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

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC–19–0006]

RIN 0563–AC62

Common Crop Insurance Regulations; Rice Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Rice Crop Insurance Provisions (Crop Provisions). The intended effect of this action is to allow for new irrigation methods and change the cancellation and termination dates in certain states to align with other row crops to implement the changes contained in the Agriculture Improvement Act of 2018 (commonly referred to as the 2018 Farm Bill). The changes will be effective for the 2020 and succeeding crop years.

DATES:

Effective Date: This final rule is effective November 30, 2019.

Comment Date: We will consider comments that we receive on this rule by the close of business January 21, 2020. FCIC will consider these comments and make changes to the rule if warranted in a subsequent rulemaking.

ADDRESSES: We invite you to submit comments on this rule. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of rule. You may submit comments by any of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–19–0006. Follow the online instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change and publicly available on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state and in Puerto Rico through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.141 Rice Crop Insurance Provisions to implement the changes contained in the 2018 Farm Bill (Pub. L. 115–334) to be effective for the 2020 and succeeding crop years. The 2018 Farm Bill requires that FCIC research and develop an insurance product that provides coverage to alternative irrigation practices for rice; specifically, intermittent flooding and furrow irrigation practices.

The changes to 7 CFR 457.141 Rice Crop Insurance Provisions are as follows:

1. Section 5—FCIC is adding an additional cancellation and termination date of March 15 for Illinois and Missouri. This change is needed to make the dates consistent with other row crops in these states.

2. Section 6—FCIC is revising section 6(c) to allow additional irrigation methods to be specified in the Special Provisions. In the past, rice has traditionally been grown under flood irrigation, whereby an entire field is continuously flooded during the entire growing season and not drained until preparations for harvest. Currently, only continuously-flooded rice is covered under the Rice Crop Provisions.

The intermittent flood irrigation and furrow irrigation methods are desirable alternatives to continuous flood irrigation because they produce a similar yield to continuously flooded fields while using less water and lowering greenhouse gas emissions.

Intermittent flood irrigation is a method of crop irrigation, also known as alternate wetting and drying (AWD), that allows flood irrigation water within a field to subside naturally (dry down) during rice growth and development before the rice field is reflooded.

Furrow irrigation is a method of crop irrigation in which furrows are created to convey water down the field; capacity and equipment must be able to apply water uniformly across the crown of the field to assure water delivery to all rice plants in the field.

These alternative irrigation methods will offer existing rice growers flexibility to choose the most appropriate irrigation method for their farming operation, while maintaining crop insurance eligibility. Crop insurance is an important component of many farming operations to manage financial risks and is often required by lending institutions to receive an operating loan.

Effective Date and Notice and Comment

In general, the Administrative Procedure Act (APA, 5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** for interested persons to be

given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation and requires a 30-day delay in the effective date of rules, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to contracts and therefore the requirements in section 553 do not apply. Although not required by APA, FCIC has chosen to request comments on this rule.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FCIC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective November 30, 2019.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated as not significant, it is not subject to Executive Order 13771.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by SBREFA, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FCIC has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, FCIC will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes and additions identified in this rule are not expressly mandated by the 2018 Farm Bill.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450—Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563–0053.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR part 457, effective for the 2021 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 2. Amend § 457.141 as follows:
■ a. In the introductory text by removing ''2017'' and adding ''2020'' in its place;
■ b. Revise the table in section 5; and
■ c. Revise section 6(c).

The revisions read as follows:

§ 457.141 Rice crop insurance provisions.

* * * * *

5. Cancellation and Termination Dates

* * * * *

State and county	Cancellation and termination date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas Counties south thereof;	January 31.
Florida	February 15.
Illinois and Missouri	March 15.
All other states	February 28.

* * * * *

6. Insured Crop.

* * * * *

(c) That is flood irrigated unless otherwise specified in the Special Provisions; and

* * * * *

Robin Anderson,

Executive Secretary, Federal Crop Insurance Corporation.

[FR Doc. 2019–25386 Filed 11–21–19; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC61

[Docket ID FCIC–2019–0002]

Common Crop Insurance Policy Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: The Federal Crop Insurance Corporation is correcting a final rule that was published in the **Federal Register** on June 28, 2019, which revised the Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance Basic Provisions, and the Common Crop Insurance Policy (CCIP) Basic Provisions. This correction is being published to correct an incorrect reference in section 3(g)(3) of the Common Crop Insurance Policy Basic Provisions.

DATES: *Effective:* November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7730; email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

This correction is being published to correct section 3(g)(3) of the Common Crop Insurance Policy Basic Provisions, published June 28, 2019 (84 FR 30857–30862). Section 3(g)(3) incorrectly references ''section 34(c)(3).'' The correct reference should be ''section 34(b)(3)'' and is being revised in this correction.

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Need for Correction

Accordingly, 7 CFR part 457 is corrected by making the following amendments:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

§ 457.8 [Amended]

■ 2. Amend § 457.8, in the Common Crop Insurance Policy, in section 3(g)(3), remove the words ''section 34(c)(3)'' and add ''section 34(b)(3)'' in its place.

Robin Anderson,

Executive Secretary, Federal Crop Insurance Corporation.

[FR Doc. 2019–25387 Filed 11–21–19; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. APHIS–2018–0067]

RIN 0579–AE50

Swine Health Protection Act; Amendments to Garbage Feeding Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Swine Health Protection Act regulations by removing the State status lists from the regulations in order to maintain these lists on the Agency's website. These changes will allow us to use a notice-based, streamlined approach to update the lists while continuing to protect swine health in the United States.

DATES: Effective December 23, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Ross Free, Veterinary Services, APHIS, 920 Main Campus Dr. #200, Raleigh, NC 27606; email: *Ross.a.Free@usda.gov;* phone: (919) 855–7712.

SUPPLEMENTARY INFORMATION:

Background

The Swine Health Protection Act (7 U.S.C. 3801 *et seq.,* referred to below as the Act) is intended to protect the commerce, health, and welfare of the people of the United States by ensuring that food waste fed to swine does not contain active disease organisms that pose a risk to domestic swine. The regulations in 9 CFR part 166 regarding swine health protection (referred to below as the regulations) were promulgated in accordance with the Act. Section 166.15 of the regulations contains provisions regarding garbage feeding and enforcement responsibility, with lists of States that are subject to each provision.

On June 20, 2019, we published in the **Federal Register** (84 FR 28774–28775, Docket No. APHIS–2018–0067) a proposal [1] to amend the regulations by moving the State status lists for garbage feeding of swine in § 166.15 from the regulations to the Animal and Plant Health Inspection Service (APHIS) website. As a result of this move, any subsequent change to a State's status will be announced through a notice published in the **Federal Register** in conjunction with updating that status on the APHIS website.

We solicited comments concerning our proposal for 60 days ending August 19, 2019. We received four comments by that date. They were from a national organization representing pork producers and members of the public. All responses were in favor of moving the State status lists in § 166.15 from the regulations to the APHIS website.

One commenter stated that we should ensure that information be made available in an alternative format for persons without online access.

