when identifying a covered document by name would not reasonably convey the nature of the covered document. Otherwise, only identification of the covered document by name is required. For example, an NOIA for a quarterly benefit statement ordinarily would not need a brief description. Quarterly benefit statements are furnished every three months and their content, which includes periodic personalized benefit account information for a covered individual, generally is well understood by individuals. Alternatively, the Department expects that a plan administrator furnishing an NOIA for a blackout notice would need to include a brief description to comply with this requirement. Blackout notices typically are not furnished on a recurring basis, and the circumstances surrounding the provision of a blackout notice may not be clear to many covered individuals. It is not unlikely, for example, that some covered individuals will have never before received a blackout notice. The Department believes that these modifications are responsive to commenters' concerns without undercutting the important message NOIAs are intended to convey.

Paragraph (d)(3)(iv) of the proposal, now (d)(3)(i)(D) in the final rule, also reflects limited revision in response to commenters' questions about whether plan administrators could use a hyperlink on an NOIA, rather than simply a website address. The Department did not intend to limit NOIAs to including only website address citations: Plan administrators are encouraged to use hyperlinks that take covered individuals directly to a website address. The rule has been revised explicitly to include hyperlinks.[39]

A few commenters addressed the standard in paragraph (d)(3)(iv) of the proposal, now (d)(3)(i)(D), that the required internet website address must be ''sufficiently specific'' to provide ready access to the covered document (or, in the case of a combined NOIA, covered documents).[40] A website address (or hyperlink) will satisfy this requirement if it leads the covered individual directly to the covered document. A website address (or hyperlink) also will satisfy the ''sufficiently specific'' standard if the address leads the covered individual to a login page that provides, or immediately after a covered individual logs on provides, a prominent link to the covered document. Most commenters did not respond with suggestions for how to improve the ''sufficiently specific'' standard, except for requesting minor clarifications. The very few commenters that did address the standard disagreed with each other on the problem; for example, one commenter believed that the ''sufficiently specific'' standard is too prescriptive and should allow more flexibility, especially to accommodate future technology, whereas another commenter argued that the standard is not sufficiently protective of covered individuals and that the notice should take individuals straight to the disclosure (following a secure login, as applicable). Similarly, very few commenters addressed whether additional or different security procedures or information about login or similar procedures should be included in the notice. Most believe this additional information will only further clutter the notice and detract from key information, and that security procedures and protocols may become quickly outdated. One commenter asked the Department to require a separate notice including login and security information, but did not offer specific commentary on security or privacy language that should be required. Following its review of commenters' views, the Department decided to retain the ''sufficiently specific'' standard, which now applies whether the notice includes a website address or a hyperlink to such address, and made other non-substantive revisions to simplify the paragraph.

The next two content requirements proposed in paragraphs (d)(3)(v) and (vi), which are now contained in paragraphs (d)(3)(i)(E) and (F) of the final rule, have been adopted with only minor amendment to clarify that requests for a specific paper version, and requests to opt out are both fulfilled free of charge. An NOIA must include a statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right (under (d)(3)(i)(E)); and a statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right (under (d)(3)(i)(F)). Commenters overall did not object to requiring that the notice explain covered individuals' rights to request paper or opt out of electronic delivery. The Department continues to believe these are vitally important and protective rights for covered individuals and is not persuaded by the one commenter who requested that these statements be removed. A couple of commenters suggested that these rights should be ''prominently'' displayed and that the notice should include detailed instructions about how to opt out and any timelines for doing so. The Department did not adopt these suggestions. Given the very limited content of the NOIA, nearly everything arguably is ''prominent,'' and adding more and more content and specifications would only undermine the intended brevity and simplicity of the notice.

The final rule includes one additional content requirement, in paragraph (d)(3)(i)(G), to respond to several commenters' suggestion that covered individuals should be made aware that covered documents may not always be available online. The Department agrees that covered individuals would benefit from such a warning or reminder, so that they can take any desired action to print or save covered documents, or possibly request a paper copy of a covered document. As discussed below in detail, plan administrators are not required to maintain covered documents online indefinitely for purposes of

[39] The Department did not adopt one commenter's recommendation that final guidance require hyperlinks or the ability to hover over words that previously have been defined. Although the rule now explicitly includes hyperlinks in addition to website addresses, the Department is not persuaded that hyperlinks should be mandatory; further, it is unclear whether the commenter's suggestion that covered individuals must be able to hover over defined terms is meant to apply to notices (which are intended to be concise, clear documents notifying of internet availability, rather than substance) or more likely to the covered documents themselves. This rule is not intended to change substantive requirements of covered documents, such as the use of (and hyperlink capabilities associated with) defined terms.

[40] *See, e.g.,* 29 CFR 2550.404a–5(d)(v), which similarly requires disclosure of specified information at ''[a]n internet website address that is *sufficiently specific* to provide participants and beneficiaries access to'' such information (emphasis added). The Department is not aware of any evidence that plan administrators need further clarification or that this standard is ineffective. The proposal nonetheless included, and the final rule continues to include, two non-exclusive methods for website access that satisfy this standard.

satisfying this electronic delivery safe harbor. Thus the final rule now requires an NOIA to include a cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document. This requirement will ensure that covered individuals understand that covered documents will not be available online indefinitely. Plan administrators could, for example, draft the cautionary statement in a manner that encourages covered individuals to print, save, or otherwise preserve covered documents.

A few commenters found paragraph (d)(3)(vii) of the proposal, now (d)(3)(i)(H), requiring a contact telephone number to be deficient, for example suggesting that the rule should mandate toll-free telephone numbers both for the employer or plan administrator and for the Department. The Department did not adopt a requirement that the telephone number must be toll-free, because such a requirement would place a costly and unnecessary burden on plan sponsors, particularly for sponsors of small plans that might be located in the vicinity of most of their participants without the need for any long-distance calling. Further, the Department is unaware of any problems or objections from plan participants with the telephone number that is required as contact information in the participant-level fee disclosure regulation (which similarly does not require a toll-free number).[41] In any event, the safe harbor does not preclude plan administrators from providing (and including on the NOIA) a toll-free number. The Department was not persuaded that this final content requirement from the proposal should be revised. Paragraph (d)(3)(i)(H) of the final rule continues to require a telephone number to contact the plan administrator or other designated representative of the plan.

The Department declined to adopt a number of additional content requirements suggested by some commenters.[42] For example, one commenter on paragraph (d)(3)(vii) of the proposal, now (d)(3)(i)(H), argued that the notice's content should be expanded to include an explanation that the number may be used for paper and opt-out requests as well as other questions, with a required response time of no more than 72 hours. Covered individuals will not necessarily be better informed by, and are more likely to ignore, a long and detailed notice that they receive repeatedly. The purpose of the NOIA is to highlight for covered individuals that a retirement plan document is available online, not to become a new and comprehensive disclosure of ERISA rights and responsibilities in itself.

Based on additional feedback from commenters and analysis of the circumstances that may in fact warrant additional content on an NOIA, however, the Department adopted one more provision to the final safe harbor in paragraph (d)(3)(ii). As opposed to the preceding content requirements for the notice in paragraph (d)(3)(i), the information described in paragraph (d)(3)(ii) (ii) is not required. An NOIA furnished pursuant to the safe harbor may (but is not required to) contain a statement as to whether action by the covered individual is invited or required in response to the covered document and how to take such action, or that no action is required, provided that such statement is not inaccurate or misleading. The Department included this new provision because it was persuaded by commenters that covered individuals may find it advantageous to be notified whether some action on their part is (or is not) invited or required in response to the notice. The rule does not preclude plan administrators' discretion to include this information, although it is not required. Plan administrators, however, must ensure that any statement about action that may or must be taken, or that no action is needed, is not inaccurate or misleading. For example, in the Department's view, it would ordinarily be inaccurate and misleading for a plan administrator to state on an NOIA for a benefits claim denial under section 503 of ERISA that no action is invited or required. Even if a covered individual chooses to ignore the NOIA and not initiate an appeal, a benefits claim denial, by its very nature, is an invitation to take action, and requires such action within a specific timeframe or else the claimant may forfeit a right to a benefit.

Finally, as to the content required for the NOIA, the Department requested comments on whether affected parties believed that a model NOIA would be useful, and asked that parties submit sample models for the Department's consideration. Although a few commenters stated that they did not necessarily object to the provision of a model NOIA, many commenters responded that a model is not necessary, for example because the NOIA content and other requirements are sufficiently clear, or more explicitly that the Department should not adopt a model, because, given the large variety in retirement plan features and designs, a model could be insufficiently flexible and ultimately interfere with the ability of plan administrators to appropriately prepare NOIAs for their plans.[43] The public record, therefore, did not demonstrate a meaningful level of interest in having a model NOIA published with the final rule. The Department also did not receive any sample models from commenters. Given this overall lack of interest, and in light of changes made to improve the required content of the NOIA in response to commenters' concerns, the Department has not included a model NOIA in the final rule.[44]

(iii) Form and Manner of Furnishing Notice of Internet Availability

The Department intends the NOIA to be a succinct, understandable disclosure that will convey its importance and easily call the recipient's attention to the availability of a covered document. With this goal in mind, paragraphs (d)(4)(i) through (iv) of the proposed rule set forth standards for the form and manner of furnishing the notice. As proposed, an NOIA had to first, be furnished electronically to the address referred to in paragraph (b) of the proposal; second, contain only the content specified in paragraph (d)(3) of the proposal, except that the plan administrator could include pictures, logos, or similar design elements, so long as the design was not inaccurate or misleading; third, be furnished separately from any other documents or disclosures furnished to covered individuals, except as permitted under paragraph (i) of the proposal (which addressed the consolidation of certain notices of internet availability on an annual basis); and fourth, be written in a manner calculated to be understood by

[41] *See* 29 CFR 2550.404a–5(d)(2)(i)(A).

[42] Examples of additional statements that commenters suggested for the NOIA include that it is the covered individual's responsibility to notify the plan administrator of a new electronic address; where historical versions of documents can be obtained; the significance of the covered document and what has changed since the last version; that there will be no retaliation for choosing paper; that notices and covered documents should be printed and saved for personal records; the right to print covered documents at an employer's place of business; and the availability of the plan administrator to assist with passwords.

[43] One commenter supported the Department's development of a model notice, and explained that to do so properly would require as long as six months. For the reasons stated herein, however, the Department has declined to adopt a model NOIA at this time.

[44] The Department similarly did not adopt a model for the initial notification required under paragraph (i) of the rule, discussed in detail below. As with the NOIA, commenters did not necessarily object to a model, but there was not consistent or strong support for a model for either notice.

the average plan participant. The proposal elaborated on this fourth condition, explaining that a notice that uses short sentences without double negatives, everyday words rather than technical and legal terminology, active voice, and language that results in a Flesch Reading Ease test score of at least 60 would satisfy the fourth requirement.[45]

The proposal required that the NOIA be furnished by itself. The NOIA contains important information alerting covered individuals that retirement plan disclosures are available online. This information should not be obscured by commercial advertisements or even other ERISA-required disclosures. The second and third requirements in paragraph (d)(4) of the proposal were intended to achieve this objective. Any additional information or content had to be limited; to permit otherwise would have frustrated the Department's goal of a clear, concise notice. To the extent design elements could enhance the appearance of the NOIA and possibly increase the likelihood that it would draw the desired attention of covered individuals, however, the proposal did not exclude the use of pictures, logos, and similar design elements, so long as the design was not inaccurate or misleading and the required content was clear.

Plan administrators must write clear and understandable notices of internet availability, and to that end the proposal relied on the standard measure for readability of ERISA disclosures—that the annual notice be ''written in a manner calculated to be understood by the average plan participant.'' Due to the concise nature of the NOIA, however, paragraph (d)(4)(iv) of the proposal included additional guidelines for plan administrators to satisfy the readability requirement, and plan administrators were encouraged to apply the plain language concepts described above (including the Flesch Reading Ease test). The Department incorporated these concepts to further improve individuals' comprehension of the information on the NOIA and to provide plan administrators a safe harbor, essentially, to satisfy the readability standard for purposes of the proposed safe harbor.

Commenters had a variety of general observations about the form and manner by which an NOIA must be furnished. For example, some commenters asked the Department to provide flexibility in how the notice may be furnished, not just by email but by text messages, mobile application notifications, and future innovations. Alternatively, some commenters requested that the rule be revised to allow plan administrators to furnish the NOIA in paper form, or electronic form, based on a determination by the plan administrator. Allowing paper disclosure would, these commenters explained, somewhat alleviate their concerns about the revocation of FAB 2006–03, discussed below in the section titled ''*Transition Issues.*'' Other commenters argued that allowing paper would reduce their concern that disclosures may not be received by covered individuals, winding up in a spam folder or otherwise buried.

The Department notes that, similar to the discussion below with respect to the concept of a ''website,'' the final rule is intended to apply to a broad range of technologies in addition to emails and internet browser websites. Indeed, the Department specifically designed the rule to accommodate future technological innovations that can be used in compliance with the standards of the safe harbor. By its terms, the rule does not limit furnishing of the NOIA to email; the notice could, for example, be sent by text message. The Department did not, however, adopt certain commenters' suggestion that plan administrators should be able to furnish the NOIA in paper form.[46] One of the goals in adopting this safe harbor is to advance the use of electronic tools to enhance the effectiveness of, and reduce the costs associated with, ERISA disclosures. The Department maintains that it is important for covered individuals to receive an initial notice, on paper, alerting them that disclosures will be furnished using different procedures. But after that, the safe harbor will create consistency by requiring plan administrators to communicate electronically. As to ensuring the receipt of electronic notices, the rule includes a specific provision in paragraph (f)(4) requiring that action be taken in response to invalid or inoperable electronic addresses. Accordingly, paragraph (d)(4)(i) of the final rule adopts the proposal's requirement that an NOIA must be furnished electronically to the address referred to in paragraph (b) of the safe harbor.

The Department also received more specific comments on the requirements of section (d)(4) of the proposal. In response to paragraph (d)(4)(ii) of the proposal, limiting the content of the NOIA but permitting specified design elements, a few commenters requested clarification that covered individuals will not be forced to wade through what are essentially marketing communications as purported ''design'' elements that could overtake the actual content of the notice. And more importantly to these commenters, covered individuals should not be confused by suggestible endorsements and advertising. The Department appreciates commenters' concern that the content of the required NOIA must be clear and direct, and that the NOIA should not be used as marketing or sales material to the extent the NOIA is prepared by a plan service provider. However, the Department believes that these concerns are mitigated by the requirement in paragraph (d)(4)(ii) that design elements not be inaccurate or misleading and that the required content be clear. The purpose of the notice is to communicate the availability of an online disclosure, and plan administrators are responsible for ensuring that this purpose is not obscured.

Paragraph (d)(4)(iii) of the final rule requires that an NOIA must be furnished separately from any other documents or disclosures except as permitted, and discussed below, by paragraph (i) of the final rule. Some commenters questioned whether the NOIA must be furnished separately if it accompanies the covered document (*e.g.,* an email notice with an attached PDF version of the covered document); this matter is addressed by the addition to the final rule of paragraph (k), discussed below, permitting such direct delivery of covered documents.

The Department received significant commentary on the readability standard in paragraph (d)(4)(iv) of the proposal with its references to short sentences, active voice, and the Flesch reading ease score. Most commenters strenuously objected to the inclusion of these additional, more specific measurements to assess the readability of NOIAs. These commenters argued that the Department's existing standard, ''written in a manner calculated to be understood by the average plan participant,'' is sufficient and well understood. They asserted that, in their

[45] *See, e.g.,* general information about this formula for writing in plain English, at *https://web.archive.org/web/20160712094308/http://www.mang.canterbury.ac.nz/writing_guide/writing/flesch.shtml* (Rudolf Flesch).

[46] The Department believes that commenters' support for paper NOIAs was due, in part, to the fact that some plan administrators currently rely on Field Assistance Bulletin 2006–03, which permits a paper notice, to furnish pension benefit statements. The Department understands that for these administrators, reliance on this final rule will require them to modify their procedures with respect to notices for benefit statements and consequently is providing an 18-month transition period during which plan administrators can implement such modifications. FAB 2006–03 and the transition period are discussed further below, under the heading ''*Transition Issues.*''

view, including additional standards, particularly standards based on the application of a Flesch reading ease score, would increase the costs of compliance with the safe harbor without obvious benefits. Even though the new standards were proposed as examples of compliance with the general standard, rather than as independent requirements, the commenters argued that there is a good chance the standards would be interpreted as a new legal standard, not only for this final rule's notices but for other ERISA disclosures, such as the SPD. The Flesch reading ease score was especially problematic for commenters, who suggested that perhaps it could be used as a goal, but is not appropriate as a required score.[47] If the Department retained this standard, they argued, it would have to be clear that it applied only in the context of this safe harbor, even though such a statement would not necessarily preclude its expected application in other contexts. Only one commenter supported these additional criteria, and that commenter suggested that their inclusion should only be a first step and that additional standards, including for the design and layout of notices, should be included. The same commenter cautioned that the Department should also test NOIAs to ensure they are understandable.

In response to commenters' concerns, the Department has removed from paragraph (d)(4)(iv) the more detailed guidelines for meeting the general readability standard. The final rule requires that the NOIA must be written in a manner calculated to be understood by the average plan participant. Although those additional guidelines may be helpful tools suitable for drafting clear and simple notices under this rule, the Department agrees with commenters that it would not be desirable to imply that these guidelines are mandatory for ERISA disclosures or notices in general. The Department also acknowledges some of the more specific objections that commenters raised. For example, it may not be possible to consistently achieve a Flesch reading ease test score of at least 60, especially for NOIAs that consolidate content for more than one covered document, as permitted by paragraph (i) of the rule. Some experts posited that using ''one-size-fits-all'' scoring programs does not always result in effective communications.[48] Although the Department has declined to include the proposal's specific guidelines in the final rule, it will continue to analyze readability and other measures in connection with the responses to the RFI on general disclosure issues that was published with the proposed rule. In the meantime, plan administrators may look to the Department's SPD regulations for guidance on the meaning of ''written in a manner calculated to be understood by the average plan participant.'' [49]

(iv) Standards for Internet Website

The proposed safe harbor included minimum standards concerning the availability of covered documents on a website, which were set forth in paragraphs (e)(1) through (3) of the proposal. Generally these standards remain intact. The principal changes, discussed below, include revisions to the website retention requirement, in paragraph (e)(2)(ii) of the final rule, and a new provision, in paragraph (e)(4), to address the application of the safe harbor to mobile apps.

Paragraph (e)(1) of the proposal stated the general requirement that plan administrators must ensure the existence of an internet website at which covered individuals are able to access covered documents. This provision is adopted without change. This paragraph holds the plan administrator responsible for ensuring the establishment and maintenance of the website. The Department understands that, in many cases, some or all of the responsibilities associated with the website may be delegated to plan service or investment providers or other third parties, as frequently occurs now for other aspects of plan administration. Any such delegation is subject to the plan administrator's compliance with paragraph (j) of the safe harbor, ''Reasonable procedures for compliance,'' discussed below, and the plan administrator's general obligation as a plan fiduciary under ERISA section 404 to prudently select and monitor such parties.[50]

A few commenters argued that paragraph (e)(1) of the proposal sets a higher, strict liability, standard for plan administrators that is not appropriate. The Department disagrees with these commenters. The existence of an internet website is integral to the successful execution of the notice-and-access framework adopted in the final rule. Without an accessible website that includes the covered document, the plan administrator has not effectively ''furnished'' the document under the notice-and-access portion of this safe harbor.[51] Consequently, the Department cannot accept a lesser standard, for example that the plan administrator must ''take measures reasonably calculated'' to ensure the website's existence, as was suggested by a few commenters. The Department also disagrees that this standard results in strict liability. The final rule explicitly provides relief in paragraph (j), discussed below, for reasonable events that may interrupt the availability of covered documents on the website. Temporary interruptions due to internet connectivity problems, routine maintenance, or network disturbances do not necessarily mean that the plan administrator failed to ensure the existence of the website pursuant to this safe harbor.

One commenter requested that the Department modify paragraph (e)(1) of the proposal to prohibit website addresses from changing for at least

[47] One commenter suggested that, if the Department wishes to include additional standards for plan administrators to achieve ''readability,'' the final rule should include only the Flesch reading ease score, an objective standard.

[48] *See, e.g.,* Janan, D., Wray, D., ''Readability: The limitations of an approach through formulae'' (2012) (readability formulae found to be inadequate), at *http://www.leeds.ac.uk/educol/documents/213296.pdf. See also* Crossley, S.A., Allen, D., & McNamara, D. S., ''Text readability and intuitive simplification: A comparison of readability formulas'' (Apr. 2011, Vol. 21, No. 1, pp. 84–101) (traditional readability formulas weak due to reliance on overly simplistic mechanisms), at *http://nflrc.hawaii.edu/rfl. But compare* Federal Plain Language Guidelines, (March 2011, Rev. 1, May 2011*)* (federal agencies should apply user testing techniques to aid compliance with The Plain Writing Act of 2010 (P.L. 111–274) (Oct. 13, 2010),)), at *https://plainlanguage.gov/guidelines/.*

[49] *See* 29 CFR 2520.102–2(a) (''The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. In fulfilling these requirements, the plan administrator shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan. Consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross references and a table of contents.'').

[50] One commenter specifically expressed concern about service providers' potential misuse of plan and account information, for example covered individuals' personal financial information, that is obtained in connection with their provision of plan services, including furnishing information and disclosures, or maintaining a website, to comply with this rule. The commenter suggested that the Department should prohibit the use of any such information to market or sell non-plan products and services to covered individuals. This commenter's concern is beyond the scope of this safe harbor, which addresses only a plan administrator's compliance with ERISA's standard for the furnishing of covered documents to covered individuals.

[51] Other methods of furnishing covered documents electronically do not require the existence of a website. *See* paragraph (k) of the final rule.

some specified period of time, because website addresses can shift over time. The Department declines to adopt this suggestion. The final rule, in paragraph (e), relating to minimum standards for the website, contains a new provision requiring that covered documents remain available on the website for a specified time. In addition, paragraph (d)(3)(i)(D) of the final rule requires each NOIA to contain a sufficiently specific website address or hyperlink to provide ready access to the covered document. Collectively, these two provisions provide for easily locatable content available for a long enough time. At this time, the Department therefore declines to establish additional prescriptive mandates on website management or website maintenance, such as hyperlink redirects or hyperlink expiration rules, in response to this comment.