In § 166.15(b), we note that for information concerning the feeding of garbage to swine, the public may contact the APHIS Area Veterinarian in Charge, the State animal health official, or Veterinary Services, 4700 River Road, Unit 37, Riverdale, MD 20737–1231.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

In accordance with the Swine Health Protection Act (7 U.S.C. 3801 *et seq.*), APHIS regulates food waste containing any meat products fed to swine. Raw or undercooked meat may transmit numerous infectious or communicable diseases. Compliance with these regulations ensures that all food waste fed to swine is properly treated to kill disease organisms.

We are revising the regulations by moving the State status lists in § 166.15 from the regulations to the APHIS website. As a result of this move, any subsequent additions, deletions, and other changes to a State's status will be made using a notice-based process.

This final rule, while facilitating changes to the State status lists, is not expected to have an economic impact on hog and pig farms.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Congressional Review Act

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0067.*

(44 U.S.C. 3501 *et seq.*), the information collection requirements included in this final rule have already been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0065.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 9 CFR Part 166

Animal diseases, Reporting and recordkeeping requirements, Swine.

Accordingly, we are amending 9 CFR part 166 as follows:

PART 166—SWINE HEALTH PROTECTION

■ 1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3801–3813; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 166.12 is amended by:
■ a. Removing the phrase ''listed in § 166.15(d) of this part'' each time it appears and adding the phrase ''referenced in § 166.15(a)'' in its place;
■ b. Revising the text of footnote 1; and
■ c. Removing the words ''of this part'' in paragraph (c).

The revision reads as follows:

§ 166.12 Cancellation of licenses.

* * * * *

[1] To find the name and address of the Area Veterinarian in Charge, go to *https://www.aphis.usda.gov/animal_health/contacts/field-operations-districts.pdf.*

■ 3. Section 166.15 is revised to read as follows:

§ 166.15 State status.

(a) The Animal and Plant Health Inspection Service (APHIS) will maintain on its website [2] the following lists of States:

(1) States that prohibit the feeding of garbage to swine;

(2) States that allow the feeding of treated garbage to swine;

(3) States that have primary enforcement responsibility under the Act; and

(4) States that issue licenses under cooperative agreements with APHIS, but do not have primary responsibility under the Act.

(b) For information concerning the feeding of garbage to swine, the public may contact the APHIS Area Veterinarian in Charge, the State animal health official, or Veterinary Services, 4700 River Road, Unit 37, Riverdale, MD 20737–1231.

[2] *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/swine-disease-information.*

Done in Washington, DC, this 18th day of November 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–25367 Filed 11–21–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9613]

RIN 1545–BI67

Reduced 2009 Estimated Income Tax Payments for Individuals With Small Business Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision TD 9613, which was published in the **Federal Register** on Wednesday, February 27, 2013. Treasury Decision 9623 contains final regulations under section 6654 of the Internal Revenue Code relating to reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009 and does not apply to any taxable years beginning before or after 2009.

DATES: This correction is effective on November 22, 2019 and is applicable on or after February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Janet Engel Kidd, Office of Associate Chief Counsel (Procedure and Administration), (202) 317–3600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9613) that are the subject of this correction are issued under section 6654 of the Internal Revenue Code.

Need for Correction

As published February 27, 2013 (78 FR 13221), the final regulations (TD 9613) contain an error that needs to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by adding a sectional authority for § 1.6654–2 in numerical order to read in part as follows:

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

* * * * *

Section 1.6654–2 also issued under 26 U.S.C. 6654(n).

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2019–25346 Filed 11–21–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Venezuela Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Venezuela Sanctions Regulations to incorporate additional Executive orders, add a general license authorizing U.S. Government activities, and add an interpretive provision.

DATES: *Effective Date:* November 22, 2019.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

On July 10, 2015, OFAC issued the Venezuela Sanctions Regulations, 31 CFR part 591 (the ''Regulations'') (80 FR 39676, July 10, 2015) to implement the Venezuela Defense of Human Rights and Civil Society Act of 2014 (Pub. L. 113–278) and Executive Order 13692 of March 8, 2015 (''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela'') (E.O. 13692). The Regulations were published in abbreviated form for the purpose of providing immediate guidance to the public. Since then, the President has issued six additional Executive orders pursuant to the national emergency declared in E.O. 13692: Executive Order 13808 of August 24, 2017 (''Imposing Additional Sanctions With Respect to the Situation in Venezuela'') (82 FR 41155, August 29, 2017); Executive Order 13827 of March 19, 2018 (''Taking Additional Steps to Address the Situation in Venezuela'') (83 FR 12469, March 21, 2018); Executive Order 13835 of May 21, 2018 (''Prohibiting Certain Additional Transactions With Respect to Venezuela'') (83 FR 24001, May 24, 2018); Executive Order 13850 of November 1, 2018 (''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'') (83 FR 55243, November 2, 2018); Executive Order 13857 of January 25, 2019 (''Taking Additional Steps To Address the National Emergency With Respect to Venezuela'') (84 FR 509, January 30, 2019); and Executive Order 13884 of August 5, 2019 (''Blocking Property of the Government of Venezuela'') (84 FR 38843, August 7, 2019).

In subpart B of the Regulations, OFAC is expanding existing § 591.201 to specify that the prohibitions in that section include all transactions prohibited pursuant to E.O. 13692 of March 8, 2015 or any further Executive order issued pursuant to the national emergency declared in E.O. 13692. In subpart C of the Regulations, OFAC is making a technical amendment to the definition of financial, material, or technological support at § 591.304 to reflect the changes being made to § 591.201.

OFAC also is incorporating a general license into subpart E that was previously posted only on OFAC's website. This general license, which is being added as new § 591.509, authorizes the U.S. Government to engage in certain activities related to Venezuela. OFAC is adding a new interpretative provision at § 591.407 regarding settlement agreements and the enforcement of liens, judgments, arbitral awards, decrees, or other orders through execution, garnishment, or other judicial process. This interpretive provision clarifies that, notwithstanding the existence of any general license issued under 31 CFR part 591, or issued under any Executive order issued pursuant to the national emergency declared in E.O. 13692, the entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 591.201 is prohibited unless authorized pursuant to a specific license issued by OFAC. Finally, OFAC is making certain technical and conforming edits.

OFAC intends to supplement part 591 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 591

Administrative practice and procedure, Banks, Banking, Blocking of assets, Legal services, Penalties, Reporting and recordkeeping requirements, Sanctions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR chapter V as follows:

PART 591—VENEZUELA SANCTIONS REGULATIONS

■ 1. The authority citation for part 591 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 113–278, 128 Stat. 3011 (50 U.S.C. 1701 note); E.O. 13692, 80 FR 12747, March 11, 2015, 3 CFR, 2015 Comp., p. 276; E.O. 13808, 82 FR 41155, August 29, 2017, 3 CFR, 2017 Comp., p. 377; E.O. 13827, 83 FR 12469, March 21, 2018, 3 CFR, 2018 Comp., p. 794; E.O. 13835, 83 FR 24001, May 24, 2018, 3 CFR, 2018 Comp., p. 817; E.O. 13850, 83 FR 55243, November 2, 2018, 3 CFR, 2018 Comp., p. 881; E.O. 13857, 84 FR 509, January 30, 2019; E.O. 13884, 84 FR 38843, August 7, 2019.