Paragraph (e)(2) of the proposal contained six paragraphs. Paragraph (e)(2)(i) of the proposal provided that the covered document must be available on the website no later than the date on which the covered document must be furnished under ERISA. Paragraph (e)(2)(ii) required that a covered document remain available on the website until it is superseded by a subsequent version of the covered document. Paragraph (e)(2)(iii) required that a covered document be presented on the website in a manner calculated to be understood by the average plan participant. Paragraph (e)(2)(iv) of the proposal provided that the covered document must be presented on the website in a widely-available format or formats that are suitable to be both read online and printed clearly on paper. Paragraph (e)(2)(v) provided that the covered document must be searchable electronically by numbers, letters, or words. Finally, under paragraph (e)(2)(vi) of the proposal, the covered document must be presented on the website in a widely-available format or formats that allow the covered document to be permanently retained in an electronic format that satisfies the requirements of paragraph (e)(2)(iv) (requiring a format that can be read online and printed clearly on paper). Paragraph (e)(2)(vi) of the proposal was included to enable covered individuals to keep a copy of the covered document, for example, by saving it to a file in electronic format, on a personal computer.

A significant number of commenters focused on the requirement, in paragraph (e)(2)(ii) of the proposal, relating to how long covered documents must remain available on the website. This provision in the proposal required that a document must remain available until ''it is superseded by a subsequent version of the covered document.'' This provision was intended to ensure that covered individuals have readily available the information they need to protect and enforce their rights under ERISA and the plan, especially the SPD for example. The Department requested comments as to whether there are circumstances when a superseded document may still be relevant to a covered individual's claims or rights under the plan and, if so, whether additional or different conditions are needed to address such circumstances. The Department also invited comments on whether a final rule should explicitly address the category of covered documents that technically do not become superseded by reason of a subsequent version of the covered document, but instead cease to have continued relevance to covered individuals (*e.g.,* a blackout notice).

The Department received a wide range of comments on paragraph (e)(2)(ii) of the proposal. A few commenters, who were generally opposed to the new safe harbor, argued that all covered documents should be retained on the website indefinitely, regardless of continued relevance. Many more commenters, however, supported the proposed retention provision, but even these commenters suggested a need for a clearer standard for the category of covered documents that technically do not become superseded by reason of a subsequent version of the covered document, such as blackout notices under section 101(i) of ERISA or notices of the right to divest employer securities under section 101(m) of ERISA. For this subset of covered documents, commenters offered a variety of suggestions for how long such documents should be retained on the website. A number of commenters, for example, suggested that such documents should be retained on the website ''until they cease to have relevance,'' leaving it to the plan administrator to determine whether and when a document ceases to be relevant. Other commenters, however, strongly preferred that the Department set a defined length of time, with comments ranging from one to three years. These commenters emphasize that there is a benefit to having a bright line standard for compliance purposes.

After considering the comments received, the Department has decided a one-year posting requirement strikes the appropriate balance between ensuring participants have reasonable electronic access to current documents and the appropriate scope of this regulation, which provides a safe harbor for *furnishing* requirements, not underlying *retention* requirements. The one-year period in paragraph (e)(2)(ii) of the final rule is responsive to both of the principal observations by most commenters: First, by specifically addressing the fact that not all covered documents are in fact superseded by another version; and second, by providing clear time limits for website retention of these covered documents. Affected parties will benefit from the administrative simplicity and consistency of a bright-line test to follow when managing, or accessing, covered documents on a website. Accordingly, paragraph (e)(2)(ii) of the final rule now provides that a covered document must remain available on the website until it is superseded by a subsequent version of the covered document, if applicable, but in no event less than one year after the date the covered document is made available on the website pursuant to paragraph (e)(2)(i) of the rule.[52] Under this standard, all covered documents must remain on the website for at least one year from the date they were first posted on a website. This will protect participants from confusion and uncertainty about how long their documents will be available on a website. Some covered documents, for example, the SPD, must remain on a website until they are superseded by a subsequent version of themselves, even if longer than one year from the date they were originally posted on a website.

The following examples illustrate how paragraph (e)(2)(ii) of the final rule applies to several different covered documents.

Example 1. A plan's SPD is furnished under the new safe harbor on January 1, 2025 (''2025 SPD''). Thus, it is first posted on the website on the same date. The plan is materially amended in 2026, and a summary of material modifications (SMM) was timely furnished. A new SPD is furnished via posting on the website on January 1, 2030 (''2030 SPD''), reflecting the 2026 amendment. The 2025 SPD must remain on the website at least until January 1, 2030, the date the updated 2030 SPD is furnished superseding the 2025 SPD. In this example, the 2025 SPD is superseded by a subsequent covered document more than one year after the

[52] These safe harbor requirements are not retroactive. Plan administrators are not required to go back and post historical versions of covered documents, dated prior to the effectiveness of this final rule, on the website. The Department intends these website retention provisions to be prospective in nature.

date it was first made available on the website.

Example 2. A pension benefit statement for a participant in a defined benefit pension plan is furnished on January 1, 2030 (''2030 PBS''), via posting it on the website on the same date. Subsequently, the plan furnished the same participant the next pension benefit statement on January 1, 2033 (''2033 PBS''), via posting it on the website on the same date. The 2030 PBS must remain on the website until January 1, 2033, when it is superseded by the 2033 PBS. In this example, the 2030 PBS was superseded by a subsequent covered document more than one year after the date it was first made available on the website.

Example 3. A pension benefit statement for a participant in a participant-directed defined contribution pension plan was furnished on January 1, 2030, via posting it on the website on the same date (''Q1 Benefit Statement''). Subsequently, the plan furnishes the same participant the next pension benefit statement on April 1, 2030, via posting it on the website on the same date (''Q2 Benefit Statement''). The Q1 Benefit Statement must remain on the website until January 1, 2031, one year after it was first posted to the website. In this example, even though the Q1 Benefit Statement was superseded on April 1, 2030, the date on which the Q2 Benefit Statement is posted, the Q1 Benefit Statement must remain on the website for at least one year, *i.e.,* at least until January 1, 2031.

Example 4. A blackout notice is furnished to all plan participants on January 1, 2029, via posting it on the website. The blackout notice, among other things, announced an upcoming 30-day blackout period ending on March 15, 2029. The blackout notice must remain on the website until at least January 1, 2030. In this example, even though the blackout period ended on March 15, 2029, the blackout notice must remain on the website for at least one year, *i.e.,* at least until January 1, 2030.

The Department does not agree that covered documents must be available online indefinitely, as suggested by several commenters, but paragraph (e)(2)(ii) of the final rule reflects the Department's determination that covered documents must, at a minimum, be available on the website for at least one year. Covered individuals will benefit from having covered documents available to them for a reasonable period of time. For example, participants in a participant-directed individual account plan will, at any time, have access to at least a year's worth of quarterly pension benefit statements, which may be accessed throughout the year for a variety of reasons, including to verify contributions, review and revise asset allocations, or otherwise manage their retirement assets. This also provides ample time for covered individuals who wish to print or download covered documents to do so.

The new website retention provision in paragraph (e)(2)(ii) of the final rule does not preclude the ability of plan administrators to retain historical documents on the website longer than the minimum term required, if they choose.[53] Plan administrators may prefer to archive or similarly preserve prior covered documents on the website for a longer period of time than is required by paragraph (e)(2)(ii). Nor do these new website retention requirements alter a plan administrator's general recordkeeping requirements under ERISA. For example, ERISA sections 107 (retention of records) and 209 (recordkeeping and reporting requirements) separately specify retention periods.[54] Thus, participants may continue to request covered documents that are older than one year. Plan terminations, benefit determinations, and many other circumstances and events naturally will arise during, and following, an employer's sponsorship of a pension benefit plan that require special attention to the proper management and retention of documents.[55] Plan administrators' (and other plan fiduciaries') responsibilities with respect to retaining plan records and documents and responding to participant requests are unchanged from existing law. The new safe harbor adopted today is not meant to alter ERISA obligations with respect to the maintenance of plan records or otherwise. This is an optional safe harbor available to plan administrators that provides a new method for plan administrators to furnish covered documents to plan participants.

Some commenters asked the Department to include standards for the design of the website, such as requiring that information be presented in a simple and direct form, and that the rule should prevent covered individuals from having to click through various levels to find documents. The Department disagrees that any changes to the rule are necessary to manage these concerns. The rule already requires, in paragraph (e)(2)(iii), that covered documents must be presented on the website in a manner calculated to be understood by the average plan participant. Further, the rule requires, in paragraph (d)(3)(i)(D), that a website address or hyperlink must be ''sufficiently specific'' to provide ready access to a covered document. A link that requires a covered individual to click through an unreasonable number of web pages to find a covered document would not satisfy the standard. The Department also believes that plan administrators and their service providers, rather than the Department, are better equipped to address the technicalities involved in designing websites to disclose required information.

Paragraph (e)(3) of the proposal required that the plan administrator take measures reasonably calculated to ensure that the website protects the confidentiality of personal information that could be included in covered documents. The Department explained that given the industry's increasing reliance on and use of electronic technology, many plans already have secure systems in place to protect covered individuals' personal information, as is generally required by section 404 of ERISA. The Department requested comments on whether this standard is sufficient to protect covered individuals' personally identifiable information. Commenters disagreed on the sufficiency of this standard. Some commenters asserted that the proposal adequately addressed information privacy and security concerns and that the approach taken in the proposal, which included a principles-based standard, is preferable to specific standards, requirements, and certifications, which can quickly become obsolete with rapidly-changing technology. Other commenters do not believe the Department sufficiently addressed privacy concerns in the proposal, especially for inactive or unused electronic addresses, which, in the view of some commenters, are likely to result for participants who are

[53] One commenter argued that including numerous historical documents on the website could create unnecessary confusion. The Department disagrees. Any such confusion should be minimal to the extent that the current version of any covered document must be presented on the website in a manner calculated to be understood by the average plan participants pursuant to paragraph (e)(2)(iii) of the final rule. A covered document that is buried or obscured on the website is not, in the Department's view, presented on the website in a manner that satisfies this standard.

[54] 29 U.S.C. 1027, 1059.

[55] As one commenter pointed out, maintaining historical versions of covered documents not only is necessary for plan administrators to satisfy their ERISA recordkeeping obligations and this final rule, but may be in plan sponsors' own interest to the extent they wish to rely on such covered documents in later litigation or enforcement matters.

assigned an electronic address by their employer. These commenters suggested that the more devices on which the Department allows electronic delivery of information, the more complex security issues become, and that security requirements may need to vary from covered document to covered document.

The Department in the final rule has maintained the principles-based standard included in the proposal, agreeing with commenters that efforts to establish specific, technical requirements would be difficult to achieve, given the variety of technologies, software, and data used in the retirement plan marketplace. The commenters requesting more specific standards themselves point to this difficulty, insofar as these issues become more complex as innovations occur and the same standards may not be appropriate for all covered documents, all systems, or in all circumstances. Therefore, the final rule continues to require that the plan administrator, possibly in coordination with plan service providers, take measures reasonably calculated to protect the security and privacy of covered individuals' information.[56]

Paragraph (e)(4) of the final rule is new. It was added in response to a range of questions from commenters about what constitutes a ''website'' for purposes of the safe harbor. In the preamble to the proposed rule, the Department explicitly asked for commenters' views on whether, and how, the rule should be modified to include other web-based mechanisms, such as messaging and mobile ''apps.'' Although some commenters recommended a narrow application of the rule to traditional websites accessed with a browser, most commenters on this issue encouraged the Department to broadly define what constitutes a website, or at least to clarify that the term covers any appropriate electronic source for accessing information. These commenters want to ensure that the rule accommodates advances in technology and permits the use of mobile applications, texting, and other internet-based mechanisms and, in some cases, these commenters suggested specific language for the rule or that the Department adopt a good faith or similar standard in the rule to allow plan administrators to use new technology without having to revisit the regulatory process. The Department agrees that the rule should more clearly state its inclusion of additional and new technologies, as long as those technologies are not inconsistent with a plan administrator's ability to satisfy the requirements of the safe harbor. The Department does not want to inhibit innovation in the delivery of required ERISA disclosures, especially as forms of communication improve and expand. Thus, for purposes of the safe harbor, the term ''website'' means an internet website, or other internet or electronic-based information repository, such as a mobile application, to which covered individuals have been provided reasonable access.

(4) Right to Copies of Paper Documents or To Globally Opt Out of Electronic Delivery

The Department believes that it is essential that any enhanced use of electronic disclosure permitted under ERISA respects the preferences of covered individuals who want to receive covered documents on paper, mailed or delivered to them. To that end, the proposal contained two safeguards, in paragraph (f), for these covered individuals.

The first safeguard, in paragraph (f)(1) of the proposal, provided that upon request from a covered individual, the plan administrator must promptly furnish to such individual, free of charge, a paper copy of a covered document. Commenters overwhelmingly supported protecting covered individuals' rights to request a free paper copy of a required ERISA disclosure. A few commenters focused on the number of paper copies a covered individual could request, and receive, free of charge. These commenters were concerned about potentially abusive practices in which a covered individual makes several requests for different covered documents. The Department is not persuaded that this is a legitimate concern. The 2002 safe harbor permits paper copies, free of charge, and the Department is unaware of abusive practices of this nature. The final rule allows covered individuals to request more than one covered document pursuant to this provision. For instance, a participant could contact the plan administrator for a participant-directed individual account plan and request paper copies of the plan's comparative investment chart required by 29 CFR 2550.404a–5(d)(2) as well as a copy of the participant's most recent quarterly pension benefit statement. In response to commenters concerns about repeated requests for the same version of the covered document, however, paragraph (f)(1) of the final rule clarifies that only one paper copy of any specific covered document must be provided free of charge under this safe harbor. Beyond that, whether the plan charges for additional copies of the same covered document depends on the terms of the particular plan and other applicable provisions of ERISA and regulations thereunder, and is outside the scope of this regulation.

A few commenters focused on how quickly plan administrators must respond to requests under the safe harbor. Some suggested time limits for responses, like those adopted by the SEC for shareholder reports, *i.e.,* within three business days.[57] The Department is not persuaded that strict time limits are needed. The 2002 safe harbor does not contain time limits for responses and the Department is unaware of harm or exploitation in this area. The safe harbor requirement to respond to requests rests with the ERISA plan administrator. The Department expects that the plan administrator will furnish the copy to the covered individual as soon as reasonably practicable after receiving the request. This overarching standard of reasonableness is sufficient to protect covered individuals' right to paper. The statute itself also provides a civil enforcement remedy, when appropriate.[58]

The second safeguard, in paragraph (f)(2) of the proposal, provided covered individuals with the right to opt out of electronic delivery and receive some or all covered documents in paper form. Commenters overwhelmingly supported this provision and, thus, it was adopted with only two minor changes. As proposed, this provision allowed covered individuals to ''globally'' opt out, in the sense that individuals would be able to opt out of electronic delivery entirely. In addition, the provision granted covered individuals the right to opt out of electronic delivery on a document-by-document, à la carte basis. Commenters universally supported the right of covered individuals to globally opt out of electronic delivery. Many commenters, however, objected to requiring plan administrators to offer a document-by-document opt-out right. Current recordkeeping systems, they explained, generally apply an ''all or nothing'' approach to paper versus electronic delivery. An à la carte system, by contrast, would require difficult and costly system modifications to keep track of paper preferences on a document-by-document basis for each covered individual. Commenters

[56] Some commenters raised issues regarding liability for security breaches. This safe harbor only establishes an optional method for delivery of covered documents. Issues pertaining to liability for security breaches are beyond the scope of this safe harbor.

[57] 17 CFR 270.30e–3(e).

[58] 29 U.S.C. 1132(c)(1).

explained that it is highly atypical for plan administrators to offer a ''pick-and-choose'' approach to opting out of electronic delivery. It would be rather cumbersome and complicated for plan administrators to track opt-outs participant-by-participant, and document-by-document, over time, they added. In addition, the fact that the rule permits plan administrators to provide a combined annual NOIA for multiple covered documents would exacerbate this problem, and potentially create confusion for covered individuals. For example, the commenters question whether an NOIA would have to include an explanation that a covered individual can opt out for one, more than one, or all of the combined covered documents and a detailed explanation of how to do so for each possible opt-out variation. Commenters also pointed out that even if the rule were limited to a global opt out, covered individuals under the rule always may request a paper copy of any specific covered document. Thus, according to these commenters, accommodating an à la carte opt-out right would be burdensome and result in costs that could deter plan administrators from using the safe harbor. At least one comment letter can be interpreted as support for requiring plan administrators to offer a document-by-document opt out right, in that it identifies practices showing that some participants might prefer a combination of paper and electronic communications.

The Department is persuaded that the critical protection for covered individuals is the right to globally opt out of electronic delivery. Therefore, the final rule strikes the phrase ''some or all'' from paragraph (f)(2), retaining (and making clearer by adding the term ''globally'') only the global opt-out as a requirement. This global opt-out requirement in paragraph (f)(2) of the final rule is the minimum; plan administrators may offer additional opt-out election options, such as a document-by-document opt out or one based on categories or classifications of covered documents. For example, some participants might be comfortable knowing that certain documents, such as the SPD, are available on the website, but prefer to receive paper versions of other documents, such as their quarterly pension benefit statements. This provision also was revised to include the words ''free of charge,'' clarifying that covered individuals may not be charged an opt-out fee.

Paragraph (f)(3) of the proposal required that the plan administrator establish and maintain reasonable procedures governing requests or elections under paragraphs (f)(1) and (2) of the safe harbor. This provision also provided that the procedures are not reasonable if they contain any provision, or are administered in a way, that unduly inhibits or hampers the initiation or processing of a request or election. This paragraph is adopted without change in the final rule, although a few commenters raised concerns with this provision.

The principal concerns related to the provision's lack of specificity, lack of prescriptiveness, and level of discretion afforded plan administrators. These commenters were worried that the provision would not adequately protect covered individuals who prefer paper documents, either because plan administrators would establish onerous procedures designed to frustrate requests or because covered individuals would find it difficult to follow such procedures. The suggested solution, according to these commenters, would be the establishment of required, uniform procedures for all plans. Ideas for elements of such procedures included, among other things, mandatory written procedures for tracking opt-outs; and a requirement that plan administrators permit covered individuals to submit opt-out elections either electronically or in writing.

These ideas may be perfectly reasonable with respect to certain plans, and the Department does not wish to discourage the establishment of such procedures under this safe harbor. The Department does not believe, however, that it is appropriate to set forth a single set of procedures to govern all requests or elections for all plans, in all circumstances. The general, principle-based approach in paragraph (f)(3) of the final rule provides stringent and protective guardrails to protect covered individuals' rights, while avoiding the pitfalls of adopting strict one-size-fits-all procedural requirements that must be applied by all plans in all circumstances, and that might inhibit innovation in the implementation of this notice-and-access framework. Finally, the Department finds unpersuasive the assertions that some covered individuals may be unaware of their plan's procedures for making requests or elections. Paragraph (g) of the final rule, discussed in more detail below, requires these procedures to be set out in writing in an initial paper notice to all individuals to whom the plan administrator intends the safe harbor to apply, before the safe harbor can be used.

A couple of commenters also asked for confirmation that paragraph (f)(3) of the safe harbor does not preclude plan administrators from continuing to make online information available to covered individuals who globally opt out of electronic delivery under the safe harbor. One commenter, for example, noted that some plan administrators may post covered documents online and continue to send NOIAs to covered individuals that have decided to opt out of electronic delivery. The safe harbor provides plan administrators with an optional method of furnishing covered documents through electronic media, and paragraph (f)(3) provides a mechanism for individuals to override a plan's decision and select paper delivery. When an individual makes an election under paragraph (f)(2) of the safe harbor, the plan administrator must return that individual to paper delivery, at which point the conditions of the safe harbor no longer apply with respect to that individual. Once a plan respects the individual's election and satisfies its obligation to furnish paper documents, the plan may continue to provide online access to covered documents that are available as well. The safe harbor has no effect on optional action in this context by plan administrators.

Finally, paragraph (f)(4) of the proposal is adopted in the final rule with one minor change for clarification. This paragraph requires that the system for furnishing the NOIA must be designed to alert the plan administrator of an invalid or inoperable electronic address. If a plan administrator learns of an invalid or inoperable electronic address (*e.g.,* the email is returned as undeliverable or ''bounces back'' and the problem is not promptly cured), the plan administrator must treat the covered individual as if he or she had elected to opt out of electronic delivery under paragraph (f)(2). One way to cure the problem would be to furnish the NOIA to a valid and operable secondary electronic address that had been provided by the covered individual when alerted of the invalidity or inoperability of the primary electronic address. Another way to cure the problem would be to promptly obtain a new electronic address for the covered individual. Some commenters offered additional remedies for promptly curing an invalid electronic address. The Department agrees that other acceptable cures exist depending on the particular facts and circumstances surrounding an NOIA that cannot be delivered. Regardless of the procedures that a plan administrator implements to cure an invalid electronic address, if the problem is not promptly cured, the deemed election of paper delivery will

persist until the plan administrator is able to obtain a valid and operable electronic address for the covered individual.

Paragraph (f)(4) is solely a safeguard to ensure that covered individuals actually receive their pension plan disclosures by requiring different treatment of a covered individual when his or her electronic address is invalid or inoperable. As long as the plan administrator is not alerted to such a problem, and the other conditions of the safe harbor are satisfied, the plan administrator is considered to have furnished the covered documents required under Title I of ERISA. This provision does not address issues such as whether a covered individual read, understood, or had actual knowledge of the contents of the covered documents accessed.[59] Nor does this provision impose an affirmative obligation on the plan administrator to monitor whether covered individuals visit the specified website or login at the website.

Some commenters recommended that paragraph (f)(4) should include additional safeguards, such as a requirement that plan administrators monitor, using electronic tracking tools, whether covered individuals actually receive, open, read, or access online the NOIA or covered documents. These commenters argued that without a monitoring requirement, NOIAs could end up in a spam folder or be buried or otherwise misfiled, resulting in a covered individual never actually accessing a covered document online. A few commenters questioned whether application of the safe harbor would adequately result in covered documents actually being received and whether the conditions of this rule are sufficient to satisfy the general standard for furnishing documents under ERISA.