Subpart B—Prohibitions

■ 2. Revise § 591.201 to read as follows:

§ 591.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13692 of March 8, 2015, or any further Executive orders issued pursuant to the national emergency declared in Executive Order 13692, are prohibited pursuant to this part.

Note 1 to § 591.201: The names of persons designated pursuant to Executive Order 13692, or pursuant to any further Executive orders issued pursuant to the national emergency declared in Executive Order 13692, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the identifier formulation ''[VENEZEULA–E.O. [E.O. number pursuant to which the person's property and interests in property are blocked]].'' The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 591.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 591.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List using the identifier formulation ''[BPI–VENEZEULA–E.O. [E.O. number pursuant to which the person's property and

interests in property are blocked pending investigation]].''

Note 3 to § 591.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

Subpart C—General Definitions

§ 591.304 [Amended]

■ 3. In § 591.304, remove the text '', as used in Executive Order 13692 of March 8, 2015,''.

Subpart D—Interpretations

■ 4. Add § 591.407 to read as follows:

§ 591.407 Settlement agreements and enforcement of certain orders through judicial process.

Notwithstanding the existence of any general license issued under this part, or issued under any Executive order issued pursuant to the national emergency declared in E.O. 13692, the entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 591.201, as referenced in § 591.506(c), is prohibited unless authorized pursuant to a specific license issued by OFAC pursuant to this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 591.506 [Amended]

■ 5. In § 591.506(a), (b), and (c), remove the text ''or any further Executive orders relating to the national emergency declared in Executive Order 13692 of March 8, 2015.''

§ 591.507 [Amended]

■ 6. In § 591.507(a) and the note to paragraph (a), remove the text ''or any further Executive orders relating to the national emergency declared in Executive Order 13692 of March 8, 2015.''

§ 591.508 [Amended]

■ 7. In § 591.508, remove the text ''or any further Executive orders relating to the national emergency declared in Executive Order 13692 of March 8, 2015.''

■ 8. Add § 591.509 to read as follows:

§ 591.509 Official business of the United States Government.

All transactions that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

Note 1 to § 591.509: For additional information regarding requirements relating to the entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 591.201, *see* § 591.407.

Subpart H—Procedures

■ 9. Revise § 591.802 to read as follows:

§ 591.802 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13692 of March 8, 2015, Executive Order 13808 of August 24, 2017, Executive Order 13827 of March 19, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13850 of November 1, 2018, Executive Order 13857 of January 25, 2019, Executive Order 13884 of August 5, 2019, and any further Executive orders issued pursuant to the national emergency declared in Executive Order 13692 of March 8, 2015, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Dated: November 18, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–25343 Filed 11–21–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0120]

RIN 1625–AA09

Drawbridge Operation Regulation; River Rouge, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is authorizing the Conrail Railroad Bridge, mile 1.48, across the River Rouge, to be operated remotely.

DATES: This rule is effective December 23, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*. Type USCG–2019–0120 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD 85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On March 28, 2019, we published a NPRM entitled ''Drawbridge Operation Regulation; River Rouge, Detroit, MI'' in the **Federal Register** (84 FR 11694). We received no comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

Conrail Railroad Bridge, mile 1.48, across the River Rouge is a single leaf bascule bridge. A horizontal navigation clearance of 123 feet is available. Eight feet of vertical clearance, referred to LWD is available in the closed position. The Conrail Bridge is advertised as having unlimited clearance in the open position; however, the tip of the bridge leaf does encroach slightly into the northern boundary of the navigation channel. The Federal Channel has a bend in the river immediately west of the Conrail Bridge. Because of this bend most large commercial vessels will not enter the river unless they have conformation that this bridge is opened. The Rouge River is primarily used by commercial vessels.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 180 days and no comments were received. We did not make any changes to regulatory language.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and

Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

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, it 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.

We did not change the operating schedule of the bridge we only changed the location of the drawtender.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this final rule would not have a significant economic impact on any vessel owner or operator because the operating schedule did not change.

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**, above.

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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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.

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. We provided a 180 day comment period and we did not receive any comments concerning the Unfunded Mandates Reform Act of 1995.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We 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. This rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 117.645 to read as follows:

§ 117.645 River Rouge.

The draw of the Conrail Bridge, mile 1.48, is remotely operated, is required to operate a radiotelephone, and shall open on signal.

Dated: November 18, 2019.

D.L. Cottrell,

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

[FR Doc. 2019–25347 Filed 11–21–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

[ED–2018–OESE–0079]

RIN 1810–AB49

Title I—Improving the Academic Achievement of the Disadvantaged; Education of Migratory Children

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Department modifies the requirements related to the responsibilities of State educational agency (SEA) recipients of funds under title I, part C, of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to conduct annual prospective re-interviews to confirm the eligibility of children under the Migrant Education Program (MEP). We clarify the definition of ''independent re-interviewer'' and reduce the costs and burden of prospective re-interviews conducted by independent re-interviewers while maintaining adequate quality control measures to safeguard the integrity of program eligibility determinations.

DATES: These regulations are effective December 23, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah Martinez, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E343, Washington, DC 20202. Telephone: (202) 260–1334. Email: *sarah.martinez@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 29, 2018, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (83 FR 61342). In the preamble of the NPRM, we discussed the major changes proposed in that document to the requirement for SEAs to annually validate MEP eligibility determinations through re-interviews for a randomly selected sample of children identified as migratory during a single performance reporting period. These included the following amendments to § 200.89(b):

- Clarifying for SEAs that as a quality control measure, individuals conducting annual prospective re-interviews must be individuals who did not work on the initial eligibility determination being reviewed.
- Replacing the reference to ''current-year'' eligibility determinations with the term ''current performance reporting period.'' A performance reporting period, sometimes referred to as a child count year, is a more specific time frame: September 1 through August 31, and thus clarifies any ambiguity associated with the phrase ''current-year.''
- Modifying the requirement that SEAs use independent re-interviewers for prospective re-interviews at least once every three years. Instead, the regulations require the use of independent re-interviewers at least once every three years until September 1, 2020. After September 1, 2020, SEAs are required to use independent re-interviewers for prospective re-interviews at least once during one of the first three full performance reporting periods (September 1 through August 31) following the effective date of a major statutory or regulatory change that impacts program eligibility (as determined by the Secretary), in order to test eligibility determinations made based on the changed eligibility criteria.

Except for minor editorial revisions, there are no substantive differences between the NPRM and these final regulations.

Public Comment: In response to our invitation in the NPRM, ten parties submitted comments on the proposed regulations. We group major issues according to subject. Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed regulations.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

Structure of Regulations

Comment: None.

Discussion: Upon further consideration, we have modified the structure of § 200.89(b)(2) from what was proposed in the NPRM. We think it is clearer to include all of the requirements for prospective re-interviewing within § 200.89(b)(2), rather than to add a new paragraph (b)(3). This modification does not change the substance of the requirements as proposed, but, rather, organizes the requirements in such a way that minimizes the changes to the previous structure. This modification also eliminates the need to make an additional change to § 200.89(d)(5), which currently refers to prospective re-interviewing as described in paragraph (b)(2). In addition, after publication of the NPRM, we identified an additional change that needed to be made to paragraph (b)(2)(ii), for consistency throughout § 200.89(b)(2) in referring to current performance reporting period, instead of current year.

Changes: Paragraph (b)(2)(i) describes the individuals who may conduct annual prospective re-interviews, with specific exceptions for years in which independent re-interviewers are required. Paragraph (b)(2)(i)(A) contains the requirements for independent re-interviewers before September 1, 2020, and paragraph (b)(2)(i)(B) contains the requirements for independent re-interviewers beginning September 1, 2020. Paragraph (b)(2)(ii) has been revised to reference the current performance reporting period instead of current year, consistent with this change in paragraph (b)(2).

Clarity of Regulations

Comment: One commenter suggested that the Background and Proposed Regulations sections of the preamble would be easier to understand if they were divided into more and shorter sections. The commenter indicated that the proposed regulations were clearly stated.

Discussion: We appreciate the commenter's suggestions for clarifying the preamble, and we will take these suggestions into consideration for future NPRMs, to the extent feasible.

Changes: None.

Support for the Proposed Regulations

Comment: Five commenters expressed support for the proposed changes. One of the five commenters specifically noted that the changes will result in a significant cost savings for the State's MEP.

Discussion: We appreciate the commenters' support for these regulations.

Changes: None.

Criteria for Individuals Conducting Annual Prospective Re-Interviews

Comment: One commenter asked whether individuals who provided consultation, guidance, or coaching to the recruiter who conducted the original interview would be considered to have worked on the initial eligibility determination being tested.

Discussion: We consider individuals who worked on the initial eligibility determination being tested to be those individuals who conducted the initial interview used to document the child's MEP eligibility (*e.g.,* the recruiter). The requirements for who may conduct annual prospective re-interviews do not preclude other personnel involved in

the eligibility determinations process who may have provided consultation, guidance, or coaching to the recruiter (*e.g.,* identification and recruitment coordinators, SEA-designated Certificate of Eligibility reviewers) from conducting annual prospective re-interviews. The exception to this rule is for any year in which the SEA uses independent re-interviewers to conduct the prospective re-interviews. Those independent re-interviewers may not be SEA or local operating agency personnel working to administer or operate the MEP, nor any other person who worked on the initial eligibility determination being tested.

Changes: None.

§ 200.89(b)(2)(i)(B) Prospective Re-Interviewing Following a Major Statutory or Regulatory Change to Child Eligibility

Comment: One commenter identified two sentences in the preamble and proposed regulations that might signal to readers that, if an SEA elects to conduct independent re-interviews in the third performance reporting period following a major statutory or regulatory change, the sample must be drawn from eligibility determinations made during all three performance reporting periods following the statutory or regulatory change. The commenter suggested alternative wording to clarify that the re-interview sample would be limited to those eligibility determinations made during a single performance reporting period.

Discussion: We appreciate the commenter's identification of potentially confusing regulatory language and the suggested revisions. We agree with the commenter that the requirement is intended to validate child eligibility determinations made during one of the first three full performance reporting periods following a major statutory or regulatory change that impacts eligibility. Therefore, the sample must be drawn from eligibility determinations made during a single performance reporting period, and not from determinations made during a three-year span.

Changes: We have revised § 200.89(b)(2)(i)(B) to clarify the sampling universe for independent re-interviews conducted following a major statutory or regulatory change.

Comment: One commenter identified potential confusion regarding the changes to the requirements for independent re-interviewers. The commenter suggested that it may be difficult for readers to identify what has changed from the previous requirement to use independent re-interviewers at least once every three years.

Discussion: We appreciate the commenters' identification of potentially confusing language. The revised regulations require the use of independent re-interviewers at least once every three years (performance reporting periods), only until September 1, 2020. Beginning September 1, 2020, the use of independent re-interviewers will only be required in the event that the Secretary determines there has been a significant change to eligibility requirements made by statute or regulations.

Changes: None.

Comment: One commenter indicated that the changes to the required use of independent re-interviewers may be confusing and asked whether the change would allow for a child selected in the sample to be re-interviewed in less than three years, potentially losing eligibility when eligibility criteria are changed.

The same commenter also asked whether the changes to the regulations would reduce the number of individuals considered eligible due to the reduced frequency of interviews.

Discussion: In response to the commenter's first question, a prospective re-interview considers whether the child met the eligibility criteria at the time the child's eligibility was determined (*i.e.,* at the time the Certificate of Eligibility was completed and approved). Independent re-interviews taking place after a statutory or regulatory change would be conducted for children who were determined to be eligible after that change took effect. If, as a result of the re-interview process, the SEA determines that the initial eligibility determination is incorrect (*i.e.,* the child did not meet the eligibility requirements at the time the determination was made), the SEA must stop providing MEP services to the child and remove the child from the database used to compile counts of eligible children. This corrective action, described in § 200.89(b)(2)(v), is unchanged from the previous requirements for prospective re-interviews.

In response to the commenter's second question, regarding the impact of these regulations on the number of children considered eligible for the MEP, we do not anticipate that the reduced frequency of independent re-interviews will reduce the number of children considered eligible for the program. SEAs must continue to conduct annual prospective re-interviews. The change from previous requirements concerns when an SEA must use independent re-interviewers to conduct those annual prospective re-interviews. The purpose of the annual prospective re-interview process is to help ensure that eligibility determinations are being made accurately, and to identify problems in order for the SEA to implement corrective actions in a timely manner. The SEA is not required to re-interview all currently eligible migratory children, nor is a re-interview required to maintain a child's 36 months of MEP eligibility, which begins on the child's qualifying arrival date.

Changes: None.

Delegation of Responsibility for Prospective Re-Interviews

Comment: One commenter asked several questions regarding who will be responsible for conducting prospective re-interviewing (*e.g.,* school district staff, State staff), how independent re-interviewers will be selected, and whether funding will be made available to complete the process.

Discussion: Because the MEP is a State-administered and -operated program, the SEA is responsible for all aspects of the prospective re-interview process, which includes any delegation of responsibility and the process for selecting re-interviewers. In accordance with § 200.82, the SEA may set aside MEP funds for program administrative activities that are unique to the MEP. Therefore, the SEA may choose to use part of its MEP award for re-interviews. The specific amount of funds used, and the costs involved with re-interview efforts will vary by State.

Changes: None.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We anticipate that the changes to these regulations will reduce the cost and burden associated with prospective re-interviewing, specifically the use of independent re-interviewers, for some SEAs. While we believe that SEAs will be required to conduct independent re-interviews less frequently under the amended regulations than they are currently, we cannot predict when statutory changes that directly impact child eligibility will occur. To qualify as ''independent,'' the re-interviewers must be neither SEA nor local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested. Although there is no Federal requirement for SEAs to use a specific funding mechanism to support independent re-interviewers, such as a contract, or to use out-of-State personnel who require travel costs, several SEAs have chosen to use such methods and personnel for independent re-interviews. For those SEAs that have chosen to use more costly methods for independent re-interviews, we anticipate that the reduced frequency of independent re-interviews will result in reduced cost and burden. Further, we do not believe that burden will be affected by the clarification that annual prospective re-interviews must be conducted by individuals who did not work on the initial eligibility determination being reviewed, as this is consistent with the current practices of most SEAs.