Other commenters strongly opposed the imposition of tracking or monitoring obligations on plan administrators. These commenters did not necessarily challenge the existence of tracking or monitoring technology to learn about participants' electronic engagement; indeed some commenters pointed to tracking capabilities when citing the benefits of electronic delivery, possibly even correlating to higher deferral rates. Rather, these commenters opposed a tracking or monitoring obligation on the grounds of economic burdens. One commenter, for example, stated that ''requiring employers to ensure that a required document is received and read—when this has not been required for paper documents—would surely substantially increase cost, time and liability for plan fiduciaries.'' In support of this position, they maintained that the safeguards in paragraph (f)(4) of the proposal are reasonably crafted and sufficient to resolve potential electronic delivery failures, and that any additional obligations would be unnecessary and unsupported from a cost-benefit perspective. These commenters also opposed a tracking or monitoring obligation on policy grounds, arguing that it would be inconsistent for the Department to impose a tracking or monitoring requirement on plan administrators using electronic delivery when they currently are unable to determine if individuals open and read paper disclosures sent by U.S. mail. In this regard, they asserted that it would be poor and inconsistent policy to regulate electronic delivery more stringently than traditional paper delivery methods.

The Department disagrees that compliance with this final rule, which includes a variety of protections and safeguards for covered individuals, in addition to this paragraph (f)(4), fails to satisfy ERISA's standard for delivery. The Department does agree, however, that imposition of a monitoring requirement could be very expensive, especially for small plans, to the extent technological systems have to be replaced or altered significantly, or additional, potentially costly, plan services have to be procured. Even the most basic requirement for website monitoring, for example tracking the instances of users visiting a particular page on a website or views of a screen on an app, would require a web analytics tool, according to the commenters. Even for plan administrators that already, as suggested by a few commenters, engage in some level of monitoring, transitioning their systems and procedures to comply with a specific, technical requirement in this safe harbor would not be without some burden and cost. It is unlikely in all cases that the capabilities or functioning of existing monitoring systems would align precisely with a new regulatory requirement. Further, the Department believes that the rule's protections for covered individuals, not only paragraph (f)(4) but, for example, the clear and timely communication of website activity and paper and opt-out rights to preserve individuals' delivery preferences, taken together, provide a method of furnishing documents that is more than reasonably calculated to ensure actual receipt of covered documents. Thus, the Department does not see a compelling reason to establish a stricter standard for monitoring covered individuals' use of disclosures furnished electronically than for paper deliveries. The practical effect of paragraph (f)(4) of the final rule is analogous to the circumstances that arise when a plan is alerted to an invalid physical mailing address when a letter is returned as undeliverable. Of course, this final rule does not prevent plan administrators who already engage in some level of monitoring from continuing to do so.

(5) Initial Notification of Default Electronic Delivery and Right To Opt Out

Paragraph (g) of the proposal provided that the plan administrator must furnish to each individual, prior to the plan administrator's reliance on this section with respect to such individual, a notification on paper that some or all covered documents will be furnished electronically to an electronic address, a statement of the right to request and obtain a paper version of a covered document, free of charge, and of the right to opt out of receiving covered documents electronically, and an explanation of how to exercise these rights.

The Department is adopting paragraph (g) with a few modifications in response to commenters' suggestions, which are explained below. The final rule continues to require that each individual with respect to whom a plan administrator intends to rely on the new safe harbor, be furnished a notification, on paper, that some or all of the plan's covered documents will be furnished electronically to an electronic address. The initial notice, as proposed, also required a statement of the right to request and obtain a paper version of covered documents and of the right to opt out of receiving covered documents electronically, free of charge, and an explanation of how to exercise these rights. The Department continues to believe that it is important for all participants and beneficiaries, who are accustomed to the current ERISA delivery rules, to be notified, on paper, that the plan administrator is adopting a new method of electronic delivery. If the plan administrator does not intend to rely on this new safe harbor for one or more employees, however, the plan administrator does *not* need to send these employees an initial notification. To illustrate, assume that an existing defined contribution plan covers three participants, only one of whom is covered under the 2002 safe harbor as an employee who is ''wired at work.'' This plan could take advantage of the new safe harbor for all three

[59] *See Intel Corp. Inv. Policy Cmte.* v. *Sulyma,* 140 S. Ct. 768 (2020).

participants, in which case each participant would have to be furnished the initial notification, even the employee who is ''wired at work.'' Alternatively, this plan could take advantage of this safe harbor only with respect to the two participants who are not covered under the 2002 safe harbor, in which case the plan would furnish the initial notification only to these two participants.

Many commenters requested an exception to the requirement that the initial notice must be furnished on paper for individuals who already receive disclosures electronically under the 2002 safe harbor. Commenters were concerned that, in this context, participants and beneficiaries who are accustomed to receiving electronic disclosures may be confused by a paper notice, or might ignore it altogether. Some of these commenters suggested that individuals covered by the 2002 safe harbor should not be required to receive an initial notice at all. On the other hand, the Department received comments supporting the requirement that an initial notice must be furnished on paper to all intended covered individuals, without exception. The Department believes that commenters' concern about potential confusion on the part of individuals receiving an initial notice is speculative at best. Further, even if an individual has been receiving electronic disclosures pursuant to the 2002 safe harbor, the logistics of electronic disclosure likely will work differently under the new safe harbor, for example with respect to the right to globally opt out. Therefore, the Department continues to believe that application of this new safe harbor warrants an initial notification, in paper, advising participants at the outset how covered documents will be furnished and their rights under the new electronic delivery framework and that confusion or other harm is highly unlikely. To that end, a plan administrator may not rely on the 2002 safe harbor to furnish the initial notice electronically to any participant or beneficiary that will be a covered individual under the new safe harbor.

A few commenters questioned the sufficiency of providing only one initial notice to warn participants and beneficiaries about the transition from paper to electronic delivery. Commenters made various suggestions, including that the Department require plan administrators to send two such notices before relying on the safe harbor, and that additional notices should be provided annually and at termination of employment. The Department declines to adopt these suggestions. These commenters offered no basis to conclude additional paper notices would be significantly more effective, particularly in light of the additional costs such a requirement would entail. In addition, the Department notes that the initial notice is not the only protection for participants and beneficiaries who will be transitioned to notice-and-access electronic disclosure. The specific purpose of the initial notice is to alert covered individuals to the coming change and of their rights under the new disclosure framework. Covered individuals, however, will continue to be informed of these rights in all future NOIAs. The Department drafted this safe harbor mindful of important periods of transition for covered individuals, not only requiring an initial notice before electronic delivery begins for a particular individual, but also requiring all future NOIAs thereafter to contain similar information, and a special rule to address the time at which covered individuals sever from employment.

Although a number of commenters supported the proposed content requirements, without modification, other commenters recommended a variety of additional content requirements for the initial notice required under paragraph (g) of the proposal. For example, commenters suggested that it would benefit covered individuals if the initial notice included instructions for how to access covered documents and the electronic address that will be used to furnish NOIAs under the safe harbor. Commenters point out that a covered individual's electronic address plays a crucial role under the new safe harbor, especially with respect to situations in which the employer will assign an electronic address (and here, especially if an employer assigned a commercial electronic address, such as a Google email account (or ''gmail.com'')). Additional suggestions for required content included a list of disclosures the plan intends to provide electronically, a statement that individuals who request paper will be protected from retaliation, the right of individuals to print covered documents at the employer's office, and a toll-free number to contact the plan for password and other assistance.

Although the Department disagrees with the appropriateness and necessity of each item on the broad list of additions offered by these commenters, the Department was persuaded by commenters that the initial notification could be improved, and the transition to electronic delivery made smoother, by requiring certain additional items of information. First, the final rule now provides, in paragraph (g), that plan administrators identify the electronic address that will be used for a particular individual and any instructions necessary to access the covered documents. The Department agrees that it would be helpful for a plan administrator to identify the specific electronic address that will be used to furnish covered documents to a covered individual and that the additional burden, if any, of including this personalized information will be more than offset by the benefit to both the plan administrator and covered individuals of stating, up front, the electronic address that will be used. This requirement will help to identify and rectify potential mistakes for an individual's preferred electronic address and to clearly identify electronic addresses assigned by the employer. Second, the Department agrees that individuals will benefit from the inclusion of any instructions that will be necessary to access covered documents, for example whether individuals will have to use passwords, download a mobile application, or set up an online account to view secure documents. Third, the Department added to the final rule a requirement that the initial notice include a cautionary statement that the covered document is not required to be available on the website for more than one year; or, if applicable, after it is superseded by a subsequent version of the covered document. This addition is to make sure that covered individuals are put on notice as they transition to a notice-and-access disclosure framework that covered documents may not be available online indefinitely.

The Department did not adopt, as requirements, any of the other content suggested by commenters; the Department notes, however, that the content requirements for initial notices in the final rule, unlike for NOIAs, are not limiting. As long as additional content on the initial notice is relevant and not inaccurate or misleading, plan administrators may personalize and further enhance the initial notice to better communicate the plan's transition to electronic disclosure under the safe harbor. Finally, the Department added one additional, non-content, requirement to paragraph (g), that the initial notice must be written in a manner calculated to be understood by the average plan participant; this change is intended merely to confirm that the initial notice must satisfy the same general readability standard as the NOIA and other required ERISA disclosures.

One commenter raised an issue with respect to the prominence of the initial notification required by paragraph (g) of the proposal. This commenter was concerned that initial notifications might be packaged or combined with other disclosures, including non-ERISA employment materials, distributed during the onboarding process and that newly hired individuals might lose track of them. This commenter requested that the final rule include a requirement that an initial notice be furnished alone and not, for example, with enrollment or other materials. Others disagreed with this commenter and believed that initial notices should be contained in plan enrollment materials, or for instance in a new employee packet or with other onboarding human resource documents. The Department understands the concerns of the former commenter, but believes it may be impractical to mandate that the initial notice be furnished alone. The Department agrees with the latter commenter that it makes common sense for plan administrators to distribute initial notices with standard enrollment materials. It is customary for plan administrators to consolidate or package different documents or disclosures into a single enrollment package for organizational purposes and for the sake of efficiency. The requirement in paragraph (g) that the initial notification be in writing is sufficient protection against the possibility that covered individuals will overlook such notices. Accordingly, no change to paragraph (g) of the proposal is made in response to this comment.

(6) Special Rule for Severance From Employment With Plan Sponsor

Paragraph (h) of the final rule continues, as proposed, to include a special requirement for plan administrators who wish to use the safe harbor for furnishing ERISA pension plan disclosures to employees who have severed from employment.[60] As explained in the proposal, this special rule focuses on circumstances when there is a heightened concern about the accuracy of electronic contact information in connection with an employee's severance from employment. As proposed, paragraph (h) provided that, at the time a covered individual who is an employee severs from employment with the employer, the plan administrator must take measures reasonably calculated to ensure the continued accuracy of the electronic address described in paragraph (b) of the rule or to obtain a new electronic address that enables receipt of covered documents following the employee's severance from service.

Many commenters suggested eliminating this provision in its entirety, arguing that it is unnecessary and duplicative, because paragraph (f) of the proposal, which required a plan administrator to take curative steps if the electronic address of a covered individual becomes invalid or inoperable (*i.e.,* the ''bounce back'' provision) will remedy problems with electronic addresses of former employees. The Department intends to ensure a seamless transition for the dissemination of ERISA pension plan information when an employee leaves employment. And as such, the Department disagrees that paragraph (f) will address every circumstance in which an electronic address becomes inoperable or no longer associated with a covered employee who severs from employment. For example, emails sent to employer-provided email addresses of employees who have severed employment will not necessarily bounce back in a timely fashion, or ever, as would be necessary to give the plan administrator time to furnish documents within applicable timeframes. As a result, the Department is retaining the ''severance from employment'' rule, subject to a few revisions.

Other commenters recommended limiting the rule to severing employees who are receiving covered documents through an employer-provided electronic address, not a personal electronic address. These commenters argued that a special provision for severance is necessary only for employees who have an employer-assigned electronic address. If the electronic address being used by a terminated employee is not one that has been assigned by their employer, these commenters argued, there is no obvious reason that the address would cease to be valid or used by the individual merely because of cessation of employment. That is not the case with employer-provided addresses, which are likely to cease working at termination of employment or at some point thereafter, either because the employer deletes the email account or the severing employee no longer uses or has access to the employer-provided email account. The Department agrees that the special severance provision is not necessary when a personal electronic address is being used to provide covered documents to a covered individual. Therefore, the Department has revised paragraph (h) to read as follows: ''At the time a covered individual who is an employee, and for whom an electronic address assigned by an employer pursuant to paragraph (b) of this section is used to furnish covered documents, severs from employment with the employer, the plan administrator must take measures reasonably calculated to ensure the continued accuracy and availability of such electronic address or to obtain a new electronic address that enables receipt of covered documents following the individual's severance from employment.''

This revision also addresses concerns raised by representatives of multiemployer plans. These representatives stated that the Department should adjust paragraph (h) to better reflect and accommodate the experiences of individuals covered by a multiemployer plan, who may work for multiple different employers in the same year, if not the same month. These representatives also stated that it is not typically the case that employees are provided email addresses through their employers in the multiemployer sector and that those multiemployer plans who do deliver notices electronically, do not typically use employer-provided emails. Thus, this revision in practice will usually exclude plan administrators of multiemployer plans from the requirements of paragraph (h) of the final rule.

The special rule for ''severance from employment'' requires a plan administrator to take measures reasonably calculated to ensure the continued accuracy of the electronic address following a severance from employment, or to obtain a new address that enables receipt of covered documents following the severance. Many commenters requested clarification on what types of procedures would constitute such reasonable measures. One commenter suggested that the Department should require plan administrators to furnish, on paper, an additional, post-termination notice, with content similar to the NOIA. Covered individuals terminating their employment should already be familiar with their plan's notice-and-access framework for delivery, so the Department disagrees that the rule should include an additional notice requirement at termination. Requiring another notice,

[60] As explained in the preamble to the proposal, the phrase ''severance from employment'' in paragraph (h) is intended to have its ordinary meaning. A severance from employment occurs when an employee dies, retires, is dismissed, or otherwise terminates employment with the employer that maintains the plan, including when the employee continues on the same job for a different employer as a result of a liquidation, merger, consolidation or other similar corporate transaction. Whether a severance from employment has occurred is determined based on the facts and circumstances of the particular situation.

especially in paper form, would increase the costs of compliance with the safe harbor overall, and, in the Department's view, unnecessarily. Employees separating from service are sufficiently protected under this provision to the extent the rule requires plan administrators to have procedures in place to ensure they have a correct electronic address to which notices will be furnished. As an example, procedures that include requesting and receiving an updated personal email address for future notifications as part of a company's standard off-boarding process ordinarily would be sufficient to meet this standard. If these measures fail, the participant or beneficiary is no longer a ''covered individual'' under paragraph (b) of the final rule.

(7) Special Rule for Annual Combined Notices of Internet Availability

Although the proposal generally required, in paragraph (d)(1), that a plan administrator furnish an NOIA for each covered document, a special rule in paragraph (i) of the proposal allowed a plan administrator to furnish one annual combined NOIA (combined NOIA), subject to the timing requirements in paragraph (d)(2), that incorporates or combines the content required by paragraph (d)(3) with respect to one or more of a subset of covered documents. These documents included, as applicable (1) a SPD; (2) a SMM; (3) a summary annual report (SAR); (4) an annual funding notice; (5) an investment-related disclosure under 29 CFR 2550.404a–5(d); (6) a QDIA notice; and (7) a pension benefit statement. The Department proposed a special rule for these covered documents because they represent the most common and recurring disclosures that are made to pension plan participants, and are triggered by no event other than the passage of time.[61]

The Department excluded other required ERISA disclosures from this special rule, because, for example, they are event-specific disclosures and might communicate information that requires or invites specific and timely action on behalf of a participant or beneficiary. The special rule excluded contingent or irregular documents that are furnished based on an individual transaction or plan-status basis, or that are not regularly furnished to participants and beneficiaries. For example, a participant who receives notice of a blackout period, as required by ERISA section 101(i), may consider changing their investment directions and, if so, must do so within the timeline specified. Similarly, a participant who receives notice of an adverse benefit claim determination, as required by ERISA section 503(1), may wish to appeal or take other action following such determination, in which case they similarly must act within defined periods of time. In either example, the timing of the annual combined NOIA may not align with, and may even post date, the timing of the specific act required or invited by the covered document. Additional examples include a qualified domestic relations order determination under ERISA section 206(d)(3)(G)(i)(II), and a notice of failure to meet minimum funding standards under ERISA section 101(d).

In short, the Department excluded documents that it believes do not lend themselves, primarily because of their timing, irregularity, or requirement of potentially timely action by a covered individual, to a framework that permits combination into one annual NOIA. The Department solicited comments on whether, and why, the subset of covered documents eligible for paragraph (i) should be expanded or narrowed, and the criteria that would justify an expansion or narrowing. In addition, the Department asked for commenters' views on whether, instead of an explicit list of the covered documents to which paragraph (i) applies, any final safe harbor should adopt a principles-based or categorical approach, describing the type or nature of covered documents that may be combined.

Paragraph (d)(2), as proposed, required that a combined NOIA for more than one covered document under paragraph (i) be furnished at least once each plan year, and, if the combined NOIA was used for the prior plan year, no more than 14 months following the prior year's notice. The Department intended this combined NOIA to be an annual disclosure; to provide flexibility to plan administrators and avoid potential compliance issues associated with a strict 12-month standard, however, the proposal provided that an ''annual'' combined NOIA may be furnished up to 14 months following the prior ''annual'' combined NOIA. Commenters did not object to the timing standard for this notice, and paragraph (d)(2) has been adopted as proposed to provide for this ''annual'' combined NOIA.

The special rule in paragraph (i) of the proposal elicited a large number of comments. Some of the commenters opposed paragraph (i) and argued that permitting consolidation is insufficient because it fails to provide notice to participants about important documents that are due at different times. Without an NOIA each time a document is posted online, these commenters worry that covered individuals will have no reason to go to the website. One commenter pointed out that the very documents that may be consolidated are the documents that are most critical to covered individuals understanding their most basic retirement plan rights and benefits. Another commenter asserted that this concern is heightened for covered individuals in a participant-directed individual account plan who would receive only one notice per year that covers all four of their quarterly pension benefit statements. This commenter argued that this framework may not, as a legal matter, constitute adequate ''furnishing'' of the quarterly pension benefit statements. Further, since the cost of sending an NOIA by email, for example, is or should be insignificant, argued one commenter, plans will realize very little savings under the proposed special rule.

Other commenters, however, not only supported the consolidation of notices permitted by paragraph (i) of the proposal, but in some cases requested that the Department expand the consolidation permitted for the final rule to include additional disclosures. Commenters offered a variety of suggestions, including any information that must be furnished annually (*e.g.,* the general plan information required by paragraph (c) of the Department's 404a–5 participant-level fee disclosure regulation[62]) or any covered documents that would be furnished at the same time, such as disclosures based on plan events.[63] Several commenters also

[61] The proposal included the SMM even though it does not technically fit under the passage-of-time descriptor. An SMM's timing requirement sets it apart from, and warrants different treatment than, other event-triggering disclosures, the timing for which more closely corresponds to the particular event. *See* 29 CFR 2520.104b–3(a) (requiring the plan administrator to furnish the SMM ''not later than 210 days after the close of the plan year in which the modification or change was adopted''). In response to negative commentary on its inclusion in this paragraph, the SMM is excluded from the special rule in paragraph (i) of the final rule. Despite this exclusion, the SMM remains a covered document and may be furnished under the safe harbor, but it must have its own NOIA.

[62] 29 CFR 2550.404a–5, ''Fiduciary requirements for disclosure in participant-directed individual account plans'' (Oct. 20, 2010).

[63] For example, one commenter suggested if a plan administrator changes investment providers, a required blackout notice, pursuant to 29 CFR 2520.101–3, and the disclosure of changes to plan investment options, pursuant to 29 CFR 2550.404a–5(c)(1)(ii), should be permitted to be announced in a combined NOIA. The Department did not accept this suggestion. The final safe harbor's special rule generally is intended to apply to routine disclosures that are furnished on a regular basis and that do not invite action in response to the disclosure. The blackout notice and disclosure of changes to plan investment options do not satisfy these criteria; in

Continued

requested inclusion of specified plan-related notices required by the Internal Revenue Code, such as the Code automatic contribution arrangement notices that currently may be furnished with the Department's QDIA notice.[64]

Other commenters responded favorably to the concept of a principles-based category of documents that may be consolidated, beyond the seven included in the proposal, and that might be flexible enough to accommodate future disclosure requirements. A different commenter argued that a principles-based standard for covered documents that may be consolidated is not workable, because plan administrators may interpret the language differently creating unnecessary confusion, including for covered individuals. Commenters also disagreed on whether plan administrators should be able to consolidate notices of more than one plan when offered by a plan sponsor and asked for clarification on this point. In this connection, the Department notes that the final rule applies to ''an'' employee benefit plan, and its requirements must be satisfied with respect to each such plan, even if sponsored by the same employer. Allowing covered documents for more than one plan to be included on a combined NOIA could create confusion for covered individuals and would result in an even longer, less concise notice, especially to the extent notices for multiple covered documents for each plan already may be consolidated.

Paragraph (i) of the final rule is appreciably different than the paragraph as proposed, based on the Department's reevaluation of the combined NOIA concept in light of commenters' many ideas and points of view. Paragraph (i) continues to provide that plan administrators can furnish one annual NOIA that incorporates or combines the content required by paragraph (d)(3) of the rule with respect to more than one document. As opposed to the proposed list of seven covered documents, though, the group of documents for which a single annual combined NOIA is permitted has been revised.

As revised, paragraph (i) of the final rule permits one annual combined NOIA that incorporates the content required by paragraph (d)(3) with respect to four categories of documents and information. The first category is the SPD, as required pursuant to section 104(a) of ERISA. The second category is any covered document or information that must be furnished annually, rather than upon the occurrence of a particular event, and does not require action by a covered individual by a particular deadline. The third category is any covered document, not in the first and second categories, if authorized in writing by the Secretary of Labor, by regulation or otherwise, in compliance with section 110 of ERISA. The fourth category is any applicable notice required by the Code if authorized in writing by the Secretary of the Treasury.

Paragraph (i)(1) of the final rule deals with the first category of permissible documents, which consists solely of the SPD. The Department finds that the SPD lends itself to inclusion on an annual, combined NOIA, especially because its inclusion generally will remind covered individuals as to its availability more often than it otherwise would have to be furnished. Most commenters supported inclusion of this document.