We remain committed to providing SEAs with technical assistance to support their efforts to maintain effective quality control over program eligibility determinations, which includes prospective re-interviewing. Past support has included the Technical Assistance Guide on Re-interviewing published in December 2010,[1] updated non-regulatory guidance on program eligibility published in March 2017,[2] the Identification and Recruitment Manual updated in September 2018,[3] numerous presentations on program eligibility, ongoing responses to questions from grantees regarding program eligibility and identification and recruitment practices, and Title I, Part C Consortium Incentive Grant (CIG) funding for 13 SEAs participating in a five-year cohort focused on identification and recruitment.

Elsewhere in this section, under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. Because these final regulations would affect only States and State agencies, the final regulations would not have an impact on small entities. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These regulations contain information collection requirements that are

[1] U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, *Technical Assistance Guide on Re-interviewing,* Washington, DC 20202 (*https://results-assets.s3.amazonaws.com/tools/mep-reinterviewing-guide-dec-10.pdf*).

[2] U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, *Non-Regulatory Guidance for the Title I, Part C Education of Migratory Children,* Washington, DC, 2017 (*https://results-assets.s3.amazonaws.com/legislation/MEP%20Non%20Regulatory%20Guidance%20March%202017.docx*).

[3] U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, *Migrant Education Program Identification and Recruitment Manual,* Washington, DC 20202 (*https://results.ed.gov/idr-manual*).

approved by OMB under OMB control number 1810–0662.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the Paperwork Reduction Act of 1995 (PRA) and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Section 200.89(b) contains an information collection requirement. This information collection has been approved by OMB Control Number 1810–0662. The currently approved collection includes cost and burden estimates for annual prospective re-interviewing that do not vary based on the specific personnel used for re-interviews—*i.e.,* there is no distinction made between the cost and burden hours associated with prospective re-interviews conducted by ''independent'' re-interviewers compared to other re-interviewers. Although we anticipate that ''independent'' re-interviewers will be used less frequently under the revised regulations than they are currently, SEAs are still required to conduct prospective re-interviews on an annual basis under the revised regulations, so our cost and burden estimates for this information collection are unchanged from the currently approved information collection.

We estimate a standard number of hours to conduct re-interviews—including multiple attempts to locate the family and travel to their location (2 hours/child), analyze the findings (1 hour/child), and summarize findings for annual reporting (2 hours/SEA). We estimate costs based on a standard hourly rate for staff conducting re-interviews ($10/hour) and a higher standard hourly rate for staff responsible for analysis and reporting ($25/hour).

Some SEAs have elected to use more costly resources and methods when conducting independent re-interviews, such as contracts with private organizations and out-of-State personnel. Since these are not Federal requirements, under the PRA, any increased costs associated with these resources and methods were not factored into the cost and burden estimates in the currently approved collection, and, accordingly, any decreased costs associated with these resources and methods that would result from their less frequent use under the final regulations also do not affect the cost and burden estimates. Thus, the burden estimated in the approved information collection remains unchanged.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the NPRM we identified a specific section that may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or 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. (Catalog of Federal Domestic Assistance number 84.011: Education of Migratory Children)

List of Subjects in 34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

Dated: November 19, 2019.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6576, unless otherwise noted.

Section 200.1 also issued under 20 U.S.C. 6311(b)(1).

Section 200.11 also issued under 20 U.S.C. 6311(c)(2), (g)(2)(D), (h)(1)(C)(xii), (h)(2)(C), 6312(c)(3), 9622(d)(1).

Section 200.25 also issued under 20 U.S.C. 6314.

Section 200.26 also issued under 20 U.S.C. 6314.

Section 200.29 also issued under 20 U.S.C. 1413(a)(2)(D), 6311(g)(2)(E), 6314, 6396(b)(4), 7425(c), 7703(d).

Section 200.61 also issued under 20 U.S.C. 6312(e).

Section 200.62 also issued under 20 U.S.C. 6320(a).

Section 200.63 also issued under 20 U.S.C. 6320(b).

Section 200.64 also issued under 20 U.S.C. 6320.

Section 200.65 also issued under 20 U.S.C. 6320(a)(1)(B).

Section 200.68 also issued under 20 U.S.C. 6320(a)(3)(B).

Section 200.73 also issued under 20 U.S.C. 6332(c), 6336(f)(3), 7221e(c).

Section 200.77 also issued under 20 U.S.C. 6313(c)(3)–(5), 6318(a)(3), 6320; 42 U.S.C. 11432(g)(1)(J)(ii)–(iii), 11433(b)(1).

Section 200.78 also issued under 20 U.S.C. 6313(a)(5)(B), (c), 6333(c)(2).

Section 200.79 also issued under 20 U.S.C. 6313(b)(1)(D), (c)(2)(B), 6321(d).

Section 200.81 also issued under 20 U.S.C. 6391–6399.

Section 200.83 also issued under 20 U.S.C. 6396.

Section 200.85 also issued under 20 U.S.C. 6398.

Section 200.87 also issued under 20 U.S.C. 7881(b)(1)(A).

Section 200.88 also issued under 20 U.S.C. 6321(d).

Section 200.89 also issued under 20 U.S.C. 6391–6399, 6571, 18 U.S.C. 1001.

Section 200.90 also issued under 20 U.S.C. 6432, 6454, 6472.

Section 200.100 also issued under 20 U.S.C. 6303, 6303b, 6304.

Section 200.103 also issued under 20 U.S.C. 6315(c)(1)(A)(ii), 6571(a), 8101(4).

■ 2. Section 200.89 is amended by:

■ a. Revising paragraphs (b)(2) introductory text and (b)(2)(i) and (ii).

■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 200.89 Re-interviewing; eligibility documentation; and quality control.

* * * * *

(b) * * *

(2) *Prospective re-interviewing.* As part of the system of quality controls identified in paragraph (d) of this section, an SEA that receives MEP funds must annually validate child eligibility determinations from the current performance reporting period (September 1 to August 31) through re-interviews for a randomly selected sample of children identified as migratory during the same performance reporting period. In conducting these re-interviews, an SEA must—

(i) Except as specified in paragraphs (b)(2)(i)(A) and (B) of this section, use one or more re-interviewers who may be SEA or local operating agency staff members working to administer or operate the State MEP, or any other person trained to conduct personal interviews and to understand and apply program eligibility requirements, but who did not work on the initial eligibility determinations being tested;

(A) At least once every three years until September 1, 2020, SEAs must use one or more independent re-interviewers (*i.e.,* interviewers who are neither SEA nor local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested and who are trained to conduct personal interviews and to understand and apply program eligibility requirements).

(B) Beginning September 1, 2020, an SEA must use one or more independent re-interviewers to validate child eligibility determinations made during one of the first three full performance reporting periods (September 1 through August 31) following the effective date of a major statutory or regulatory change that directly impacts child eligibility (as determined by the Secretary). Therefore, the entire sample of eligibility determinations to be tested by independent re-interviewers must be drawn from children determined to be eligible in a single performance period, based on eligibility requirements that include the major statutory or regulatory change.

(ii) Select a random sample of identified migratory children so that a sufficient number of eligibility determinations in the current performance reporting period are tested on a statewide basis or within categories associated with identified risk factors (*e.g.,* experience of recruiters, size or growth in local migratory child population, effectiveness of local quality control procedures) in order to help identify possible problems with the State's child eligibility determinations;

* * * * *

[FR Doc. 2019–25424 Filed 11–21–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–HOSP–28641; PPMWMWROW2/PMP00UP05.YP0000]

RIN 1024–AE50

Hot Springs National Park; Bicycling

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends the special regulations for Hot Springs National Park to allow bicycle use on a new trail connection between the Park and property owned by the City of Hot Springs, Arkansas. The new 0.65-mile trail will provide local residents and visitors with access in and across the Park to an extensive network of recreational trails in the City's Northwoods Urban Forest Park. The new natural surface, multi-use trail connection will be open to both pedestrian and bicycle use. National Park Service regulations require promulgation of a special regulation to designate new trails for bicycle use off park roads and outside developed areas.

DATES: This rule is effective on December 23, 2019.

FOR FURTHER INFORMATION CONTACT: Tokey Boswell, Chief of Planning and Compliance, Serving DOI Unified Regions 3, 4, and 5, 601 Riverfront Drive, Omaha, Nebraska 68102. Phone: 402 661–1534, Email: *tokey_boswell@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

People have long recognized the unique thermal waters that flow from the base of Hot Springs Mountain in Hot Springs, Arkansas. For thousands of years before it became a favored vacation destination in the 18th century, and prior to the arrival of early European explorers journeying west of the Mississippi River, Native Americans from around the region traveled to the springs and surrounding rocky mountain slopes, quarrying novaculite from the hilltops for their tools and weapons, and drinking and bathing in the mineral rich waters bubbling from the ground. The first permanent settlers to reach the Hot Springs area in 1807 were quick to realize the springs' potential as a health resort, and a bustling town grew up around the hot springs to provide services for health seekers.

To protect this unique national resource and preserve it for the use of the public, Congress set aside the springs and adjoining mountains as a Federal reservation in 1832, making it the oldest unit of the National Park System. Over the next 50 years, the area transformed from a rough frontier town to an elegant and thriving spa city. In 1921, Congress designated the reservation as Hot Springs National Park (the Park). Today, the 5,500-acre Park contains vegetation, thermal waters, cold-water springs, bathhouses and associated cultural features, nearly 26 miles of hiking and equestrian trails, and prehistoric and historic novaculite quarries. The National Park Service (NPS) preserves and manages the natural and cultural resources of the Park for more than 1.5 million annual visitors. The City of Hot Springs, with an approximate population of 37,000, is located next to the Park.

Pullman Avenue Trail Connection/Environmental Assessment

The NPS will create a new 0.65-mile natural surface trail within the Park. This new Pullman Avenue Trail Connection will extend north from a trailhead at Pullman Avenue and connect the Park with ongoing trail development on City property at the Park's northern boundary. The NPS will build the trail using sustainable trail construction techniques and designate it for both pedestrian and bicycle use. The trail will follow the natural contours of the site, winding around obstacles such as trees, large rocks, and bushes; and will feature shallower grades and wider turns to support user safety, reduce water pooling and erosion, and reduce the overall maintenance costs associated with more complex trail features. This gently-graded bare soil and bedrock trail connection will (1) better connect the Park with the adjacent City and county

trail networks for the benefit of visitors and residents of the City; (2) expand recreational trail use opportunities for hikers and bikers; and (3) enhance visitor experience and safety while protecting natural and cultural resources. The NPS will implement measures to promote safe use of the trail, such as signage and trail maintenance. This trail will serve as a formalized entry point into the Park for hikers and bicyclists where currently there is none. This will increase access to the Park, which helps the NPS meet its mandate to manage the hot springs for public health, wellness, and enjoyment.

On February 1, 2019, the NPS published the Pullman Avenue Trail Connection/Environmental Assessment (EA). The EA presents two alternatives for future trail opportunities at the Park, and identifies one of the alternatives as the NPS preferred alternative. Under the preferred alternative, the NPS will construct the Pullman Avenue Trail Connection and designate it for pedestrian and bicycle use. The EA evaluates (1) the suitability of the Pullman Avenue Trail Connection for bicycle use; and (2) life cycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and methods to protect natural and cultural resources and mitigate impacts associated with bicycle use on the trail in compliance with 36 CFR 4.30(e)(2). The EA contains a full description of the purpose and need for taking action, the alternatives considered, maps, and the environmental impacts associated with the project. After a public review period, the Acting Regional Director, Interior Regions 3, 4, and 5 (formerly the Midwest Region) signed a Finding of No Significant Impact (FONSI) on July 28, 2019 that identified the preferred alternative (Alternative B) in the EA as the selected alternative. Concurrently, the Acting Regional Director signed a Written Determination to assure that bicycle use on the new trail is consistent with the protection of the Park's natural, scenic, and aesthetic values, safety considerations and management objectives, and that it will not disturb wildlife or park resources. The EA, FONSI, and Written Determination may be viewed online at *http://parkplanning.nps.gov/Pullman Connection,* by clicking on ''Document List.''

Final Rule

This rule implements the selected alternative in the FONSI and authorizes the Superintendent to designate bicycle use on the Pullman Avenue Trail Connection. This rule does not include any existing park trails, which are not and will not be opened to bicycles by this rule.

This rule complies with the requirement in 36 CFR 4.30 that the NPS must promulgate a special regulation in order to designate a new bicycle trail that requires construction activities outside of developed areas. The rule adds a new paragraph (c) to 36 CFR 7.18—Special Regulations, Areas of the National Park System for Hot Springs National Park. After the trail is constructed, the rule requires the Superintendent to notify the public prior to designating the trail for bicycle use through one or more of the methods listed in 36 CFR 1.7, and identify the designation on maps available at Park visitor centers and on the Park website (*www.nps.gov/hosp*). Where the trail crosses or intersects other Park trails closed to bicycle use, signage will clearly indicate allowed uses and restrictions at those intersections. The rule also authorizes the superintendent to establish closures, conditions, or restrictions for bicycle use on the trail after considering public health and safety, resource protection, and other management activities and objectives, provided public notice is given under 36 CFR 1.7(a). E-bikes will be allowed on the new trail in accordance with NPS Policy Memorandum 19–01—Electric Bicycles.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on May 15, 2019 (84 FR 21738). The NPS accepted public comments on the proposed rule for 60 days via the mail, hard delivery, and the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments were accepted through July 15, 2019. A total of 15 comments were submitted and reviewed. A majority of commenters supported the proposed rule. A summary of the pertinent issues raised in the comments and NPS responses are provided below.

1. Comment: Some commenters raised general concerns about impacts to natural resources from mountain biking, including soil erosion, habitat degradation, and wildlife disturbance. One commenter suggested that the NPS construct the trail surface to support bicycles without leaving ruts or damaging natural resources.

NPS Response: The NPS is aware of the potential for erosion and other disturbances to natural conditions that could be caused by constructing the new trail and allowing hiking and biking on the trail. The EA and FONSI determined that these impacts would not be significant, and could be mitigated by using appropriate construction techniques. The NPS will work with experts in trail design to minimize impacts to natural resources.

2. *Comment:* Several commenters raised general concerns about impacts to other visitors from mountain biking, including impacts to hikers and equestrians who seek a non-motorized and quiet experience in national parks. One commenter objected to the building of the trail because although it improves access for one recreational activity, it does not maximize the visitor experience for the broader visiting public.