Paragraph (i)(2) of the final rule deals with the second category of permissible documents and information. This category includes certain annual disclosures meeting certain conditions. Rather than listing the covered documents, however, the final rule describes this category as ''any covered document or information that must be furnished annually, rather than upon the occurrence of a particular event, and that does not require action by a covered individual by a particular deadline.'' The NOIA for any covered document meeting this description may be consolidated onto an annual combined NOIA. This category includes many of the covered documents that were listed in the proposal, for example, an SAR, an annual funding notice, a QDIA notice, an annual (but not quarterly) pension benefit statement, and annual investment-related information required by paragraph (d)(2) of the Department's § 2550.404a–5 regulation. In response to public comments, this new category also includes information that must be furnished annually to comply with paragraph (c) of the 404a–5 regulation, for example the general plan information in paragraph (c)(1)(i) or the description of fees for plan administrative services in paragraph (c)(2)(i)(A).

Paragraph (i)(3) of the final rule deals with the third category of permissible documents. This category includes any covered document ''if authorized in writing by the Secretary of Labor, by regulation or otherwise, in compliance with section 110 of the Act.'' This category is intended to provide the Department with flexibility to accommodate additional or future covered documents that do not fit in the second category in paragraph (i)(2), but that may be beneficial to include, for example to reduce administrative burdens on plans and improve the effectiveness of disclosures to covered individuals.[65]

The fourth category, in paragraph (i)(4) of the final rule, deals with applicable notices required by the Internal Revenue Code if authorized in writing by the Secretary of the Treasury. This category was added in response to the many commenters who requested a safe harbor that aligns with the Treasury Department's electronic media regulation for applicable notices at 26 CFR 1.401(a)–21(c), especially for disclosing Code automatic contribution arrangement notices and ERISA QDIA notices.

Unlike the proposal, the special rule no longer permits an annual NOIA to cover quarterly benefit statements within the meaning of section 105(a)(1)(A)(i) of ERISA. The Department was persuaded by commenters that an annual NOIA, for example furnished on January 15 of a given year, may be insufficient to adequately alert covered individuals as to the availability of subsequent benefit statements furnished later in that same year, for example, on April 15, July 15, and October 15. That view was not unanimous among the commenters, however, with many commenters suggesting that a single annual notice of availability is likely a very common practice, if not the norm, for plan administrators relying on FAB 2006–03. Given the lack of consensus among the commenters, and the Department's concern that an annual NOIA may not effectively promote covered individuals' access to and review of covered documents that will not be posted until months later, it makes sense to treat these recurring covered documents differently than other recurring documents. Accordingly, a separate NOIA must be furnished for each of

the Department's view these disclosures warrant separate notice.

[64] *See* Code sections 401(k)(13)(E), 414(w)(4), and 401(k)(12)(D); *see also* FAB 2008–03 as to furnishing the Code notices with the Department's QDIA notice.

[65] Section 110 of ERISA permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that (1) The use of the alternative method is consistent with the purposes of Title I of ERISA, provides adequate disclosure to plan participants and beneficiaries, and provides adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate. Section 110 provides both procedural and substantive requirements that the Department incorporates by reference.

these covered documents. The Department intends, however, to give further consideration to this issue in the future, and reserves the ability to take action pursuant to paragraph (i)(3) of the final rule, discussed above.

(8) Reasonable Procedures for Compliance

The Department included a provision in the proposal to ensure that plan administrators would not violate their disclosure obligations under ERISA when, for a variety of reasons beyond the control of the plan administrator, there may be temporary interruptions in the availability of covered documents on a website. Paragraph (j) of the proposal explained that, if certain requirements are satisfied, the conditions of the safe harbor are also satisfied, notwithstanding the fact that covered documents are temporarily unavailable for a period of time in the manner required by § 2520.104b–31 due to unforeseeable events or circumstances beyond the control of the plan administrator. The plan administrator must have reasonable procedures in place to ensure that the covered documents are available in the manner required by § 2520.104b–31. In the event that covered documents are temporarily unavailable, the plan administrator must take prompt action to ensure that the documents become available in the manner required by § 2520.104b–31 as soon as practicable following the earlier of the time at which the plan administrator knows or reasonably should know that the documents are temporarily unavailable. Commenters generally agreed that, by including this relief from potential liability, the Department fairly recognized the practical reality of temporary technical disruptions in modern times while at the same time including sufficiently rigorous standards to make sure that, as a general matter, important ERISA information is available to participants and beneficiaries when they need it.

A few commenters nonetheless made practical suggestions relating to the circumstances under which this relief should be triggered, and for how long the relief should be available. One commenter pointed out that covered documents also may periodically be offline for technical maintenance, upgrades, or similar activities to maintain or improve the website. The Department agrees that plan administrators should not fail the safe harbor during such times, and added the concept of ''technical maintenance'' to paragraph (j) to address these reasonable situations in which systems staff and other providers perform tasks necessary to maintain and improve the website on which covered documents are posted. These situations for the most part will be foreseeable, however, so plan administrators should take care to ensure that resulting service disruptions are reasonable. Another commenter suggested that the Department include a more specific parameter for how long the documents may be ''temporarily'' unavailable; for example, what if the problems occur during a blackout or similarly critical timeframe? The Department agrees that consideration should be given to facts and circumstances surrounding failure and that covered documents may be unavailable for only a ''reasonable'' period of time. The final rule has been modified accordingly.

(9) Direct Delivery Via Electronic Mail

In response to a considerable amount of commentary on the proposal, the Department is persuaded that the proposed framework for disclosure would be enhanced by allowing the delivery of covered documents to covered individuals via email, with the covered document attached, in addition to allowing plan administrators to furnish covered documents on an internet website. As proposed, the safe harbor required that covered documents be posted on a website; the proposal did not specifically provide for (and its requirements did not accommodate), for example, the furnishing of an email to a covered individual that includes an attached PDF or similar version of a covered document. Providing covered individuals with an email that includes an attached covered document is, however, functionally similar to providing covered individuals with an email that includes a website link to a covered document. For the reasons discussed below, the Department has decided that direct delivery will provide covered individuals with comparable access to covered documents.

A large number of commenters asked the Department to clarify, in the final rule, that the safe harbor also applies to the direct furnishing of documents in electronic form. These commenters believe the rule would be improved if plan administrators are not limited to sending to covered individuals an email with a website address or a hyperlink to a covered document that is posted on a website, but instead could also send an email to covered individuals with covered documents in the body of or as an attachment to the email. Commenters believe that this form of delivery is equally effective, and, for some individuals, perhaps preferable to hyperlinks and website postings. In fact, even commenters who generally oppose electronic disclosure as a default, nonetheless argue that directly sending covered documents is preferable to, and more protective than, a notice-and-access framework. According to these commenters, direct delivery is preferable because website access may require multiple steps (logons, passwords, opening hyperlinks, etc.) which, in their opinion, could result in a burdensome process that some individuals may not pursue. A significant benefit of direct delivery is immediate access to covered documents, while avoiding accessibility issues such as firewalls and forgotten passwords. Further, some plan administrators also may want to provide electronic delivery but cannot support, or have logistical concerns with supporting, a website.

The Department is persuaded by the broad range of commenters supporting the direct delivery of covered documents. Therefore, the final rule includes a new provision, in paragraph (k), which allows plan administrators to furnish covered documents directly to covered individuals using email, in contrast to the proposal, which permitted emails to covered individuals with links to covered documents. As explained below, although it is set forth in paragraph (k), the direct delivery provision relies on cross-references to other provisions of the final rule to ensure that it maintains the applicable requirements and protections of the notice-and-access framework.[66] The Department believes that this new provision better addresses commenters' requests for a direct delivery alternative, while ensuring that there are sufficient safeguards and other requirements necessary for application of the final rule when a plan administrator prefers delivery by email of the actual covered documents (as opposed to delivery by email of hyperlinks to a website that includes the covered documents).

Paragraph (k) provides that, notwithstanding any other provision of the safe harbor, a plan administrator will satisfy ERISA's general furnishing obligation by using an email address to furnish a covered document to a covered individual provided that the

[66] The final rule's website accessibility, maintenance, and other requirements do not apply to direct delivery by email. Paragraph (k) does, however, incorporate the relevant substantive requirements of paragraph (d), as well as the requirements of paragraphs (f), (g) (except the cautionary statement), and (h). Paragraph (k)(3) also includes formatting and searchability requirements similar to those imposed by paragraph (e). These cross-references are discussed in greater detail in this section.

requirements of paragraph (k) are satisfied. Although an electronic address for purposes of defining a ''covered individual'' in paragraph (b) of the rule is broader, for example encompassing mobile telephone numbers, paragraph (k) is limited to delivery to an electronic address that is an email address. Specifically, paragraph (k)(1) requires that the covered document be sent to a covered individual's email address no later than the date on which the covered document must be furnished under ERISA. Paragraph (k)(2) clarifies that, because the covered document will be furnished directly, the plan administrator does not need to comply with paragraph (d) and send an NOIA. Rather, the plan administrator must send an email that (i) includes the covered document in the body of the email or as an attachment; (ii) includes a subject line that reads: ''Disclosure About Your Retirement Plan''; (iii) includes the information described in paragraph (d)(3)(i)(C) if the covered document is an attachment (identification or brief description of the covered document), paragraph (d)(3)(i)(E) (statement of right to paper copy of covered document), paragraph (d)(3)(i)(F) (statement of right to opt out of electronic delivery), and paragraph (d)(3)(i)(G) (a telephone number); and (iv) complies with paragraph (d)(4)(iv) (relating to readability). Paragraph (k)(2) ensures that the substantive information required by paragraph (d) is provided in a clear manner to those covered individuals who receive disclosures directly under paragraph (k).

Similar to paragraph (e)'s requirements for covered documents posted on a website, paragraph (k)(3) requires that the covered document be (i) written in a manner reasonably calculated to be understood by the average plan participant; (ii) presented in a widely-available format or formats that are suitable to be read online, printed clearly on paper, and permanently retained in electronic format that satisfies the preceding requirements in this sentence; and (iii) searchable electronically by number, letters, or words. Finally, paragraph (k)(4) mandates that the plan administrator (i) take measures reasonably calculated to protect the confidentiality of personal information relating to the covered individual; and (ii) comply with paragraphs (f) (relating to copies of paper documents or the right to opt out); (g) (relating to the initial notification of default electronic delivery), except for the cautionary statement; and (h) (relating to severance from employment) of the rule. Administrators who use direct email delivery pursuant to paragraph (k) are not required to include the cautionary statement required in paragraph (g) (*i.e.,* a statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document), because plan administrators who use paragraph (k) are not required to maintain a website that would retain the covered documents that are delivered directly via email.

The Department notes that because this method of delivery does not require that plan administrators furnish an NOIA, the corresponding provision of the rule in paragraph (i) does not apply either. Paragraph (i), discussed above, allows the combination of content of certain covered documents on one, annual NOIA. The Department anticipates that, although the annual NOIA concept does not apply when covered documents are delivered directly, plan administrators may wonder whether more than one covered document can be attached to one email, especially for annually required or other covered documents that the plan administrator wishes to send at the same time. Plan administrators should apply the same standard in this case that would apply if documents were to be furnished on paper. In some cases documents must be furnished separately, the required timing for different documents does not align, or the content of a particular document may not be combined with other documents. But the Department often permits plan administrators to furnish required disclosures at the same time (*e.g.,* in the same envelope, the ''envelope rule''). In that case, plan administrators may treat the email to the covered individual as the ''envelope'' and attach more than one document, as would otherwise be permitted.

(10) Dates; Severability

The Department proposed in paragraph (k)(1) of the rule that the new alternative method for disclosure through electronic media, as finalized, would be effective 60 days following publication of a final rule in the **Federal Register**. The proposal included a separate applicability date in paragraph (k)(2), providing that the new safe harbor would apply to employee benefit plans on the first day of the first calendar year following the publication of the final rule in the **Federal Register**. The Department requested comments on the extent to which this applicability date should be sooner, given that the provision is optional, or later, if necessary to safeguard plan participants and beneficiaries from potential harm if plan administrators rely on the safe harbor too soon.

Nearly all commenters on this provision asked the Department to allow plan administrators to rely on the safe harbor as soon as possible. Further, since publication of the proposal, governments, industries, and workers globally have had to respond to the coronavirus disease 2019 (COVID–19) outbreak, which President Donald J. Trump declared a National Emergency on March 13, 2020. The ability of plan administrators to use this rule will greatly assist employers, workers, and the retirement plan industry in managing the effects of COVID–19. Specifically, enhanced electronic delivery will immediately alleviate some of the current disclosure-related problems being reported by a great many retirement plans. Many retirement plan representatives and their service providers, for example, have indicated to the Department that they are experiencing increased difficulties and, in some cases, an inability to furnish ERISA disclosures in paper form. The reported problems, which are likely to persist for the foreseeable future, include temporary or permanent closure of printing and mailing centers, and disruptions in paper supply chains, among others. The infrastructure necessary to deliver information electronically in this country, however, remains largely intact.

Given that it is a safe harbor, and that plan administrators must be in compliance with all requirements before relying on the safe harbor, there is no harm, and considerable benefits, associated with moving up the applicability date, especially for employers and plan service providers as they work toward economic recovery from COVID–19. To the extent reliance on the rule results in cost savings and other benefits, the Department should not delay these benefits. Commenters on the proposal suggested that the rule be applicable on the same day that the final rule becomes effective: Sixty days after its publication in the **Federal Register**. Only one commenter explicitly requested a delay in the application of the safe harbor, suggesting that a more appropriate timeline would be January 1 of the second year, rather than the first year, following the final rule's publication.

The Department is persuaded that there is no sound reason to delay the anticipated benefits of this rule, especially because it is a safe harbor, rather than a requirement, and it has

now been revised based on rigorous analysis and thoughtful stakeholder input to ensure that it adequately addresses appropriate policy goals and concerns. Therefore, the Department has aligned the effective and applicability dates to be 60 days following today's publication in the **Federal Register**. This has been done in paragraph (l)(1), rather than paragraph (k), due to the addition of a new provision in paragraph (k). Further, although the rule is not effective or applicable until 60 days after its publication, the Department, as an enforcement policy, will not take any enforcement action against a plan administrator that relies on this safe harbor before that date. The Department's decision to provide this non-enforcement policy supports the Federal government's broader effort to respond to COVID–19. The Department understands the far-reaching effects of COVID–19, and the non-enforcement policy provides flexibility and may reduce administrative burden on employers and pension plan service providers during this unprecedented time.

The final rule also includes, in paragraph (l)(2), a severability provision, which provides that if any provision in the final rule is found to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, such provision shall be severable and the remaining portions of the rule would remain operative and available to plan administrators. Thus, if a federal court were to find a specific provision, for example one of the NOIA content requirements, to be legally insufficient, then the remaining content requirements of the NOIA would remain applicable and in place.

(11) Changing Recordkeepers

Several commenters representing recordkeepers and plan administrators raised questions about whether and how certain provisions of the final rule would apply when a plan changes its recordkeeper, plan administrator, or both. For example, a number of commenters asked whether the safe harbor allows a new recordkeeper to rely on a list of electronic addresses and opt-out elections that are transferred from the old recordkeeper, or whether the new recordkeeper must independently solicit or verify electronic addresses and furnish new initial notifications under paragraph (g) of the rule. Correspondingly, would covered individuals have to resubmit an opt-out request? Commenters also asked whether a plan's safe harbor status is lost if there are changes in business structure (*e.g.,* mergers, consolidations, closings, acquisitions) of the plan sponsor, plan administrator, or plan recordkeeper, in any case resulting in a new recordkeeper. These commenters requested guidance on how plan administrators and other plan fiduciaries could navigate these issues under ERISA and maintain compliance with the new safe harbor.

A change in recordkeeper or plan administrator is a rather common and very fact-specific event that may raise a variety of issues under ERISA, including record retention, fiduciary, reporting, and disclosure issues, that are generally beyond the scope of this safe harbor regulation, which addresses only a plan administrator's obligation under ERISA to furnish required disclosures. This becomes apparent when one considers that these questions apply upon a change in recordkeepers regardless of whether the disclosures are furnished to a physical address (in paper copy) or to an electronic address (in electronic copy). The same ERISA fiduciary obligations that apply when changing recordkeepers responsible for furnishing paper disclosures will apply when changing recordkeepers responsible for furnishing electronic disclosures. Accordingly, the Department in this document declines to render an opinion on the impact that changing a recordkeeper or plan administrator could have, as a general matter, on the status of a plan under ERISA and the safe harbor. Nothing in this safe harbor, however, prohibits a plan administrator from relying on the safe harbor in circumstances when the plan's recordkeeper transfers accumulated lists of electronic addresses and opt-out elections to a successor recordkeeper. This makes sense because changing a recordkeeper would seem to have little or no effect on the validity or operability of a covered individual's electronic address, in much the same way that changing recordkeepers would have no effect on a participant's physical mailing address or other contact information. To the contrary, it is the Department's belief that confusion to covered individuals, as well as economic inefficiencies, are likely results if participants lose their status as covered individuals, resulting in a return to paper delivery, solely because of the plan's decision to change its recordkeeper.[67] Similarly, the Department is of the general view that, to the extent a plan participant or beneficiary is a ''covered individual'' who already is receiving disclosures electronically pursuant to the safe harbor (and therefore already received an initial notice and is accustomed to the notice-and-access delivery method permitted by this safe harbor), a new initial notice is not necessary.

(12) Transition Issues

(i) Delay in Superseding Prior Subregulatory Guidance

Although the 2002 safe harbor remains in effect, the Department occasionally has issued guidance in limited circumstances allowing, as a non-enforcement policy or otherwise, the use of electronic delivery methods other than the 2002 safe harbor. In the preamble to the proposed rule, the Department stated that although the new safe harbor would have no impact on the current electronic delivery rule at 29 CFR 2520.104b–1(c), the new safe harbor would, if finalized, supersede the relevant portions of this prior interpretive guidance. Specifically, the relevant documents are FAB 2006–03, FAB 2008–03 (Q&A 7), and Technical Release 2011–03R (Dec. 8, 2011) (TR 2011–03R).[68]

The Department issued FAB 2006–03 to help plan administrators comply with amendments to ERISA's pension benefit statement requirements made by the Pension Protection Act of 2006. In relevant part, FAB 2006–03 provides that plan administrators may satisfy their obligation to furnish pension benefit statements by providing continuous access to benefit statement information through one or more secure websites. FAB 2006–03 included a variety of conditions, including notification to participants and beneficiaries explaining how to access their statements online. FAB 2008–03 later provided interpretive guidance on the Department's final QDIA regulation, which includes an initial and annual notice requirement. The QDIA notice may be combined with the Code's notice requirement for automatic contribution arrangements in Code sections 401(k)(13)(E) and 414(w)(4). This FAB 2008–03 allows plan administrators that wish to furnish QDIA notices electronically to rely on either the Department's 2002 safe harbor or the Treasury Department's rule at 26 CFR 1.401(a)–21(c), relating to use of

[67] The Department nonetheless cautions that, to the extent a plan administrator changes the plan's recordkeeper based on incompetence, negligence, or fraud on the part of the current recordkeeper, a plan administrator (or other responsible plan fiduciary supervising the change in recordkeeper) may, as a fiduciary matter, have to intervene and take reasonable steps to ensure that the transfer of all plan records (not limited to electronic addresses and opt-out records for purposes of this safe harbor) adheres to the duties set forth in ERISA section 404.

[68] 84 FR 56894, at 56900, footnote 60.

electronic media. Finally, TR 2011–03R sets forth an interim enforcement policy regarding the use of electronic media to satisfy the disclosure requirements under 29 CFR 2550.404a–5, the participant-level disclosure regulation. TR 2011–03R allows plan administrators to furnish this information through electronic media (including through a continuous access website) if participants voluntarily provide an email address and other conditions are satisfied.

Many commenters objected to the Department's statement that this prior guidance would be superseded. They argued that the Department should codify and permanently preserve the guidance to avoid unnecessary disruptions to systems already in place in reliance on such guidance. Further, commenters urged, if the Department is not willing to codify and permanently preserve the guidance, then the Department should, at a minimum, provide a transition period during which plan administrators could continue to rely on this prior guidance, while they adjust to the terms of the new safe harbor. A transition period would provide more time for plan administrators and plan service providers to make necessary systems and other changes and thereby reduce the costs and administrative burden that would result from having to do so immediately.

The Department disagrees that this prior guidance should be maintained permanently. In the interest of creating uniformity in the delivery of ERISA disclosures electronically, the Department believes that, rather than a piecemeal approach permitting different standards for different documents in a variety of subregulatory documents, a sounder approach is to require that, over time, plan administrators who wish to disclose information electronically follow a consistent standard. The final rule is intended to be such a standard, which, unlike the prior guidance, benefits from the regulatory process in which the Department engaged, including public notice and comment. The Department is persuaded, however, that it may be unnecessarily disruptive and costly, as well as harmful, or at least confusing, to participants and beneficiaries, if established disclosure procedures are suddenly invalid as of the applicability date of the final rule. The Department agrees with commenters that a reasonable transition period, during which plan administrators may continue to rely on prior guidance as they make necessary system changes and acquire electronic addresses to comply with the final rule, is appropriate. Accordingly, for 18 months following the effective date of this final rule, plan administrators may continue to rely on the guidance set forth above. Thereafter, the relevant portions of such guidance are superseded. Commenters suggested transition periods generally ranging from one to two years. It makes sense that a transition period should be greater than one year, because many plan and participant communication cycles are annual; allowing one full communication cycle will enable plan administrators to rely on their general communication cycle to solicit electronic addresses from plan participants and beneficiaries. An 18-month extension accommodates this cycle and adds a reasonable cushion for unanticipated events. The Department will take no enforcement action against plan administrators who comply with the requirements of such guidance to satisfy their delivery obligations for the specified disclosures during this transition period.

(ii) Electronic Addresses Obtained Prior to the Effective Date of This Final Rule

Some commenters raised an additional issue as to whether and how plan administrators may use electronic addresses already in the plan's possession before transitioning to the new safe harbor. These commenters explained that plan administrators and sponsors in many cases already have extensive lists of email addresses, which they have compiled over time for various employment-related reasons and in the normal course of business operations. These addresses most likely were provided to the plan administrator or sponsor directly by the employee, or assigned by the plan administrator or sponsor for employment purposes. However, prior to this new safe harbor, plan sponsors and administrators have had no reason, at least in the context of ERISA disclosure requirements, to document the precise source of any particular electronic address. Commenters were concerned that paragraph (b) of the proposal, which required that an electronic address be provided by the individual, would prevent plan administrators from using such electronic addresses if they do not have records that definitively indicate where or from whom the plan obtained the electronic address. These commenters asked whether a plan administrator may treat electronic addresses already obtained as having been provided by the participant, beneficiary, or other individual entitled to covered documents for purposes of treating such person as a covered individual under the safe harbor, even in the absence of documentation that such previously attained address was, in fact, provided by such person to the employer, plan sponsor, or plan administrator.