NPS Response: The NPS acknowledges the potential for conflict among trail user types. The EA and FONSI determined that visitor conflicts would not be significant. The new trail will not change the use patterns or opportunities for recreation on existing trails. The new trail and new uses allowed on it expand options for recreation within the Park.

3. Comment: Some commenters raised concerns about visitor safety on the trail. One commenter requested the NPS establish right-of-way rules to protect pedestrians from bicycles. Another commenter requested the NPS enforce a bicycle speed limit of five miles per hour.

NPS Response: The NPS acknowledges the potential for conflicts among visitors on the trail. Similar conflicts currently exist within the Park where equestrians and hikers share trails. The EA and FONSI determined that the potential impact to visitor safety was not significant, and could be minimized through signage and education. The NPS will mark trails with signs identifying rules about yielding to other user groups. The natural surface of the trail would make it difficult to establish lanes for different types of uses. Existing trails within the Park do not have speed limits and the terrain of the new trail will naturally limit speeds. The NPS will monitor use on the trail and the Superintendent may implement measures, including speed limits, that may become necessary to promote safe use of the trail by all user groups.

Compliance With Other Laws, Executive Orders and Department Policy Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and

Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Enabling regulations are considered deregulatory under guidance implementing E.O. 13771 (M–17–21). This rule authorizes the Superintendent to designate a trail for bicycle use at the Park, which will create an opportunity for recreation and access that would otherwise be prohibited.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled Draft Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Special Regulations to Designate a New Trail Connection for Bicycle Use at Hot Springs National Park. The document may be viewed at *http://parkplanning.nps.gov/PullmanConnection,* by clicking on the link entitled ''Document List.''

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. Nevertheless, in support of the Department of Interior and NPS commitment for government-to-government consultation, through the EA process, the NPS initiated consultation with the four Indian tribes traditionally associated with the Park.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (NEPA)

The NPS has prepared the EA to determine whether this rule will have a significant impact on the quality of the human environment under the NEPA. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because of the FONSI. A copy of the EA and FONSI can be found online at *http://parkplanning.nps.gov/PullmanConnection,* by clicking on the link entitled ''Document List.''

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects in not required.

Drafting Information

The primary authors of this regulation are Julia Larkin and Jay Calhoun, National Park Service, Division of Regulations, Jurisdiction, and Special Park Uses.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

■ 2. Amend § 7.18 by adding paragraph (c) to read as follows:

§ 7.18 Hot Springs National Park.

* * * * *

(c) *Bicycle use.* (1) The Superintendent may designate all or a portion of the following trail as open to bicycle use:

(i) Pullman Avenue Trail Connection (full length of the trail approximately 0.65 miles).

(ii) [Reserved]

(2) A map showing trails open to bicycle use will be available at park visitor centers and posted on the park website. The Superintendent will provide notice of all trails designated for bicycle use in accordance with § 1.7 of this chapter. The Superintendent may limit, restrict, or impose conditions on bicycle use, or close any trail to bicycle use, or terminate such conditions, closures, limits, or restrictions in accordance with § 4.30 of this chapter.

Rob Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–25338 Filed 11–21–19; 8:45 am]

BILLING CODE 4312–EJ–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0497; FRL–10002–13–Region 9]

Air Plan Approval; Arizona; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) and particulate matter (PM) from brick and structural clay products manufacturing, rubber sports ball manufacturing, and vegetable oil extraction processes. We are approving the rescission of local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rule rescissions will be effective on December 23, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0497. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Robert Schwartz, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3286 or by email at *schwartz.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On September 9, 2019 (84 FR 47211), the EPA proposed to approve the rescission of the following rules from the Arizona SIP.

Local agency	Rule No.	Rule title	Adopted revised	Rescission submitted
MCAQD	325	Brick and Structural Clay Products (BSCP) Manufacturing	08/10/2005	12/18/2017
MCAQD	334	Rubber Sports Ball Manufacturing	06/19/1996	12/18/2017
MCAQD	339	Vegetable Oil Extraction Processes	11/16/1992	12/18/2017

We proposed to approve the rescission of these rules because we determined that the SIP revisions, *i.e.,* rule rescissions, comply with the relevant CAA requirements, including CAA sections 110(l) and 193. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one anonymous comment.

Comment: The EPA should not approve this submission until Maricopa County and Arizona move to strike the aforementioned regulations from each applicable approved plan. These plans were approved with these regulations incorporated in them and now must be updated to account for the fact that these regulations no longer exist. The EPA should require Maricopa County and Arizona to submit new plans to replace the old approved plans so the EPA can ensure the county and state's plans still meet the necessary requirements just as the old plans did previously. The EPA must require that the plans be updated to the most recent regulations.

The EPA's Response: The SIP revision that is the subject of our September 9, 2019 proposed rule rescinds three MCAQD rules from the Arizona SIP. As noted in our September 9, 2019 proposed rule, MCAQD rescinded these three rules from the local rulebook on December 13, 2017, and ADEQ adopted the rule rescissions as a revision to the Maricopa County portion of the Arizona SIP on December 18, 2017. 84 FR 47211/column 3. The three rules are being rescinded, and not replaced, because the rules no longer apply to any sources. The sources for which the rules were originally developed and adopted have closed, and no new sources of the types covered by the rules are expected to establish operations in Maricopa County. As such, we find that no replacement of the rules is necessary to avoid interference with attainment or maintenance of any of the national ambient air quality standards in Maricopa County or any other requirement of the CAA.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rule rescissions from the Arizona SIP.

IV. Incorporation by Reference

In this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA Approved Maricopa County rules from the Arizona State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 4, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—[Amended]

■ 2. Section 52.120 is amended in paragraph (c), Table 4, by removing the entries for ''Rule 325,'' ''Rule 334'' and ''Rule 339''.

[FR Doc. 2019–25058 Filed 11–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0711; FRL–10002–46–Region 4]

Air Plan Approval; GA; Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, in letters dated September 19, 2006, with a clarification submitted on November 6, 2006, and July 31, 2018. EPA is approving miscellaneous changes to several Georgia rules. This action is being finalized pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This rule will be effective December 23, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0711. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

GA EPD submitted a SIP revision through a letter dated July 31, 2018, to EPA for review and approval into the Georgia SIP that contains changes to a number of Georgia's air quality rules in Rule 391–3–1.[1] The changes that EPA is approving into the SIP through this rulemaking revise Rule 391–3–1–.01, ''Definitions,'' [2] Rule 391–3–1–.02(2)(c), ''Incinerators,'' Rule 391–3–1–.03(6), ''Exemptions,'' and Rule 391–3–1–.03(11) ''Permits by Rule.''

See EPA's June 29, 2017 (82 FR 29418) [3] direct final rule (DFR) and accompanying June 29, 2017 (82 FR 29469) notice of proposed rulemaking (NPRM) for further detail on the changes made in the September 19, 2006, submittal and EPA's rationale for approving the revision. Comments were due on July 31, 2017. EPA received adverse comments related to other portions of the DFR, but withdrew the entire DFR on August 22, 2017 (82 FR 39671). EPA received no comments on the changes made to Rule 391–3–1–.03(6), ''Exemptions.'' Therefore, EPA is finalizing approval of those changes in this action.