The requirement in paragraph (b) of the final rule is intended to prevent plan administrators from obtaining and using unreliable electronic addresses from sources that are too far removed from the covered individual. The Department nonetheless appreciates the concern raised by commenters as to the potential challenge of verifying the source of electronic addresses that a plan administrator already has in a plan's records. For transition purposes, therefore, a plan administrator may rely on these electronic addresses, provided that the plan administrator acts reasonably, in good faith, and otherwise complies with the requirements of the safe harbor. This includes compliance with the new provision in paragraph (g) of the final rule, which requires the initial notice to identify the electronic address to which NOIAs (or emails pursuant to paragraph (k)) will be furnished under the safe harbor. The plan administrator also would have to comply with the protections in paragraph (f)(4) of the safe harbor, which require a system to alert the plan administrator of an invalid or inoperable electronic address. Absent compliance with these provisions, the Department has less assurance of the reliability of the electronic addresses at issue, in which case the Department may have a different view about relying on such addresses. Under these circumstances, and only as a transition matter, a plan administrator may rely on a preexisting list of electronic addresses that is in existence on the effective date of this final rule.

A plan administrator would not satisfy the good faith condition of this transition policy with respect to the use of any particular electronic address from such a list if the plan administrator has reason to know that such address is or may be invalid, inoperable, or obtained from a person or entity other than the participant, beneficiary, or employer, or acquired outside of the employment context in which the plan exists. For example, many commercial entities with diversified lines of business and affiliations serve as recordkeepers and plan administrators, within the meaning of section 3(16) of ERISA, for multiple retirement plans. These entities may acquire an electronic address for a person, who is plan participant, in the routine course of a business transaction unrelated to his or her retirement plan participation. The person for instance

may have purchased an investment or insurance product in his or her personal capacity. Although the address may be valid and operable, it was not provided to the entity in the entity's capacity as a plan administrator under section 3(16) of ERISA. Therefore, this address may not be used under this transition policy. Commenters also explained that these commercial entities sometimes use one or more locator services or technologies to find and obtain electronic addresses for individuals. Although addresses located through these services may be valid and operable, they were obtained from a person other than the participant, beneficiary, or employer, and perhaps without the participant's knowledge. In these examples, the electronic addresses were obtained in a manner or from a source that is too far removed from the covered individual and the employment relationship to be sufficiently reliable for use under the safe harbor.

C. E-SIGN Act

For the reasons discussed below, covered documents for purposes of this final rule are exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act, Public Law 106–229 (114 Stat. 464) (2000) (E-SIGN Act), and this rule provides an alternative method of complying with the requirement that covered documents be furnished in writing. Section 101(c) of the E-SIGN Act sets forth special protections that apply when a statute, regulation, or other rule of law requires that information relating to a transaction be provided or made available to a consumer in writing. Section 101(e) of the E-SIGN Act provides that if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of the contract or other record may be denied if the contract or other record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

Under section 104(d)(1) of the E-SIGN Act, a federal regulatory agency may exempt, without condition, a specified category or type of record from the consumer consent requirements in section 101(c) if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The final rule published today is an alternative method of compliance which would satisfy section 104(d)(1) of the E-SIGN Act and, in accordance with section 104 of the E-SIGN Act, the Department has determined that there is substantial justification for this regulatory exemption from the consent requirements of the E-SIGN Act because the rule is necessary to eliminate a substantial burden on electronic commerce and the rule will not pose a material risk of harm to consumers. In the preamble to the proposed rule, the Department requested comments as to whether there are additional, or different, steps it could take to ensure that these proposal was consistent with the requirements of section 104(d)(1) of the E-SIGN Act. The Department stated that it was particularly interested in receiving comments that provided suggestions or evidence related to whether the proposed rules would (or would not) impose unreasonable costs on the acceptance and use of electronic records. The Department did not receive substantive commentary on these questions in response to the proposed rule. The Department has determined that this final rule will not require (or accord greater legal status, or effect to) the use of any specific technology and that the rule is exempt from the consent requirements of the E-SIGN Act.

D. Regulatory Impact Analysis

(1) Relevant Executive Orders for Regulatory Impact Analyses

Executive Orders 12866 [69] and 13563 [70] direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely and materially affect 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) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Department anticipates that this final regulatory action will likely have economic impacts of $100 million or more in any one year, and therefore meets the definition of an ''economically significant rule'' within the meaning of section 3(f)(1) of Executive Order 12866. Therefore, the Department has provided an assessment of the potential benefits, costs, and transfers associated with this final rule. In accordance with Executive Order 12866, this final rule was reviewed by OMB. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

(2) Need for Regulatory Action

Technology has changed substantially since the Department first published the 2002 safe harbor.[71] Broadband and wireless networks have expanded. More people rely on email. Servers and personal computers have improved. Smartphones, tablets, and other mobile devices have become predominant modes of communication. In 2003, one year after the existing safe harbor was established, approximately 62 percent of households had one or more computers.[72] In 2016, about 89 percent of households had a computer, smartphone, or tablet.[73] The share of U.S. adults who own a smartphone increased from 35 percent in 2011 to 81 percent in 2019.[74] The share of households with internet access at home also increased, from 55 percent in 2003 [75] to 82 percent in 2016.[76]

[69] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[70] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

[71] 29 CFR 2520.104b–1(c) (2002).

[72] Jennifer Cheeseman Day, Alex Janus, and Jessica Davis, *Computer and Internet Use in the United States: 2003,* U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau (2005).

[73] Camille Ryan, *Computer and Internet Use in the United States: 2016,* American Community Survey Reports, ACS–39, U.S. Census Bureau, August 2018.

[74] Monica Anderson, *Mobile Technology and Home Broadband 2019,* Pew Research Center (June 13, 2019).

[75] *See* Cheeseman Day et al., *supra* note 72.

[76] *See* Ryan, *supra* note 73.

Consumers use the internet, smartphones, and other electronic devices for a wide range of activities, including for conducting financial transactions. According to a 2018 survey, a majority of banked households used electronic banking services. Slightly fewer than two-thirds accessed their accounts online in the past 12 months, and about two in five accessed their accounts through their mobile phones.[77] The most common mobile banking activities were checking emails from banks (44 percent) and checking account balances or recent transactions online (35 percent).

As technological capabilities, internet access, and internet use have increased, other government agencies have issued rules encouraging wider use of electronic disclosure. The Social Security Administration no longer sends paper statements to most workers. Instead, workers register on the Administration's website for a ''*my* Social Security'' account to access their statements.[78] The TSP uses paperless delivery as the default for its quarterly statements.[79] Annual TSP statements are available both on a website and delivered by mail unless an individual requests only electronic annual statements. TSP reported that electronic paperless delivery saved about $7 to $8 million in 2006.[80] On October 20, 2006, the Treasury Department and the IRS published 26 CFR 1.401(a)–21, setting forth standards for electronic notices and participant elections with respect to retirement plans and similar employee benefit arrangements.[81] Similarly, the SEC has issued several regulations on electronic disclosure.[82]

The ERISA Advisory Council has, over the years, recommended improving the 2002 safe harbor. The Council's 2017 report recommended a move toward electronic delivery.[83] Electronic delivery, according to the report, is more helpful to participants and reduces disclosure costs.[84] The Council's 2009 report recommended that the Department adopt electronic disclosure regulations more aligned with 26 CFR 1.401(a)–21(c).[85]

The Government Accountability Office (GAO) has also made recommendations to the Department. In 2013, GAO recommended that SPDs and SMMs be posted on continuous access websites.[86] GAO also recommended adding ''clear, simple, brief highlights'' of required disclosures.[87] GAO noted that ''the quantity of information diminishes the positive effects.'' [88]

On August 31, 2018, President Trump's Executive Order 13847 [89] instructed the Department to make retirement plan disclosures required under ERISA more understandable and useful for participants, while reducing the costs and burdens imposed on plan sponsors. The Executive Order also directed the Department to explore increasing electronic disclosures, to improve their effectiveness and reduce costs and burdens.

In October 2019, the Department responded to Executive Order 13847 by publishing a proposed rule to establish an alternative electronic disclosure safe harbor. The proposed rule does not disturb the Department's 2002 safe harbor for electronic delivery.

According to the Private Pension Plan Bulletin, there were approximately 710,000 private retirement plans, with over 137 million participants in 2017.[90] Many participants were already receiving disclosures electronically under the Department's 2002 safe harbor for electronic delivery. Under the Department's new rule, plan administrators will have still more flexibility to electronically deliver covered documents, either by furnishing an NOIA directing participants to a website, or by furnishing covered documents directly by email.

(3) Impacts

The Department expects the final rule to increase electronic delivery and save money by reducing the production and mailing costs associated with paper disclosures. The Department estimates that it costs plans approximately $514 million annually to mail seven specific disclosures.[91] The Department estimates that switching to electronic disclosures will likely save plans $419 million in the first year. Such savings would be partly offset by the estimated $232 million plans may pay to maintain websites, prepare NOIAs, and produce and distribute initial notifications. These added costs bring net savings to $187 million, a 36 percent reduction from the current $514 million burden. In the second year, net savings increase to $338 million, a 66 percent reduction. Over 10 years, the new rule saves approximately $3.2 billion net, annualized to $371 million per year

[77] *2017 FDIC National Survey of Unbanked and Underbanked Households,* Federal Deposit Insurance Corporation, October 2018, *https://www.fdic.gov/householdsurvey/.*

[78] *See Frequently Asked Questions,* Social Security Administration, *https://faq.ssa.gov/en-us/Topic/article/KA-01741.* The Social Security Administration does, however, mail paper social security statements to workers age 60 and older if they do not receive social security benefits and they have not yet set up a ''*my* social security'' account.

[79] 5 CFR 1640.6 (2003) (''The TSP will furnish the information described in this part to participants by making it available on the TSP website. A participant can request paper copies of that information from the TSP by calling the ThriftLine, submitting a request through the TSP website, or by writing to the TSP record keeper''). *See also Federal Thrift Savings Plan: Customer Service Practices Adopted by Private Sector Plan Managers Should Be Considered,* U.S. Government Accountability Office, GAO–05–38, Jan. 2005, at 12, n. 21, *http://www.gao.gov/new.items/d0538.pdf* (providing statistics on cost savings experience with TSP).

[80] *See Minutes of the Meeting of the Board Members,* Federal Retirement Thrift Investment Board (Feb. 20, 2007), *https://www.frtib.gov/MeetingMinutes/2007/2007Feb.pdf.*

[81] Use of Electronic Media for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents, 71 FR 61877 (Oct. 20, 2006).

[82] *E.g.,* Optional Internet Availability of Investment Company Shareholder Reports, 83 FR 29158 (June 22, 2018); Internet Availability of Proxy Materials, 72 FR 4148 (Jan. 29, 2007); *and* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020).

[83] *Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors,* ERISA Advisory Council on Employee Welfare and Pension Benefit Plans, Nov. 2017, at 34, *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans.pdf.*

[84] *Id.* at 17.

[85] *Advisory Council Report on Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries,* ERISA Advisory Council on Employee Welfare and Pension Benefit Plans, 2009, *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/*2009-promoting-retirement-literacy-and-security-by-streamlining-disclosures-to-participants-and-beneficiaries.

[86] *Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved,* Government Accountability Office, GAO–14–92, Nov. 2013, at 40, *https://www.gao.gov/assets/660/659211.pdf.*

[87] *Id.* at 41.

[88] *Id.* at 29.

[89] 83 FR 45321 (Aug. 31, 2018).

[90] *Private Pension Plan Bulletin, Abstract of 2017 Form 5500 Annual Reports,* Employee Benefits Security Administration, September 2019, at 2, *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2017.pdf.*

[91] Pursuant to paragraph (i) of the *proposed* rule, seven disclosures could be included in a single annual combined NOIA. Those seven disclosures were the SPD, SMM, SAR, annual funding notice, 404(a)(5)/404(c) disclosure, annual QDIA notice, and pension benefit statement. In response to public comments, however, the Department revised paragraph (i) in the *final* rule. As a result, some of these seven disclosures can be no longer included in a single annual NOIA. For example, a single annual combined NOIA does not include a SMM and a quarterly pension benefit statement. Despite this change in the final rule, for the purposes of estimating cost savings associated with this new safe harbor, the Department included all seven disclosures because all these seven disclosures can still be delivered electronically, just not with one single annual combined NOIA. In its burden estimates, the Department accounted for the fact that some plan administrators will email NOIAs multiple times per year under the final rule instead of emailing one single annual combined NOIA, as would have been permitted under the proposal. The Department updated these burden estimates using 2019 wage rates and 2017 retirement plan-related data.

(using a 3 percent discount rate).[92] Using a perpetual time horizon (to allow the comparisons required under E.O. 13771), the annualized cost savings in 2016 dollars are $319 million at a 7 percent discount rate.[93] Since long-term projections are inherently uncertain, however, the Department cautions against relying on the perpetual annualized cost savings estimate for purposes other than the required analyses under E.O. 13771. The fast pace of technological innovation makes it especially difficult to project cost savings into the distant future.

(i) 10-Year Cost Saving Projection

The Department based its projections on two assumptions: (1) The number of participants will grow at 0.5 percent per year;[94] and (2) the percentage of participants opting out of the default electronic delivery system will gradually decrease, from 18.5 percent to 7.5 percent, over the 10-year period.[95] The Department's 10-year projection may overstate cost savings because the number of participants receiving electronic disclosures could increase on its own under the 2002 safe harbor, even without this final rule. Similarly, plans could cut costs related to producing and mailing paper disclosures even without this final rule. On the other hand, the Department's 10-year projection may understate savings if there are a smaller than assumed number of electronic delivery failures for NOIAs over time, as plan administrators develop and maintain the most up-to-date lists of covered individuals' electronic addresses. (The Department based its current projection on the assumption that the rates of undelivered NOIAs will remain constant over the 10-year period.) If undelivered NOIAs decrease, production and mailing costs for covered documents will decrease and net cost savings will increase over the 10-year period. These cost savings may indirectly benefit covered individuals, as they may defray plan expenses and lower direct or indirect participant fees.

(ii) Cost Savings

The Department's cost savings estimates understate the potential savings generated from this final rule, because they account for the production and mailing costs of only seven covered documents.[96] The seven documents are among the most costly because they affect a lot of plans and plans must provide them to participants regularly.[97] But the final rule will cover other pension documents, such as blackout notices, which are provided irregularly because they are triggered by certain events. The cost savings associated with these disclosures is relatively small because they affect far fewer plans and individuals. For that reason, the Department estimated cost savings using only the seven regularly distributed, covered documents. If all covered documents are included, the cost savings generated by the final rule will likely be larger.

In estimating cost savings, the Department assumes that slightly more than half (56 percent) of disclosures are already delivered electronically under the 2002 safe harbor.[98] According to one commenter, 40 to 50 percent of participants receive disclosures electronically, likely from plans relying on the Department's 2002 safe harbor. One service provider reported 62 percent of participants elected electronic delivery in 2018.[99] Another commenter reported 58 percent of defined contribution (DC) plan participants accessed plan information, including legal notices, electronically.

For its cost savings estimate, the Department used the same methodology it uses to estimate the cost of distributing printed disclosures for information collections subject to the Paperwork Reduction Act.[100] Preparation costs generally include costs required to develop the content and format of disclosures. Distribution costs generally include materials, printing, and mailing costs as well as burden hours associated with providing disclosures to participants and beneficiaries. The Department's estimates assume that preparation costs will be unchanged by the final rule, because the rule does not change the content disclosures.

(iii) Quantified Costs

While the Department expects the final rule to reduce costs associated with distributing covered disclosures, these savings are partly offset by costs related to the following requirements:

(1) Furnishing the NOIA (paragraph (d) of the final rule);

(2) Providing the website for covered individuals to access covered documents (paragraph (e) of the final rule); and

(3) Distributing the initial notifications of default electronic delivery and right to opt out in paper to each individual before he or she becomes a covered individual (paragraph (g) of the final rule).

The Department assumes plans will incur one-time start-up costs to develop the NOIA and initial notifications. Such costs include ensuring the notifications comply with final regulatory requirements. The Department also assumes that costs for distributing NOIAs will be modest, because they may be distributed electronically. However, the initial notification of default electronic delivery and right to opt out would impose production and mailing costs. Plans that rely on the new email alternative, permitted under paragraph (k) of the rule, will email disclosures to participants rather than furnishing NOIAs. Certain types of plans will furnish NOIAs more often than other plan types, as required under

[92] The net cost savings will be an estimated $2.6 billion over 10-year period, annualized to $365 million per year, if a 7 percent discount rate is applied.

[93] The cost savings in years 11 and beyond are estimated using the same methodology as for years 1 to 10, which is explained in the following section.

[94] The U.S. Bureau of Labor Statistics projects that total employment will grow at 0.5 percent annually from 2018 to 2028. Based on this projection, the Department assumes that the total number of participants will also increase at 0.5 percent each year. *See* Kevin S. Dubina, Teresa L. Morisi, Michael Rieley, and Andrea B. Wagoner, *Projection overview and highlights, 2018–2028,* Monthly Labor Review, U.S. Bureau of Labor Statistics, October 2019, *https://www.bls.gov/opub/mlr/2019/article/pdf/projections-overview-and-highlights-2018-28.pdf.*

[95] The Department assumes that approximately 18 percent of participants currently receiving disclosures by mail will opt out of default electronic delivery in the first year and 16.2 percent will opt out in the second year. The Department projects the opt-out rates will decrease gradually at rates consistent with exponential decay function, $a * b^{(t-1)}$, where a is the initial opt-out rate, 18 percent, t is year, and b is the decay rate, 0.9 (= 16.2/18). The Department further projects that in the 10th year, only 7 percent of participants currently receiving paper disclosures by mail will continue to do so. Then the Department made an additional adjustment by adding 0.5 percentage point annually to account for the requirement in paragraph (f)(4) of the final rule regarding invalid or inoperable electronic addresses for covered individuals. For more detailed discussion, *see* Quantified Costs, below.

[96] The seven covered documents are the SPD, SMM, SAR, annual funding notice, 404(a)(5)/404(c) disclosure, annual QDIA notice, and pension benefit statement.

[97] Out of these seven disclosures, all but one (pension benefit statement) have associated information collection requests under the Paperwork Reduction Act. To estimate cost savings attributable to this final rule, the Department estimated the current cost burden associated with pension benefits statements, although it is not a part of the Department's information collection inventory.

[98] This is consistent with the assumption used for information collections.

[99] *Default Electronic Delivery Works: Evidence of Improved Participant Outcomes form Electronic Delivery of Retirement Plan Documents,* Quantria Strategies, prepared for The SPARK Institute, November 2019, at 25, *https://www.sparkinstitute.org/wp-content/uploads/2019/12/SPARK-Institute-Default-Electronic-Delivery-Works.pdf.*

[100] The distribution costs were estimated using the most recent data available, including updated 2019 wage rates and 2017 retirement-plan related data.

paragraph (i) of the rule. For example, participant-directed DC plans must provide NOIAs more often than non participant-directed DC plans, because they must notify participants quarterly rather than annually.

The initial notification and right to opt out is a transitional notice that informs participants who are existing employees of changes in default delivery system to electronic delivery.[101] Administrators must furnish this notice in paper form to each person before they become a covered individual. The notice informs them that covered documents will be furnished electronically, that they have the right to request paper copies of the covered documents free of charge, and how they may exercise such rights. The Department anticipates that most plans will rely on this final rule, delivering covered documents electronically to participants who were *not* eligible under the existing safe harbor without disrupting the current electronic delivery system under the Department's 2002 safe harbor. Thus, plans are mostly likely to furnish initial notices to those participants who currently receive disclosures by mail.

Retirement plans will incur one-time costs to develop and design an initial notice. Because the final rule clearly describes the specific information required of this notice, the Department expects initial costs to be modest, about $40 million on aggregate assuming all retirement plans decide to rely on this final alternative.[102] The Department estimates that approximately 60 million retirement plan participants received the covered documents by mail in 2017.[103] These participants could potentially receive the initial notice from their plan administrators. Assuming a one-page notice is mailed to these 60 million participants, the Department estimates the costs of distributing and mailing the initial notice will be about $97 million.[104] Therefore, the Department estimates that retirement plans will incur approximately $138 million in one-time costs to develop and mail the initial notice. In subsequent years, the Department estimates that retirement plans will incur approximately $12 million each year to deliver the initial notice to new hires.[105]

Paragraph (g) of the final rule provides that the initial notice must identify the recipient's electronic address where NOIAs are to be delivered. Although this revision requires personalization of the notice, the Department does not expect this change to significantly impact costs because many plan administrators already incorporate this process as common business practice.[106]

Paragraph (e) of the final rule requires plan administrators to ensure the existence of a website at which plan participants can access covered disclosures. In the proposed rule, the Department assumed this requirement would impose modest one-time costs. However, the Department was particularly concerned about burdening small plans and so solicited comments regarding the fraction of plans, particularly small plans, that would need to develop or modify a website. One commenter claimed that small plans have websites and not burdened by the proposed ''notice and access'' approach. However, another commenter suggested that small plans are less likely to have their own websites. A different commenter suggested that the impacts of paragraph (e) would vary by types of plans and that the vast majority of participant-directed DC plans already have access to or actively maintain a website, while many defined benefit plans or nonparticipant-directed DC plans may not.[107]

According to a recent poll of plan sponsors, the majority already have websites, in-house (70 percent) or via service providers (62.5 percent), and many have both.[108] One study suggests that approximately 18 percent of profit sharing and 401(k) plans did not provide any services via internet in 2017.[109] Based on these comments and study, the Department estimates that approximately 25,000 plans currently do not have, directly or indirectly through a plan service provider, a website where they can post the covered documents.[110]

Although approximately 25,000 plans do not currently have a website, the Department expects the impact of paragraph (e) of the final rule to be minimal, in part, because paragraph (k) of the final rule allows plans to furnish covered documents by email. Commenters recommended the direct delivery approach in paragraph (k) for a number of reasons, one being that plans may not currently have a website.[111] The Department assumes plans that do not have a website for posting the covered documents will most likely email the covered documents directly. The direct delivery option will likely ease the burden on small plans, as they are less likely to have, or have access to, a website. However, paragraph (k) of the final rule is still subject to the requirements of paragraph (f)(4) of the

[101] For newly hired employees, the Department assumes they will receive the notice required by paragraph (g) of the final rule in their new employee packets; thus, employers will incur only negligible costs in subsequent years.

[102] The Department estimates that attorneys will take approximately 296,000 hours to develop and review the initial notice. Assuming an hourly rate of $138.41 for in-house attorneys, the Department estimates developing the initial notice will cost approximately $41 million (295,636 hours * $138.41). Then $41 million is discounted at three percent, which leads to $40 million.

[103] Information collection requests associated with the SPD, SMM, SAR, and 404(a)(5)/404(c) disclosures assume that approximately 56 percent of participants electronically receive those disclosures from plans that rely on the 2002 safe harbor. According to the 2017 Private Pension Bulletin, there are approximately 137 million participants. Therefore, the Department estimates that approximately 60 million participants (44 percent of 137 million) receive disclosures by mail.

[104] This estimate is based on $36 million mailing costs (approximately 60 million notices * $0.60) and $64 million production costs, assuming an hourly rate of $64.11 for in-house mailing clerks (approximately 998,000 hours * $64.11). Then $36 million mailing costs and $64 million preparation costs are discounted at three percent, which lead to $35 million and $62 million respectively.

[105] According to the Current Population Survey (CPS) in 2018, approximately 16.8 percent of wage and salary workers aged 25 or older stayed with their current employers for a year or less. Based on this information, the Department estimates approximately 13 million workers will receive the initial notice each year as new hires.

[106] Because it contains personally identifiable information, such as email address, the Department assumes employers will mail notice in a sealed letter rather than a postcard, even though a postcard is a less expensive option.

[107] According to a commenter, this is because 29 CFR 2550.404a–5 currently requires that participant-directed individual account plans maintain a website to provide certain information to participants and beneficiaries. Defined benefit and nonparticipant-directed DC plans are not subject to 29 CFR 2550.404a–5.

[108] Plan Sponsor Council of America (PSCA) conducted a poll to plan sponsors in November 2019 to obtain the plan sponsors' perspectives on the proposed rule and received responses from 56 plan sponsors.

[109] *61st Annual Survey, Reflecting 2017 Plan Experience,* Plan Sponsor Council of America, 2018. (In this survey, plan sponsors were asked to indicate if any services—enrollment, plan inquiries, contribution changes, balance inquiries, investment changes, loans, hardship distribution, retirement distributions, or no services—were provided to participants via internet. Responding to this question, about 18 percent of plan sponsors indicated they did not provide any services to participants through the internet. The Department used this as a proxy for plans that do not have a website.)

[110] According to Private Pension Plan Bulletin 2017, there were over 143,000 defined benefit plans and nonparticipant-directed defined contribution plans. Applying an assumption of 18 percent, the Department estimates approximately 25,984 (143,558 * 0.181) plans currently lack websites. This estimate may understate the total number of plans that lack websites because the PSCA study examined profit-sharing plans and 401(k) plans. As discussed, most 401(k) plans are expected to have their own websites. Therefore, the fraction of defined benefit plans and nonparticipant-directed DC plans that lack websites would be likely higher than 18 percent.

[111] The direct delivery provision in paragraph (k) is not subject to the website standards in paragraph (e) of the safe harbor.

final rule, pertaining to invalid or inoperable electronic addresses. Therefore, plans that do not have software to detect invalid or inoperable electronic addresses will likely incur costs to add such software.

Paragraph (e)(2)(ii) of the final regulation establishes how long covered documents must remain on a website. It generally requires covered documents to remain on the website for at least one year.[112] Once a covered document is posted on a website, the Department assumes that the storage cost of retaining such document on the website is nominal.[113] The Department requires plan administrators to include a cautionary statement in the NOIA relating to how long the covered document is required to be available on the website. The Department expects this statement can benefit both participants and plan administrators. The statement will encourage participants to download covered documents while they are available on the website rather than contacting plan administrators to request them. Plan administrators will benefit because they will likely receive fewer document requests.

Paragraph (f)(4) of the final rule requires plan administrators to take certain actions when alerted that a covered individual's electronic address has become invalid or inoperable. For example, if an NOIA is returned as undeliverable, the plan administrator must try to locate the correct address. Accordingly, plans may incur costs to detect invalid or inoperable electronic addresses and update them. If an accurate electronic address cannot be found, plan administrators may treat those covered individuals as if they opted out of electronic disclosure and furnish their documents via mail.

To meet the requirements of paragraph (f)(4), plan administrators may purchase software to detect the validity and operability of electronic addresses. The Department invited comments about such costs and received none. The Department assumes that, while most plans already have such features built into their current electronic delivery systems, slightly less than 26,000 plans will purchase software to comply with the provision.[114] The Department estimates these costs will run approximately $8.8 million per year.[115]

The Department assumes that before mailing out covered documents to the recipients of an undelivered NOIA, plan administrators will attempt to resolve issues that are relatively easy to fix, such as redelivering bounced emails or reaching out to covered individuals to update electronic addresses. Plan administrators may treat covered individuals who are more difficult to locate, such as those who have separated from service, as having opted out of electronic delivery. Although the Department acknowledges that plan administrators may spend time attempting to correct failed delivery, as provided in paragraph (f)(4) of the proposal, it does not have sufficient data to quantify associated costs. The Department assumes, however, that plan administrators will likely select the least costly and most efficient option. Therefore, the Department assumes that plan administrators will mail documents when unable to locate a covered participant's electronic address.

For this regulatory impact analysis, the Department assumes that the requirement to remediate failed delivery will increase the global opt-out rate by 0.5 percentage points.[116] The Department assumes that plan administrators will exercise due diligence by reaching out to participants with invalid or inoperable electronic addresses rather than immediately treating them as having opted out of electronic delivery. If true, the global opt-out rate should not increase over time. The 0.5 percentage point increase in the global opt-out rate is reflected in the cost savings estimates for the seven covered documents.

This final rule provides a comprehensive alternative to the 2002 safe harbor. As a result, many more participants and beneficiaries may be easily covered. Although some plan sponsors using the 2002 safe harbor may switch entirely to the final rule, the Department assumes that most will maintain existing systems and use the final rule to cover individuals that fall outside of the existing safe harbor.

(iv) Quantified Net Cost Savings

The Department's estimates of the net cost savings from the final regulations are summarized in Table 1 below.

TABLE 1—ESTIMATED COST SAVINGS ATTRIBUTABLE TO THE FINAL RULE

[$ million]

	1st Year	2nd Year	3rd Year	Total over 10 years
Cost Savings from Eliminating Printing & Mailing Costs:				

[112] As discussed above in section B, paragraph (e)(2)(ii) of the final rule does not alter a plan administrator's general recordkeeping requirements under ERISA.

[113] As more documents remain on a website, plans may need more electronic storage. However, storage space prices have decreased substantially as cloud services become more widely available. In terms of adding storage space cloud services are available, on average, at a rate of $0.018 to $0.021 per GB per month. Some estimate that approximately 250,000 PDF files or other typical office documents can be stored on 100GB. Accordingly, the Department does not believe electronic storage will significantly increase cost burden. (For more detailed pricing information of three large cloud service providers, *see https://cloud.google.com/products/calculator;* or *https://azure.microsoft.com/en-us/pricing/calculator/;* or *https://calculator.s3.amazonaws.com/index.html.* Augmenting other features such as enhanced security services may increase costs of cloud service. However, plan administrators sometimes may find it appropriate to provide enhanced security features for participants despite increased costs.) Also, plan administrators that currently store documents electronically to satisfy general recordkeeping requirements under ERISA may already have sufficient electronic storage space; thus, the burden increase from this condition would not be significant.

[114] The Department understands that software is commercially available to produce a list of email addresses that have bounced back with the owners' name, export the list into different formats, and, in certain circumstances, remove invalid email addresses from the list. Such software also generates and reports relevant statistics such as bounce rate, open rate, and click-through rate. Some software automatically re-attempts delivery depending on the reasons of failed delivery. Given the lack of data, the Department used the percentage of plans without their own websites as a proxy for plans that lack email tracking capability.

[115] The Department gathered pricing information for five commercial software packages that ranged from $10 per month to $320 per month, depending on the volume and sophistication of features available. Taking the average of basic level prices of these five products, the Department assumes that it would cost $28.20 per month ($338.40 per year) to subscribe. Assuming 25,984 plans would purchase this type of product, the Department estimates that the aggregate costs will total $8.8 million (25,984 plans * $338.40).

[116] One industry report indicates that a well-targeted and maintained email list yields, on average, a 1.06% bounce rate. (*See Update Email Marketing Benchmarks for 2020: By Day and Time,* Campaign Monitor, *https://www.campaignmonitor.com/resources/guides/email-marketing-benchmarks/.*) EBSA's newsletter email deliveries yield a 4% bounce rate. Although the Department's assumed 0.5% bounce rate is lower than the information discussed here, the Department believes that, in general, plan administrators are able to generate and maintain more accurate and current electronic addresses for covered individuals.

TABLE 1—ESTIMATED COST SAVINGS ATTRIBUTABLE TO THE FINAL RULE—Continued

[$ million]

	1st Year	2nd Year	3rd Year	Total over 10 years
Summary Plan Description	$68	$69	$68	$663
Summary of Material Modification	18	18	18	172
Summary Annual Report	61	61	60	585
Annual Funding Notice	40	40	40	390
404(a)(5)/404(c) Disclosure	106	106	105	1,021
Annual QDIA Notice	16	16	16	156
Pension Benefits Statement	110	109	109	1,058
Subtotal: Gross Cost Savings [1]	419	419	416	4,046
Costs Imposed by the Final Rule:				
Website	−27	−27	−26	−240
Initial Notification and Right to Opt Out	−138	−12	−12	−235
Notice of Internet Availability	−67	−42	−41	−404
Subtotal: Costs of the final rule [2]	−232	−81	−78	−880
Total Net Cost Savings: [1]–[2]	187	338	338	3,166

Note: Totals in table may not sum precisely due to rounding.
Total over 10 years and all other costs and cost savings estimates are discounted at three percent annually.

The estimated cost savings of each covered disclosure reflects an assumption about participant behavior. The Department assumes that approximately 81.5 percent of participants who currently receive paper copies will switch to electronic documents, while the remaining 18.5 percent will choose paper.[117] This assumption is based on the American Community Survey (ACS) estimate that about 82 percent of U.S. households had internet subscriptions in 2016.[118] This assumption may overstate the cost savings because some participants with internet access at home may prefer to receive paper copies, and thus opt out.[119] On the other hand, this assumption may understate the cost savings, because households with DC plans tend to have higher internet access rates and may be more comfortable online, which could lead to a lower opt-out rate.[120] In projecting cost savings for 10 years, the Department assumes that by the 10th year this opt-out rate will gradually decrease to 7.5 percent of participants currently receiving paper.[121]

Table 2 shows the Department's estimates of the number of participants who currently receive disclosures on paper.

TABLE 2—ESTIMATED NUMBER OF PARTICIPANTS CURRENTLY RECEIVING PAPER DISCLOSURES

Disclosures	Number of participants (million)
Summary Plan Description	19
Summary of Material Modification	17
Summary Annual Report	45
Annual Funding Notice	29
404(a)(5)/404(c) Disclosure	33
Annual QDIA Notice	17
Pension Benefits Statement	50

Table 3 summarizes the Department's projected number of participants who will receive disclosures electronically due to the final rule.

[117] Among participants who currently receive paper disclosures by mail (rather than electronically under the existing 2002 safe harbor), the Department assumes 18.5 percent of these participants will opt out of electronic delivery under this final rule and receive paper copies. This 18.5 percent global opt-out rate reflects a 0.5 percentage point upward adjustment due to failed deliveries of internet availability NOIAs, such as bounced emails. Without this adjustment, the global opt-out rate would be 18 percent, which is consistent with the data from American Community Survey 2016.

[118] Ryan, *supra* note 73.

[119] Some commenters argued that individuals, particularly retirees and individuals older than 55, prefer paper and, in certain cases, comprehend better if financial information is presented in paper form.

[120] According to one study, among households owning DC plan accounts, 92 percent used the internet at home, work, or other location in 2018. (*See 2019 Investment Company Fact Book, A Review of Trends and Activities in the Investment Company Industry,* Investment Company Institute (April 2019), *https://www.ici.org/pdf/2019_factbook.pdf.*). Another survey suggests that 99 percent of respondents have a computer at home or work that is connected to the internet, and 84 percent agree that employers can provide retirement plan information electronically if they can opt out at any time. This implies approximately 83 percent (99% * 84%) have internet access and would agree to receive plan information electronically, which is similar to the Department's assumption of 82 percent. (*See* Quantria Strategies, *supra* note 97, at 3, 5.) Note that in these studies, ''use the internet'' includes access to the internet at home, work or other locations. Thus, the share of households using the internet in these studies are higher than the share of households accessing the internet at home that the Department relies on in estimating opt-out rates.

[121] Based on the American Community Survey (ACS) data from 2016 and 2017, the Department assumes the opt-out rate for the 2nd year is 16 percent. The Department's opt-out rate projections are based on these two recent years of ACS data and, while the rates gradually decline each year, they do not reach zero at any point in the future. This also reflects the 0.5 percentage point upward adjustment due to bounced emails.

TABLE 3—PROJECTED NUMBER OF PARTICIPANTS RECEIVING DISCLOSURES ELECTRONICALLY DUE TO THE FINAL RULE

[million]

Disclosures	1st Year	2nd Year	3rd Year	10th Year
Summary Plan Description	16	16	17	19
Summary of Material Modification	14	15	15	17
Summary Annual Report	36	37	38	43
Annual Funding Notice	23	24	25	28
404(a)(5)/404(c) Disclosure	27	28	28	32
Annual QDIA Notice	14	14	15	17
Pension Benefits Statement	41	42	43	48

Table 4 provides the estimated average per-participant cost of distributing disclosures on paper.

TABLE 4—ESTIMATED AVERAGE PER-PARTICIPANT COST OF DISTRIBUTING DISCLOSURES ON PAPER

Disclosures	Per-participant cost
Summary Plan Description	$4.48
Summary of Material Modification	1.28
Summary Annual Report	1.72
Annual Funding Notice	1.79
404(a)(5)/404(c) Disclosure	4.07
Annual QDIA Notice	1.18
Pension Benefits Statement	2.79

(v) Non-Quantified Costs (Potential Adverse Impacts)

While overall, 82 percent of U.S. households had access to the internet at home in 2016, the following groups had lower rates: Limited English speaking households (63 percent), households with income less than $25,000 (59 percent), households where the head of the household is age 65 or older (68 percent), Black households (73 percent), households in nonmetropolitan areas of the South (69 percent), and households where the head of the household obtained a high school diploma or less (56 percent).[122] Responding to these relatively low rates, some commenters pointed out that households with DC plan accounts tend to have higher internet access rates. For example, an ICI report found that among households with DC accounts, 79 percent with income less than $50,000 and 81 percent with a senior (65 or older) head of the household use the internet at home, work, or other locations.[123] Although these internet access figures are only slightly lower than those of all U.S. households (82 percent), they are significantly lower than those of all DC plan account holding households (93 percent).

Another group worth noting is households connected to the internet only through smartphones. Racial/ethnic minorities and low-income households are overrepresented in this group.[124] In 2015, approximately 8 percent of households in the United States were ''handheld- device-only'' households, but 16 percent of households where the head of the household obtained a high school diploma or less were handheld-device-only households. In contrast, only 3 percent of households where the head of the household obtained a bachelor's degree or higher were handheld-device-only households.[125] Although connected to the internet, these households may not be able to fully harness the efficiency, capacity, and convenience of the internet. Therefore, accessing disclosures online for these households may not be as convenient as for other households.

In response to numerous comments, the Department added paragraph (e)(4) to the final rule, which defines ''website'' to include internet websites and other electronic-based information repositories, such as mobile applications. With this change, the Department believes that the final rule can better accommodate advances in technology. This change also requires that covered documents delivered through mobile applications be presented in a format that can be read using a handheld device. Consequently, these handheld-device-only households will be able to access their plan information with ease. Ensuring handheld-device-only households are able to access the same information as other households may help bridge the digital divide because the gaps in smartphone ownership are less prominent than in home internet access. For example, there is almost no disparity in smartphone ownership rates by race. According to a 2019 survey, Whites, Blacks, and Hispanics own smartphones at nearly the same rate (82 percent, 80 percent, and 79 percent, respectively).[126]

For participants without ready internet access, this final rule may create additional impediments to accessing critical plan information. Those who fail to opt out and request paper documents will have to leave home (*e.g.,* visit a public library or the home of a friend or family member) to access plan information. One of the Department's goals in establishing the final framework was to be certain that, regardless of delivery method, covered individuals who wish to receive paper copies would be able to do so without undue burden. For this reason, the final rule allows for global opt out. That is, a covered individual who prefers to receive *all* covered documents in paper may choose to do so through a single request.

If covered individuals in groups with low internet access rates fail to request paper copies of covered documents or exercise their opt-out rights, the negative impacts they suffer may offset some benefits of this final regulation. The Department does not have sufficient data to quantify these negative impacts. If these unintended consequences occur, plan administrators may take steps to limit their impact. Such steps may include reaching out to these groups; communicating the plan's electronic disclosure policy effectively; providing sufficient time for participant education before implementing electronic disclosure changes; and employing simple processes for requesting print documents, opting out of electronic disclosure, and establishing and resetting passwords. Such steps might

[122] Ryan, *supra* note 73.

[123] *2019 Investment Company Fact Book, A Review of Trends and Activities in the Investment Company Industry,* Investment Company Institute (April 2019), *https://www.ici.org/pdf/2019_factbook.pdf.*

[124] Ryan, *supra* note 73.

[125] Jamie M. Lewis, *Handheld Device Ownership: Reducing the Digital Divide?* Social, Economic, and Housing Statistics Division, U.S. Census Bureau, Working Paper 2017–04, Mar. 2017, *.https://www.census.gov/content/dam/Census/library/working-papers/2017/demo/SEHSD-WP2017-04.pdf.*

[126] *Mobile Fact Sheet,* Pew Research Center, June 12, 2019, *https://www.pewresearch.org/internet/fact-sheet/mobile/.*

help ensure that the cost savings discussed above is realized without burdening vulnerable groups.

As with all agencies facing heightened cybersecurity concerns, the Department recognizes that increased electronic disclosures may expose covered participants' information to intentional or unintentional data breach. Paragraph (e)(3) of the proposal requires the plan administrator to take measures reasonably calculated to ensure that the website protects the confidentiality of personal information relating to any covered individual. As required under ERISA section 404, the Department expects that many plan administrators, or their service or investment providers, already have secure systems in place to protect covered individuals' personal information. Such systems should reduce covered individuals' exposure to data breaches.

Some commenters asserted that the Department should consider participants' preferences for paper disclosures before finalizing the rule. According to these commenters, investors prefer to receive disclosures by mail and comprehend paper documents better than electronic documents. Commenters with opposing views criticized these claims and stated that they are based on dated studies. The Department reviewed several reports concerning the issue as to whether investors prefer paper disclosures. According to a recent FINRA report, investor preference was almost evenly split between paper delivery (36 percent) and electronic delivery (33 percent) in 2018. The share of investors who prefer paper delivery has declined considerably since 2015, however, while the share of investors who prefer electronic delivery has increased.[127] (This study is based on a survey of investors who hold nonretirement accounts.) According to a different study performed in 2019, almost half of 401(k) plan participants (49 percent) preferred reviewing 401(k) account information through their 401(k) provider's website, while 13 percent preferred a hard copy of account information.[128] Even the eldest group studied (70 and older) preferred a 401(k) provider website (40 percent) to direct mail (31 percent).[129] Similarly, other studies found that participants prefer to receive communications related to their benefits through electronic media such as personal emails or websites.[130] Based on these studies, the Department reasonably believes that the final rule generally lines up with most participants' preferences. And since participants retain the right to opt out of electronic delivery, those who prefer paper disclosures are adequately protected under the final rule.

(vi) Benefits

The final rule will not require plan administrators to develop new formats or content beyond what is required in printed form. Nonetheless, some plan administrators may elect to develop new formats and content for electronic disclosures. Such formats could include more interactive content, with hotlinks and multimedia presentations, which might improve the quality and accessibility of information. DC account information often is available continuously and updated in real-time, which may help participants to effectively manage their accounts. Using assistive technology, such as screen readers, electronic disclosures could be made more accessible to the visually impaired. Online translation may help covered individuals with limited English skills better understand their disclosures. Some plans may provide mobile apps with interactive features, which will allow participants to navigate the site and conduct account transactions with ease.

Some commenters predicted that the final rule might contribute to higher retirement savings. According to these commenters, digitally engaged participants or those with electronic delivery have, on average, higher deferral rates and larger account balances than their counterparts who are not digitally engaged or receive paper disclosures. These commenters seem to attribute this higher retirement savings to electronic delivery. This interpretation, however, requires some caution. Participants who are more motivated to save are also more likely to actively use their plan's website than other participants. This self-selection, with the most motivated savers being the most digitally engaged, may explain their higher deferral rates and larger account balances. One study acknowledged this possibility, yet still contended that electronic delivery could nudge investors towards increased savings.[131] The Department agrees that participants can be nudged to save more as they interact more with various website tools and gain more financial knowledge. The Department is encouraged to find that many plan administrators now offer on their websites various financial education tools, including retirement income planning tools and budgeting tools. However, it is difficult to compare the relative impacts on retirement savings of nudging participants (through electronic delivery and digital engagement) versus self-selection. To the extent that electronic delivery increases retirement savings and better prepares participants for retirement, this rule will produce even greater benefits.

Several commenters had varying opinions on how cost savings generated by this rule would be distributed. Some commenters estimated that the rule would generate significant cost savings, with most going directly to participants. Others, however, expressed skepticism. Many suggested participants would experience minimal benefit, particularly because the Department does not require plan administrators to pass the cost savings onto participants.

Cost savings in theory could be retained by service providers as profit, or passed on to plan sponsors or participants as lower fees.[132] The disposition of savings is uncertain, in part because in the long run the savings' nominal incidence may differ from its economic incidence. The Department believes that a large portion of the savings will reach participants. Such savings are additional to the benefits participants may realize from improvements in the quality and accessibility of disclosures.

Competition among service providers can ensure cost savings to benefit plan sponsors and participants, in the form of lower fees. One commenter stated that 4,694 establishments offered third-party administrative services in 2016. She described the market as having a high volume of entry and exit, and high concentration.[133] The commenter estimated that, because of the competitive environment,

[127] *See Investors in the United States, A Report of the National Financial Capability Study,* FINRA Investor Foundation, December 2019, p. 1, *https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf.* (A survey of 2,000 investors shows that, in 2015, 49 percent preferred paper delivery, while 27 percent preferred electronic delivery).

[128] *U.S. Retirement End-Investor 2019, Driving Participant Outcomes with Financial Wellness Programs,* Cerulli Report, 2019, at 18.

[129] *Id.*

[130] *See* Boosting the Effectiveness of Retirement Plan Communications, Empower Institute, January 2019, at 9, *https://docs.empower-retirement.com/Empower/institute/Effective-Communication.pdf. See also* What Your Employees Think About Your Benefits Communication, The Jellyvision Lab, 2016, at 12, *https://www.jellyvision.com/wp-content/uploads/Survey-Report_What-Your-Employees-Think-About-Your-Benefits-Communication.pdf.*

[131] *See* Quantria Strategies, *supra* note 99.

[132] Instead of lowering fees, cost savings can be passed on to plan sponsors or to participants in the form of augmented services.

[133] This commenter indicated that this estimate was based on data from U.S. Census Bureau, County Business Patterns by Employment Size Class, 2010–2016.

approximately 60 percent of cost savings would be passed to participants in lower fees. (Stickiness in service provider relationships in some cases may slow the flow of savings, however. Large 401(k) plan sponsors (with $250 million or more in assets) most frequently identified ''10 years or longer'' when asked how long they had been with current recordkeepers.[134] Another study finds a similar pattern: a majority of plan sponsors reported having been with their current recordkeepers for 10 years or longer.[135])

Fees associated with disclosures sometimes are bundled into investment costs, such as the fees internal to mutual funds on DC plan menus. Savings from reductions in such fees generally will accrue to participants. Other times, disclosure and other administrative fees are charged separately. These charges sometimes are allocated to DC participants' accounts, again suggesting that savings will accrue to participants. Other times such separate charges may be allocated to plan forfeiture accounts or paid directly by plan sponsors. In these cases, savings may accrue to plan sponsors rather than directly to participants. Such savings nonetheless may benefit participants in the long run, for example if sponsors pass on savings in the form of richer matching contributions or other means, in response to labor market forces. Surveys and comments help illustrate how frequently common fee arrangements may result in savings to participants.

In one survey, one in three DC plan sponsors reported that administrative fees are bundled into investment costs. This is a smaller fraction than in 2015, when one-half of plan sponsors reported using this arrangement.[136] Another report identifies a similar downward trend for bundled fee arrangements.[137] Such bundled fees may be less transparent than fees that are charged separately, so in some cases service providers may be slower to pass on savings from this rule by reducing such fees. Nonetheless, competition from other service providers, including those offering both bundled and unbundled fee arrangements, will put downward pressure on bundled fees, and savings from reductions in such fees generally will accrue to participants.

Other times administrative fees are charged separately. The most common fee arrangement is a direct fee paid to the recordkeeper, one survey found. A majority (52 percent) of plan sponsors had this arrangement in 2019, up from 41 percent in 2015. An additional 15 percent used separate wrap fees or charges on investment.[138] Separate fees or charges generally are transparent and therefore likely to promote competition, so it is likely that savings from this rule largely will translate into reductions in such fees, benefitting plan sponsors or participants.

Separate administrative fees or charges often are allocated to DC participants' accounts. In 2019, 57 percent of plan sponsors reported that participants pay such fees either based on their account balances (29 percent) or in equal amounts (28 percent).[139] Under such arrangements, savings will likely accrue to participants. Other times such separate charges may be allocated to plan forfeiture accounts (6 percent) or paid directly by plan sponsors (25 percent), according to the same survey.[140] In these cases, savings may accrue to plan sponsors rather than directly to participants. Such savings nonetheless may benefit participants in the long run, for example if sponsors pass on savings in the form of richer matching contributions or other means, in response to labor market forces.

Commenters offered different views on the costs of paper delivery at the participant level and the amount that participants will save from reducing those costs. Some commenters stated the costs of paper delivery, per participant, were minimal, suggesting participants would save little. Others took the opposite view, asserting that savings from electronic delivery would significantly increase participants' account balances. One commenter suggested that a participant in a 401(k) plan receives, on average, 6 to 8 documents per year and the average cost to print and mail a single notice is $0.83. Assuming this is true, mailing disclosures to participants costs between $4.98 and $6.64 per year. If after eliminating these costs, 60 percent of the cost savings flow to participants, as one commenter suggests, participants on average would save $3 to $4 each year.

A recent study estimated that the per-participant direct fee for recordkeeping services was, on average, $54 in 2019, up from $50 in 2017.[141] Then, eliminating recordkeeping fees would save participants about 6 to 7 percent of direct fees that they pay to recordkeepers.[142] Some commenters characterized this savings as minimal. Others suggested the savings could be considerable, especially for young and newly enrolled participants, who will benefit most from the compounding effects.

(4) Regulatory Alternatives

To conform with Executive Order 12866, the Department considered several regulatory approaches while developing this final rule.

(i) Covering Welfare Benefit Plan Disclosures

As discussed in section (B)(2)(ii), the Department received numerous comments about whether to expand this final rule to cover health and welfare plans. After careful analysis and lengthy deliberation, the Department decided not to expand the rule at this time. The Department is reviewing the information provided in response to its RFI, and will continue to explore this option and may undertake rulemaking in the future. The Department has decided to take this two-step approach so that retirement plans can accrue cost savings without delay and to give the Department more time to analyze unique issues about health and welfare plans. Extending the scope of the final rule to health and welfare plans raises unique challenges regarding the tri-agency consultation process that warrant careful consideration. Accordingly, the Department intends to take more time, obtain public comments, and develop a rule that can maximize benefits to health and welfare plans and participants as part of a future project.

(ii) Conforming With Electronic Delivery Approaches Adopted by Other Agency

Executive Order 13847 directed the Department to coordinate with the Treasury Department to explore expanding electronic delivery. The goal of expanding electronic delivery is to

[134] Cerulli, *supra* note 128.

[135] *2019 Defined Contribution Benchmarking Survey Report,* Deloitte, 2019.

[136] *2019 Defined Contribution Benchmarking Survey Report,* Deloitte, 2019, at 20. (In 2015, 50 percent of plan sponsors reported to have this ''no additional fee'' arrangement, which has declined to 33 percent in 2019.)

[137] *U.S. Retirement Markets 2019, Looking Toward Holistic Solutions for Participants and Plan Sponsors,* Cerulli Report, 2019, at 69.

[138] Deloitte, *supra* note 135, at 20.

[139] *Id.*

[140] *Id.*

[141] *Id.* at 5. But according to a different, the average recordkeeping/administration costs per participant was $35 in 2017 (*see* Stephen Miller, 401(k) Sponsors Focus on Benchmarking—and Lowering—Fees (Feb. 22, 2018), *https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/401k-fee-benchmarking.aspx.*).

[142] These are calculated by ($3/$54) and ($4/$54) respectively. If the average recordkeeping/administration costs per participant were $35, as one study suggested, participants would save approximately 9 to 11 percent of direct fees. These are calculated by ($3/$35) and ($4/$35).

improve the effectiveness of disclosures and to reduce their associated costs and burdens. Following discussions with Treasury Department staff, the Department considered adopting an approach similar to that of 26 CFR 1.401(a)–21, the IRS rule for electronic disclosures.[143] This rule generally provides that a plan may use an electronic medium to provide applicable notices only for a participant who affirmatively consents to receive the notice electronically or who has the ''effective ability to access'' the electronically delivered notice.[144] A number of parties have encouraged the Department to adopt this approach, which they believed to be more flexible than the Department's 2002 safe harbor.[145] The final rule does not adopt 26 CFR 1.401(a)–21(c) verbatim, but it does, however, align with the regulation in large part. The Department considers this a logical outcome, because plan administrators have to comply with requirements of both ERISA and the Code. Thus, the more coordination and alignment among potentially overlapping regulatory requirements, the less regulatory burden overall.

(iii) Keeping a Quarterly Pension Benefit Statement in a Single Annual Combined NOIA

In the final rule, the Department revised the group of covered documents for which a single annual combined NOIA is permitted. In contrast to the proposal, under the final rule some covered documents, such as a quarterly pension benefit statement, can no longer be furnished with a single annual combined NOIA.[146] The Department considered keeping the quarterly pension benefit statement as one of the disclosures that can be included in a single annual combined NOIA. Pension benefit statements must be furnished on a quarterly basis for participant-directed individual account plans, such as 401k plans. Thus, if an annual combined NOIA is emailed at the beginning of the year, some participants may not appreciate that subsequent quarterly statements also will be made available online. Furthermore, quarterly benefit statements can prompt participants to take actions, such as checking their account balances, increasing deferral rates, or reallocating investments. With one notice at the beginning of the year, covered individuals may less frequently check their accounts and make changes accordingly. In the Department's view, this may have detrimental impacts on participants' retirement savings, although it may bring administrative costs down slightly. Therefore, the Department determined that the approach taken in the final rule is a more balanced approach that provides sufficient protection for participants while generating substantial cost savings.

(5) Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Department solicited comments on its new alternative safe harbor to use electronic media to satisfy the general furnishing requirement under Title 1 of ERISA. At the same time, the Department also submitted an information collection request (ICR) to OMB, in accordance with 44 U.S.C. 3507(d). The Department received no comment that specifically addressed the paperwork burden analysis of the information collections. The Department did, however, receive comments on costs and administrative burdens related to the proposal. The Department reviewed the comments and took them into account when making changes to the final rule, analyzing the economic impact of the proposal, and developing the revised paperwork burden analysis summarized below.

In connection with the new rule, the Department is submitting an ICR to OMB requesting approval of a revised collection of information under OMB Control Number 1210–0121. The Department will notify the public when OMB approves the ICR.

A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *https://www.RegInfo.gov.*

PRA Addressee: Address requests for copies of the ICR to James Butikofer, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers. ICRs submitted to OMB also are available at *https://www.RegInfo.gov.*

As discussed above, the final regulation will create two new information collections that are subject to the PRA: The annual NOIA (29 CFR 2520.104b–31(d)(2)) and the initial notification (29 CFR 2520.104b–31(g)). The final rule will also reduce costs for some of the Department's existing information collections.

The Department is unaware of any data source that would directly identify the number of plans that will decide to use the final new alternative safe harbor. Therefore, for purposes of this analysis, the Department conservatively assumes that all plans will use the final alternative safe harbor for at least some of their covered individuals. As discussed in the Cost Savings section above, the Department estimates that plan administrators using the final rule will incur a one-time start-up cost to prepare and distribute the annual NOIA and the initial notification. The final rule's impact on the hour and cost burden associated with the Department's information collections are discussed below.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Consent to receive employee benefit plan disclosures electronically.

Type of Review: Revision of currently approved collection of information.

OMB Control Number: 1210–0121.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 710,000.

Responses: 109,440,000.

Estimated Total Burden Hours: 2,388,000.

Estimated Total Costs: $44,737,000.

On April 9, 2002, the Department published a notice of final rulemaking on electronic communication and recordkeeping technologies to establish a safe harbor for electronic disclosures.[147] The 2002 safe harbor generally covers disclosures under Title I. The final regulation also covered the receipt of required disclosures at locations other than the workplace. The 2002 safe harbor requires that plan administrators to obtain affirmative consent, in advance, before distributing electronic disclosures to participants and beneficiaries outside the workplace.[148] In order to gain consent, the plan administrator must provide a

[143] The Treasury Department and the IRS have issued a series of guidance on electronic disclosures, beginning with IRS Notice 99–1, and more recently in 26 CFR 1.401(a)–21(c) (2006), on the ''Use of Electronic Media for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents.'' *See e.g.,* Notice 99–1 (1999–2 I.R.B. 8); Announcement 99–6 (1999–4 I.R.B. 24); T.D. 8873, 65 FR 6001 (Feb. 8, 2000); and T.D. 9294, 71 FR 61877 (Oct. 20, 2006).

[144] *See* 26 CFR 1.401(a)–21(b) and (c) (2006).

[145] *See* Written Statement of Michael Hadley, Partner, Davis & Harman LLP, to the ERISA Advisory Council (June 7, 2017), at 8, *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans-hadley-written-statement-06-07.pdf; see also* Written Statement of David N. Levine and Brigen L. Winters, Principals, Groom Law Group (June 7, 2017), at 4, *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans-levine-and-winters-written-statement-06-07.pdf.*

[146] An SMM is another document excluded from a single annual combined NOIA.

[147] 67 FR 17263 (April 9, 2002).

[148] This requirement is incorporated at 29 CFR 2520.104b–1(c)(2)(ii)(A), (B), and (C).

clear and conspicuous statement that includes the following: The types of documents to which the consent would apply; that consent may be withdrawn at any time; the procedures for withdrawing consent and updating necessary information; the right to obtain a paper copy, free of charge; and any hardware and software requirements.

The Department revises this information collection by adding the information collections required under the final rule to the 2002 safe harbor. This will increase the number of respondents by 710,000, the responses by 109,440,000, the hour burden by 2,388,000, and the cost burden by $44,737,000.

The final rule will affect the Department's burden estimates for several existing information collections of covered disclosures. Specifically, the rule will reduce the burden associated with the following covered disclosures with information collections covered by the PRA: The SPD, the SMM, the SAR, the annual funding notice, disclosures for participant-directed individual account plans under ERISA section 404(a)(5), and the QDIA notice. The burden reduction estimates are based on the current cost and hour burdens for the Department's existing ICRs for the covered disclosures, adjusted for the number of plans and participants the Department assumes will use electronic disclosures. The Department discusses these ICRs and its revised estimates below. The Department has submitted the revised information collections for these covered disclosures to OMB for review, in accordance with 44 U.S.C. 3507(d).

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary Plan Description Requirements under the ERISA.

Type of Review: Revised Collection.

OMB Control Number: 1210–0039.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 3,033,000.

Responses: 112,733,000.

Estimated Total Burden Hours: 163,000.

Estimated Total Costs: $235,556,000.

Description: Section 104(b) of ERISA requires the employee benefit plan administrators furnish participants and certain beneficiaries with an SPD that describes, in language understandable to an average plan participant, the benefits, rights, and obligations of participants in the plan. The SPD information requirements are set forth in section 102(b) of ERISA. To the extent there is a material modification in the terms of the plan or a change in the required content of the SPD, section 104(b)(1) of ERISA requires plan administrators to furnish participants and certain beneficiaries with an SMM or summary of material reductions (SMR).[149] The Department has issued regulations providing guidance on compliance with the requirements to furnish SPDs, SMMs, and SMRs. These regulations, codified at 29 CFR 2520.102–2, 2520.102–3, 29 CFR 2520.104b–2, and 29 CFR 2520.104b–3, contain information collections for which the Department has obtained OMB approval under OMB Control No. 1210–0039.

The Department estimates that the final alternative safe harbor will reduce the hour burden by 126,000 and the cost burden by $88,464,000.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Summary Annual Report Requirement.

Type of Review: Revised Collection.

OMB Number: 1210–0040.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 750,000.

Responses: 166,350,000.

Estimated Total Burden Hours: 1,185,000.

Estimated Total Costs: $24,358,000.

Description: ERISA Section 104(b)(3) and the regulation published at 29 CFR 2520.104b–10 require, with certain exceptions, that plan administrators furnish participants and certain beneficiaries with a SAR. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides information about the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues. EBSA previously submitted the ICR provisions in the regulation at 29 CFR 2520.104b–10 to OMB, and OMB approved the ICR under OMB Control No. 1210–0040.

The Department estimates that the final alternative safe harbor will reduce the hour burden by 607,000 and the cost burden by $23,661,000.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Funding Notice for Defined Benefit Pension Plans.

Type of Review: Amendment of a currently approved collection of information.

OMB Control Number: 1210–0126.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 32,000.

Responses: 65,527,000.

Estimated Total Burden Hours: 197,000.

Estimated Total Costs: $7,080,000.

Description: Section 101(f) of the ERISA sets forth annual funding notice requirements. Before 2006, the year the Pension Protection Act (PPA) was enacted, section 101(f) applied only to multiemployer defined benefit plans. The Department has issued multiple final regulations with regard to this provision, most recently on February 2, 2015 (80 FR 5625). Section 501(a) of the PPA amended section 101(f) of ERISA to change to the annual funding notice requirements. These amendments require plan administrators of all defined benefit plans subject to Title IV of ERISA to provide an annual funding notice to the Pension Benefit Guaranty Corporation (PBGC); plan participants and beneficiaries; labor organizations representing participants or beneficiaries; and, in the case of a multiemployer plan, all plan employers. The annual funding notice must include, among other things, the plan's funding percentage, assets and liabilities, asset allocation, and a description of the benefits under the plan that are eligible to be guaranteed by the PBGC. The ICR was approved by OMB under OMB Control Number 1210–0126.

The Department estimates that the final alternative safe harbor will reduce the hour burden by 454,000 and the cost burden by $12,560,000.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures for Participant Directed Individual Account Plans.

Type of Review: Revised Collection.

OMB Control Number: 1210–0090.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 566,000.

Responses: 769,693,000.

Estimated Total Burden Hours: 5,914,000.

Estimated Total Costs: $223,980,000.

Description: Plan administrators must provide plan- and investment-related fee and expense information to participants and beneficiaries in all participant-directed individual account plans (*e.g.,* 401(k) plans) for plan years beginning on or after January 1, 2011. The Department previously requested review of this information collection and obtained approval from OMB under OMB control number 1210–0090.

The Department estimates that the final alternative safe harbor will reduce the hour burden by 979,000 and the cost burden by $46,360,000.

[149] Because SMRs apply only to health plans, not retirement plans, they will not be affected by this new safe harbor.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Participant Directed Individual Account Plans.

Type of Review: Revised collection.

OMB Control Number: 1210–0132.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 297,000.

Responses: 39,549,000.

Estimated Total Burden Hours: 76,000.

Estimated Total Burden Costs: $2,074,000.

Description: Section 404(c) of ERISA states that participants or beneficiaries who can hold individual accounts under their pension plans and exercise control over the assets ''as determined in regulations of the Secretary [of Labor]'' will not be treated as fiduciaries of the plan. Moreover, plan fiduciaries are not liable for any loss resulting from the participants' or beneficiary's exercise of control over their individual account assets.

The PPA amended ERISA section 404(c) by adding paragraph (c)(5)(A). The new paragraph requires that participants who fail to make investment elections be treated as having exercised control over their account assets, so long as the plan provides appropriate notice and invests the assets ''in accordance with regulations prescribed by the Secretary [of Labor].'' As required under ERISA section 404(c)(5)(A), the Department issued a final regulation on the types of investment vehicles that plan fiduciaries may choose as a QDIA. The regulation also outlines two information collection requirements. First, it implements the statutory requirement that a fiduciary must provide annual notices to participants and beneficiaries whose account assets could be invested in a QDIA. Second, the regulation requires fiduciaries to pass certain pertinent materials they receive relating to a QDIA to those participants and beneficiaries with assets invested in the QDIA as well to provide certain information on request. The ICRs are approved under OMB Control Number 1210–0132.

The Department estimates that due to fiduciaries' use of the final alternative safe harbor to provide disclosures to participants who currently are receiving them by mail, the hour burden will be reduced by 117,000 and the cost burden will be reduced by $9,135,000.

(6) Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [150] imposes certain requirements on rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act.[151] Under section 604 of the RFA, agencies must submit a final regulatory flexibility analysis (FRFA) for proposals that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) considers an employee benefit plan with fewer than 100 participants a small entity.[152] This definition is based on section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to section 104(a)(3), the Department has previously issued simplified reporting provisions and limited exemptions from reporting/disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.[153]

Further, while some large employers may have small plans, small employers generally maintain small plans. Thus, EBSA believes that assessing the impact of this final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) [154] pursuant to the Small Business Act.[155] EBSA requested comments on the appropriateness of the size standard used to evaluate the impact of the proposed rule on small entities and received no comment on this issue. In particular, the Department did not receive any comment stating that it is inappropriate to use size standards different from those promulgated by the SBA.

The Department has determined that this final rule will significantly impact a substantial number of small entities: Employee benefit plans with fewer than 100 participants. The Department's FRFA follows.

(i) Need for and Objectives of the Rule

Pursuant to section 505 of ERISA, the Secretary of Labor has broad authority ''to prescribe such regulations as he finds necessary or appropriate to carry out the provisions of [Title I] of ERISA.'' The final rule offers a voluntary, alternative method for electronic disclosures and, thus, reduces the costs and burdens of related to required disclosures. The final rule will reduce the cost of printing and mailing covered disclosures, benefitting plans regardless of the size. Therefore, the Department expects the final rule to deliver benefits to the participants of many small plans and their families, as well as the plans themselves.

(ii) Affected Small Entities

The majority of private retirement plans are small plans with fewer than 100 participants. The 2017 Form 5500 filings show that out of total 710,000 private retirement plans, approximately 87 percent, or 619,000, of ERISA-covered retirement plans were small plans with fewer than 100 participants.[156] However, small plans cover only a fraction of total participants. In 2017, over 137 million individuals participated in private retirement plans. Out of these 137 million participants, over 12 million participants, less than 10 percent, were in small plans. The Department estimates that slightly more than half already receive disclosures electronically. The remaining half will likely receive electronic disclosures under this final rule.

(iii) Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed above, by allowing more participants who access disclosures online, the final rule will save retirement plans, including small plans, money. These cost savings can in turn be used to defray other plan-related expenses, and thus lower the overall fees charged to participants. In addition, modern technology features may help participants with disabilities or limited English skills better understand the content of disclosures, which will allow

[150] 5 U.S.C. 601 (2012).

[151] 5 U.S.C. 551 (2012).

[152] The Department consulted with the Small Business Administration Office of Advocacy in making this determination as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c).

[153] *See* 29 CFR 2520.104–20 (2012), 29 CFR 2520.104–21 (2012), 29 CFR 2520.104–41 (2012), 29 CFR 2520.104–46 (2012), and 29 CFR 2520.104b–10 (2012).

[154] 13 CFR 121.201 (2011).

[155] 15 U.S.C. 631 (2013).

[156] Private Pension Plan Bulletin 2016, Employee Benefits Security Administration, Department of Labor.

them to better manage their plan accounts. Both large and small plans will benefit from the cost savings and other benefits that result from wider use of electronic disclosure.

This final rule is a voluntary safe harbor. Therefore, plan administrators will not be required to make any specific disclosures available on a website. This final rule simply provides an additional, optional method for plan administrators to deliver covered disclosures to participants and beneficiaries electronically and does not change any underlying reporting, disclosure, and recordkeeping requirements. Therefore, the Department does not believe this final rule will impose any additional compliance requirements on small entities.

(iv) Duplicate, Overlapping, or Relevant Federal Rules

The final rule will provide retirement plan administrators with an alternative method to furnish covered disclosures electronically. In developing this alternative, the Department consulted with other relevant regulators, including the Treasury Department and the SEC. The Treasury Department has interpretive jurisdiction over certain notices relating to pension plans covered by Title 1 of ERISA, but the covered disclosures under the final rule are exclusively in the jurisdiction of the Labor Department. The SEC has jurisdiction over issuers of investment products that often are used as ERISA employee retirement plan investments as well as some service providers to ERISA-covered plans, but it has no jurisdiction over ERISA-covered pension plans.

(v) Significant Alternatives Considered

The RFA directs the Department to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. As discussed above, the Department expects this final rule to save money for small and large plans by eliminating materials, printing, and mailing costs.

The Department considered keeping the quarterly pension benefit statement as one of the disclosures that can be included in a single annual combined NOIA. Pension benefit statements must be furnished quarterly for participant-directed individual account plans, such as 401k plans. Thus, if a single annual combined NOIA is emailed at the beginning of the year, some participants may not appreciate that subsequent quarterly statements will also be made available online. Furthermore, quarterly benefit statements can prompt participants to take actions such as checking their account balances, increasing deferral rates, or reallocating investments. With one single notice at the beginning of the year, participants may less frequently check their accounts and make changes accordingly. In the Department's view, this may have detrimental impacts on participants' retirement savings, although it may bring costs down. Therefore, the Department determines that the approach taken in the final rule is more balanced, protecting participants while saving money.

Small plans, like large plans, will incur costs associated with emailing NOIAs and addressing invalid or inoperable electronic addresses quarterly, rather than annually. The Department, however, does not believe this burden will be disproportionally borne by small plans because small plans, having fewer participants, will have fewer electronic addresses to manage and an easier time updating electronic addresses due to the proximity between administrators and participants. The Department, thus, determines that this approach does not disadvantage nor unduly burden small plans.

Paragraph (e) of the final rule requires plan administrators to ensure the existence of a website at which covered individuals can access covered documents. In the proposed rule, the Department solicited comments regarding the fraction of plans, particularly small plans, that would need to develop or modify a website in order to rely on this new safe harbor. The Department was particularly concerned about any potential disproportionate burden on small plans that this condition may inadvertently impose. One commenter suggested that small plans are less likely to have their own websites. In addition, one study suggests that slightly more than a quarter (27 percent) of *small* profit sharing and 401(k) plans (plans with fewer than 50 participants) did not provide any services via internet, whereas only 10 percent of *large* profit sharing and 401(k) plans (plans with 5,000 participants or more) did not provide any services via internet in 2017.[157] In part to mitigate any potential negative impact on small plans, the Department added a new paragraph, paragraph (k), in the final rule and allows plan administrators to furnish covered documents directly by email as an alternative to the notice and access approach. Therefore, a plan administrator that does not have a website can rely on this new safe harbor to provide electronic disclosure without developing a website. The Department believes this change in the final rule will help more small plan administrators electronically deliver plan-related documents, reducing the administrative burden on small plans.

(7) Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 [158] requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a final rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this final rule does not include any federal mandate that will result in such expenditures. This is because the final rule merely provides an alternative, optional safe harbor for pension benefit plans subject to ERISA to use electronic media to furnish required disclosures to participants and beneficiaries.

(8) Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. E.O. 13132 requires federal agencies to follow specific criteria in forming and implementing policies that have ''substantial direct effects'' on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with state and local officials and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the final rule.

In the Department's view, this final regulation does not have federalism implications because it does not have a direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government.

[157] *See* Plan Sponsors Council of America, *supra* note 109. (Because the Department expects most 401(k) plans to have their own websites, the fraction of small defined benefit plans and non-participant-directed defined contribution plans that lack websites will likely be higher than that of small 401(k) plans.)

[158] Public Law 104–4, 109 Stat. 48 (1995).

List of Subjects in 29 CFR Parts 2520 and 2560

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor amends 29 CFR parts 2520 and 2560 as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The authority citation for part 2520 continues to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–1031, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2011 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–5 also issued under sec. 501 of Pub. L. 109–280, 120 Stat. 780, and sec. 105(a), Pub. L. 110–458, 122 Stat. 5092.

■ 2. Amend § 2520.101–3 by revising paragraph (b)(3) to read as follows:

§ 2520.101–3 Notice of blackout periods under individual account plans.

* * * * *

(b) * * *

(3) *Form and manner of furnishing notice.* The notice required by paragraph (a) of this section shall be in writing and furnished to affected participants and beneficiaries in any manner consistent with the requirements of § 2520.104b–1 of this chapter, including § 2520.104b–1(c) or § 2520.104b–31 of this chapter relating to the use of electronic media.

* * * * *

■ 3. Amend § 2520.104b–1 by revising paragraph (c)(1) introductory text and adding paragraph (f) to read as follows:

§ 2520.104b–1 Disclosure.

* * * * *

(c) * * *

(1) Except as otherwise provided by applicable law, rule or regulation, including the alternative methods for disclosure through electronic media in paragraph (f) of this section, the administrator of an employee benefit plan furnishing documents through electronic media is deemed to satisfy the requirements of paragraph (b)(1) of this section with respect to an individual described in paragraph (c)(2) of this section if:

* * * * *

(f) *Alternative disclosure through electronic media.* As an alternative to electronic media disclosure obligations in paragraph (c) of this section, the administrator of an employee benefit plan is deemed to satisfy the requirements of paragraph (b)(1) of this section, provided that the administrator complies with the obligations in 29 CFR 2520.104b–31.

■ 4. Add § 2520.104b–31 to subpart F to read as follows:

§ 2520.104b–31 Alternative method for disclosure through electronic media—Notice-and-access.

(a) *Alternative method for disclosure through electronic media—Notice-and-access.* As an alternative to § 2520.104b–1(c), the administrator of an employee benefit plan satisfies the general furnishing obligation in § 2520.104b–1(b)(1) with respect to covered individuals and covered documents, provided that the administrator complies with the notice, access, and other requirements of paragraphs (b) through (k) of this section, as applicable.

(b) *Covered individual.* For purposes of this section, a ''covered individual'' is a participant, beneficiary, or other individual entitled to covered documents and who—when he or she begins participating in the plan, as a condition of employment, or otherwise—provides the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) with an electronic address, such as an electronic mail (''email'') address or internet-connected mobile-computing-device (*e.g.,* ''smartphone'') number, at which the covered individual may receive a written notice of internet availability, described in paragraph (d) of this section, or an email described in paragraph (k) of this section. Alternatively, if an electronic address is assigned by an employer to an employee for employment-related purposes that include but are not limited to the delivery of covered documents, the employee is treated as if he or she provided the electronic address.

(c) *Covered documents.* For purposes of this section, a ''covered document'' is:

(1) *Pension benefit plans.* In the case of an employee pension benefit plan, as defined in section 3(2) of the Act, any document or information that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of the Act, except for any document or information that must be furnished only upon request.

(2) [Reserved]

(d) *Notice of internet availability*—(1) *General.* The administrator must furnish to each covered individual a notice of internet availability for each covered document in accordance with the requirements of this section.

(2) *Timing of notice of internet availability.* A notice of internet availability must be furnished at the time the covered document is made available on the website described in paragraph (e) of this section. However, if an administrator furnishes a combined notice of internet availability for more than one covered document, as permitted under paragraph (i) of this section, the requirements of this paragraph (d)(2) are treated as satisfied if the combined notice of internet availability is furnished each plan year, and, if the combined notice of internet availability was furnished in the prior plan year, no more than 14 months following the date the prior plan year's notice was furnished.

(3) *Content of notice of internet availability.* (i) A notice of internet availability furnished pursuant to this section must contain the information set forth in paragraphs (d)(3)(i)(A) through (H) of this section:

(A) A prominent statement—for example as a title, legend, or subject line—that reads: ''Disclosure About Your Retirement Plan.''

(B) A statement that reads: ''Important information about your retirement plan is now available. Please review this information.''

(C) An identification of the covered document by name (for example, a statement that reads: ''your Quarterly Benefit Statement is now available'') and a brief description of the covered document if identification only by name would not reasonably convey the nature of the covered document.

(D) The internet website address, or a hyperlink to such address, where the covered document is available. The website address or hyperlink must be sufficiently specific to provide ready access to the covered document and will satisfy this standard if it leads the covered individual either directly to the covered document or to a login page that provides, or immediately after a covered individual logs on provides, a prominent link to the covered document.

(E) A statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right.

(F) A statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right.

(G) A cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document.

(H) A telephone number to contact the administrator or other designated representative of the plan.

(ii) A notice of internet availability furnished pursuant to this section may contain a statement as to whether action by the covered individual is invited or required in response to the covered document and how to take such action, or that no action is required, provided that such statement is not inaccurate or misleading.

(4) *Form and manner of furnishing notice of internet availability.* A notice of internet availability must:

(i) Be furnished electronically to the address referred to in paragraph (b) of this section;

(ii) Contain only the content specified in paragraph (d)(3) of this section, except that the administrator may include pictures, logos, or similar design elements, so long as the design is not inaccurate or misleading and the required content is clear;

(iii) Be furnished separately from any other documents or disclosures furnished to covered individuals, except as permitted under paragraph (i) of this section; and

(iv) Be written in a manner calculated to be understood by the average plan participant.

(e) *Standards for internet website.* (1) The administrator must ensure the existence of an internet website at which a covered individual is able to access covered documents.

(2) The administrator must take measures reasonably calculated to ensure that:

(i) The covered document is available on the website no later than the date on which the covered document must be furnished under the Act;

(ii) The covered document remains available on the website at least until the date that is one year after the date the covered document is made available on the website pursuant to paragraph (e)(2)(i) of this section or, if later, the date it is superseded by a subsequent version of the covered document;

(iii) The covered document is presented on the website in a manner calculated to be understood by the average plan participant;

(iv) The covered document is presented on the website in a widely-available format or formats that are suitable to be both read online and printed clearly on paper;

(v) The covered document can be searched electronically by numbers, letters, or words; and

(vi) The covered document is presented on the website in a widely-available format or formats that allow the covered document to be permanently retained in an electronic format that satisfies the requirements of paragraph (e)(2)(iv) of this section.

(3) The administrator must take measures reasonably calculated to ensure that the website protects the confidentiality of personal information relating to any covered individual.

(4) For purposes of this section, the term *website* means an internet website, or other internet or electronic-based information repository, such as a mobile application, to which covered individuals have been provided reasonable access.

(f) *Right to copies of paper documents or to opt out of electronic delivery.* (1) Upon request from a covered individual, the administrator must promptly furnish to such individual, free of charge, a paper copy of a covered document. Only one paper copy of any covered document must be provided free of charge under this section.

(2) Covered individuals must have the right, free of charge, to globally opt out of electronic delivery and receive only paper versions of covered documents. Upon request from a covered individual, the administrator must promptly comply with such an election.

(3) The administrator must establish and maintain reasonable procedures governing requests or elections under paragraphs (f)(1) and (2) of this section. The procedures are not reasonable if they contain any provision, or are administered in a way, that unduly inhibits or hampers the initiation or processing of a request or election.

(4) The system for furnishing a notice of internet availability must be designed to alert the administrator of a covered individual's invalid or inoperable electronic address. If the administrator is alerted that a covered individual's electronic address has become invalid or inoperable, such as if a notice of internet availability sent to that address is returned as undeliverable, the administrator must promptly take reasonable steps to cure the problem (for example, by furnishing a notice of internet availability to a valid and operable secondary electronic address that had been provided by the covered individual, if available, or obtaining a new valid and operable electronic address for the covered individual) or treat the covered individual as if he or she made an election under paragraph (f)(2) of this section. If the covered individual is treated as if he or she made an election under paragraph (f)(2) of this section, the administrator must furnish to the covered individual, as soon as is reasonably practicable, a paper version of the covered document identified in the undelivered notice of internet availability.

(g) *Initial notification of default electronic delivery and right to opt out.* The administrator must furnish to each individual, prior to the administrator's reliance on this section with respect to such individual, a notification on paper that covered documents will be furnished electronically to an electronic address; identification of the electronic address that will be used for the individual; any instructions necessary to access the covered documents; a cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document; a statement of the right to request and obtain a paper version of a covered document, free of charge, and an explanation of how to exercise this right; and a statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right. A notification furnished pursuant to this paragraph (g) must be written in a manner calculated to be understood by the average plan participant.

(h) *Special rule for severance from employment.* At the time a covered individual who is an employee, and for whom an electronic address assigned by an employer pursuant to paragraph (b) of this section is used to furnish covered documents, severs from employment with the employer, the administrator must take measures reasonably calculated to ensure the continued accuracy and availability of such electronic address or to obtain a new electronic address that enables receipt of covered documents following the individual's severance from employment.

(i) *Special rule for annual combined notices of internet availability.* Notwithstanding the requirements in paragraphs (d)(4)(ii) and (iii) of this section, an administrator may furnish one notice of internet availability that incorporates or combines the content required by paragraph (d)(3) of this section with respect to one or more of the following:

(1) A summary plan description, as required pursuant to section 104(a) of the Act;

(2) Any covered document or information that must be furnished

annually, rather than upon the occurrence of a particular event, and does not require action by a covered individual by a particular deadline;

(3) Any other covered document if authorized in writing by the Secretary of Labor, by regulation or otherwise, in compliance with section 110 of the Act; and

(4) Any applicable notice required by the Internal Revenue Code if authorized in writing by the Secretary of the Treasury.

(j) *Reasonable procedures for compliance.* The conditions of this section are satisfied, notwithstanding the fact that the covered documents described in paragraph (b) of this section are temporarily unavailable for a reasonable period of time in the manner required by this section due to technical maintenance or unforeseeable events or circumstances beyond the control of the administrator, provided that:

(1) The administrator has reasonable procedures in place to ensure that the covered documents are available in the manner required by this section; and

(2) The administrator takes prompt action to ensure that the covered documents become available in the manner required by this section as soon as practicable following the earlier of the time at which the administrator knows or reasonably should know that the covered documents are temporarily unavailable in the manner required by this section.

(k) *Alternative method for disclosure through email systems.* Notwithstanding any other provision of this section, an administrator satisfies the general furnishing obligation in § 2520.104b–1(b)(1) by using an email address to furnish a covered document to a covered individual, provided that:

(1) The covered document is sent to a covered individual's email address, referred to in paragraph (b) of this section, no later than the date on which the covered document must be furnished under the Act.

(2) In lieu of furnishing a notice of internet availability pursuant to paragraph (d) of this section, the administrator sends an email pursuant to this paragraph (k) that:

(i) Includes the covered document in the body of the email or as an attachment;

(ii) Includes a subject line that reads: ''Disclosure About Your Retirement Plan'';

(iii) Includes the information described in paragraph (d)(3)(i)(C) of this section if the covered document is an attachment (identification or brief description of the covered document), paragraphs (d)(3)(i)(E) (statement of right to paper copy of covered document), (d)(3)(i)(F) (statement of right to opt out of electronic delivery), and (d)(3)(i)(H) (a telephone number) of this section; and

(iv) Complies with paragraph (d)(4)(iv) of this section (relating to readability).

(3) The covered document is:

(i) Written in a manner reasonably calculated to be understood by the average plan participant;

(ii) Presented in a widely-available format or formats that are suitable to be read online, printed clearly on paper, and permanently retained in an electronic format that satisfies the preceding requirements in this sentence; and

(iii) Searchable electronically by numbers, letters, or words.

(4) The administrator:

(i) Takes measures reasonably calculated to protect the confidentiality of personal information relating to the covered individual; and

(ii) Complies with paragraphs (f) (relating to copies of paper documents or the right to opt out); (g) (relating to the initial notification of default electronic delivery), except for the cautionary statement; and (h) (relating to severance from employment) of this section.

(l) *Dates; severability.* (1) This section is applicable July 27, 2020.

(2) If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof.

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 5. The authority citation for part 2560 continues to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Section 2560.503–1 also issued under 29 U.S.C. 1133. Section 2560.502c–7 also issued under 29 U.S.C. 1132(c)(7). Section 2560.502c–4 also issued under 29 U.S.C. 1132(c)(4). Section 2560.502c–8 also issued under 29 U.S.C. 1132(c)(8).

■ 6. Amend § 2560.503–1 by revising the second sentence of paragraph (g)(1) introductory text and the second sentence of paragraph (j)(1) to read as follows:

§ 2560.503–1 Claims procedure.

* * * * *

(g) * * *

(1) * * * Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans). * * *

* * * * *

(j) * * *

(1) * * * Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans). * * *

* * * * *

Signed at Washington, DC, May 15, 2020.

Eugene Rutledge,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2020–10951 Filed 5–21–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Wednesday,
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Part IV

The President

Proclamation 10038—National Maritime Day, 2020
Proclamation 10039—Honoring the Victims of the Novel Coronavirus Pandemic
Proclamation 10040—Prayer for Peace, Memorial Day, 2020

Federal Register
Vol. 85, No. 102
Wednesday, May 27, 2020

Presidential Documents

Title 3—

The President

Proclamation 10038 of May 21, 2020

National Maritime Day, 2020

By the President of the United States of America

A Proclamation

Since the founding of our great Nation, we have relied on merchant mariners to deliver goods to market and strengthen our national security. On National Maritime Day, we recognize the United States Merchant Marine for all it does to facilitate our commerce and protect our interests at sea.

Our Nation's merchant mariners enable peaceful trade with countries around the world and provide vital sealift support to our Armed Forces. Whether on the ocean or our inland waterways, merchant mariners support our economy by transporting billions of dollars of imported and exported goods. These men and women also sail bravely into combat zones to deliver supplies and weapons to our military men and women, playing a critical role in the success of their mission.

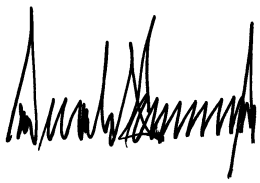
This year, as we celebrate the 75th anniversary of the end of World War II, we pay tribute to the United States merchant mariners who served as the ''Fourth Arm of Defense'' for our Nation during the war. Earlier this year, I was proud to sign into law long-overdue legislation to award the Congressional Gold Medal to the valiant civilian merchant mariners who maintained critical supply lines to our overseas troops and allies during the Second World War. Many of these mariners endured brutal attacks from German U–boats, and more than 6,000 of them perished at sea or were held as prisoners of war. This number includes 142 students of the United States Merchant Marine Academy—distinguishing it as the only one of the five service academies authorized to carry a battle standard.

As we remember the tremendous sacrifices of the World War II merchant mariners, we also continue to honor the present-day citizen mariners who make up our Nation's world-class Merchant Marine. Today, we pay tribute to their expertise, patriotism, and dedication to serving our country and ensuring our national security.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day'' to commemorate the first transoceanic voyage by a steamship in 1819 by the S.S. Savannah. By this resolution, the Congress has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim May 22, 2020, as National Maritime Day. I call upon the people of the United States to mark this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–11538
Filed 5–26–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10039 of May 21, 2020

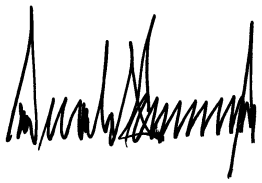
Honoring the Victims of the Novel Coronavirus Pandemic

By the President of the United States of America

A Proclamation

Our Nation mourns for every life lost to the coronavirus pandemic, and we share in the suffering of all those who endured pain and illness from the outbreak. Through our grief, America stands steadfast and united against the invisible enemy. May God be with the victims of this pandemic and bring aid and comfort to their families and friends. As a mark of solemn respect for the victims of the coronavirus pandemic, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, May 24, 2020. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred forty-fourth.



[FR Doc. 2020–11539
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Proclamation 10040 of May 21, 2020

Prayer for Peace, Memorial Day, 2020

By the President of the United States of America

A Proclamation

Since the first shots fired in the Revolutionary War, Americans have answered the call to duty and given their lives in service to our Nation and its sacred founding ideals. As we pay tribute to the lives and legacies of these patriots on Memorial Day, we also remember that they sacrificed to create a better, more peaceful future for our Nation and the world. We recommit to realizing that vision, honoring the service of so many who have placed love of country above all else.

As Americans, we will always defend our freedom and our liberty. When those principles are threatened, we will respond with uncompromising force and unparalleled vigor. Generation after generation, our country's finest have defended our Republic with honor and distinction. Memorials, monuments, and rows of white crosses and stars in places close to home like Arlington, Virginia and Gettysburg, Pennsylvania, as well as far-flung battlefields in places like Flanders Field in Belgium and Busan in Korea, will forever memorialize their heroic actions, standing as solemn testaments to the price of freedom. We will never take for granted the blood shed by these gallant men and women, as we are forever indebted to them and their families.

This year marks the 75th anniversary of the Allied victories over Nazi Germany and Imperial Japan in World War II. As we commemorate these seminal events, we also remember the tremendous cost at which these victories came. More than 400,000 souls of the Greatest Generation perished during this titanic struggle to liberate the world from tyranny. In his address to the Nation on Japan's surrender, President Truman's words remind us all of our enduring obligation to these patriots for their sacrifice: ''It is our responsibility—ours the living—to see to it that this victory shall be a monument worthy of the dead who died to win it.'' As we pause to recall the lives lost from the ranks of our Armed Forces, we remain eternally grateful for the path they paved toward a world made freer from oppression.

Our fallen warriors gave their last breath for our country and our freedom. Today, let us pause in quiet reverence to reflect on the incredible dedication of these valiant men and women and their families, invoking divine Providence as we continue pursuing our noble goal of lasting peace for the world.

In honor and recognition of all of our fallen heroes, the Congress, by a joint resolution approved May 11, 1950, as amended (36 U.S.C. 116), has requested the President issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

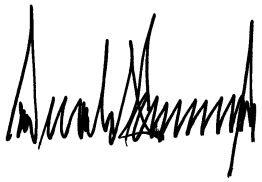
NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim Memorial Day, May 25, 2020, as a day of prayer for permanent peace, and I designate the hour beginning in each

locality at 11:00 a.m. of that day as a time when people might unite in prayer.

I further ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day.

I also request the Governors of the United States and its Territories, and the appropriate officials of all units of government, to direct that, on Memorial Day, the flag be flown at half-staff until noon on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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