See also EPA's July 10, 2019 (84 FR 32851) NPRM [4] for further detail on the changes made in the July 31, 2018, submittal and EPA's rationale for approving the revision. Comments were due on August 9, 2019, and EPA received no significant, adverse comments on the NPRM. EPA is approving these SIP revisions because they are consistent with the CAA.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia's air quality Rules 391–3–1–.01, ''Definitions,'' 391–3–1–.02(2)(c), ''Incinerators,'' and 391–3–1–.03(11) ''Permits by Rule,'' State effective July 23, 2018, and Rule 391–3–1–.03(6), ''Exemptions,'' State effective August 9, 2012,[5] which contain clarifying and administrative edits as described in the NPRMs. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[6]

III. Final Action

EPA is approving the aforementioned changes to Georgia's SIP submitted on September 19, 2006, and August 2, 2018, that make revisions to Rule 391–3–1–.01, ''Definitions,'' Rule 391–3–1–.02(2)(c), ''Incinerators,'' Rule 391–3–1–.03(6), ''Exemptions,'' and Rule 391–3–1–.03(11) ''Permit by Rule.'' EPA views these changes as being consistent with the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or

[1] EPA received the submittal on August 2, 2018. The cover letter includes other rule changes that have been or will be addressed in separate EPA actions.

[2] Consistent with Georgia's request, EPA is approving only the changes to the following definitions: 391–3–1–.01(oo), ''Manager,'' 391–3–1–.01(kkk), ''Small Business Compliance Advisory Panel,'' 391–3–1–.01(lll), ''Small business stationary source or facility,'' and 391–3–1–.01(mmm), ''Small business stationary source technical and environmental office.''

[3] EPA published a DFR and accompanying NPRM to approve changes to Rule 391–3–1–.03(6) and other changes on June 29, 2017 (82 FR 29418). EPA received adverse comments on the direct final rule—though not on the portion of the rule approving changes to Rule 391–3–1–.03(6)—and published a document withdrawing the DFR on August 22, 2017 (82 FR 39671). EPA is finalizing approval of the changes submitted to 391–3–1–.03(6) based on the June 29, 2017 (82 FR 29469) NPRM.

[4] EPA posted a memorandum of record in the Docket Identification No EPA–R04–OAR–2018–0711, to provide non-substantive clarification for two inadvertent errors in the NPRM, related to characterizing the changes as non-attainment new source review related in the summary only and incorrectly listing the state-effective date in the incorporation by reference section. The changes were correctly characterized in the remainder of the NPRM, and the submittal, with the correct effective date and changes noted, was available during the comment phase. Please see the memorandum for more information.

[5] In this action, EPA is approving changes to Rule 391–3–1–.03(6), ''Exemptions'' with a State-effective date of July 13, 2006. However, for purposes of the State-effective date included at 40 CFR 52.570(c), this change to Georgia's rule is captured and superseded by EPA's April 9, 2013 (78 FR 21065) action, which approved changes to Rule 391–3–1–.03(6) with a State-effective date of August 9, 2012. EPA is therefore retaining the later State-effective date for Rule 391–3–1–.03(6) at 40 CFR 52.570(c).

[6] *See* 62 FR 27968 (May 22, 1997).

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: November 13, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. Section 52.570(c) is amended by:

■ a. Revising the entry for ''391–3–1–.01'';

■ b. Revising the entry for ''391–3–1–.02(2)(c)'' under the heading ''Emissions Standards''; and

■ c. Revising the entries for ''391–3–1–.03(6)'' and ''391–3–1-.03(11)'' under the heading ''Permits''.

The revisions read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	7/23/2018	11/22/2019, [Insert citation of publication].	Except the first paragraph, sections (a)–(nn), (pp)–(ccc), (eee)–(jjj), (nnn)–(bbbb), (dddd)–(mmmm), (rrrr)–(ssss), approved on 12/4/2018 with a State-effective date of 7/20/2017; sections (ddd) and (cccc) - approved on 2/2/1996 with a State-effective date of 11/20/1994; (nnnn), approved on 1/5/2017 with a State-effective date of 8/14/2016; and sections (oooo)–(qqqq), which are not in the SIP.
*	*	*	*	* * *
Emissions Standards				
*	*	*	*	* * *
391–3–1–.02(2)(c).	Incinerators	7/23/2018	11/22/2019, [Insert citation of publication].	
*	*	*	*	* * *
Permits				
*	*	*	*	* * *
391–3–1–.03(6)	Exemptions	8/9/2012	4/9/2013, 78 FR 21065	

EPA-APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
391–3–1–.03(11).	Permit by Rule	7/23/2018	11/22/2019, [Insert citation of publication].	Except sections (a)–(b)(5) and (b)(7)–(b)(10), approved on 2/9/2010 with a State-effective date of 7/20/2005; section (b)(6), approved on 3/13/2000 with a State-effective date of 12/25/1997; and the phrase ''or enforceable as a practical matter'' in section .03(11)(b)11.(i), which is not in the SIP.
*	*	*	*	* * *

* * * * *

[FR Doc. 2019–25286 Filed 11–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2019–0187; FRL–9999–80–Region 3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA) section 111(d) plan submitted by the West Virginia Department of Environmental Protection (WVDEP). This plan was submitted to fulfill the requirements of the CAA and in response to EPA's promulgation of Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. The West Virginia plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective on December 23, 2019. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of December 23, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA- EPA–R03–OAR–2019–0187. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the ''For Further Information Contact'' section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2039. Mr. Gordon can also be reached via electronic mail at *gordon.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2019 (84 FR 31278), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of a Clean Air Act (CAA) section 111(d) plan submitted by the WVDEP. The formal State Plan was submitted by West Virginia on September 13, 2018.

II. Summary of State Plan and EPA Analysis

EPA has reviewed the West Virginia section 111(d) plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, EPA is determining that the submitted section 111(d) plan meets the above-cited requirements. Included within the section 111(d) plan are regulations under the West Virginia Code, specifically, West Virginia legislative rule 45 C.S.R. 23, entitled ''Control of Air Pollution from Municipal Solid Waste Landfills.'' A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

Other specific requirements of West Virginia's State Plan for MSW landfills and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving the West Virginia section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, EPA is amending 40 CFR part 62, subpart XX to reflect this action. The scope of the approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf. The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c), as well as section 4.8.b, ''Implementation of Emission Guidelines for Existing MSW Landfills,'' of West Virginia's 111(d) plan submittal.

IV. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, EPA is finalizing regulatory text that includes the incorporation by reference of West Virginia Code, specifically, West Virginia legislative rule 45 C.S.R. 23, effective June 1, 2018, entitled ''Control of Air Pollution from Municipal Solid Waste Landfills,'' which is part of the CAA section 111(d) plan applicable to existing MSW landfills in West Virginia as discussed in section II of this preamble. The regulatory provisions of 45 C.S.R. 23 establish emission standards and compliance times for the control of methane and other organic compounds from certain existing MSW landfills located in West Virginia that commenced construction, modification, or reconstruction on or before July 17, 2014. These provisions set forth requirements meeting criteria promulgated by EPA at 40 CFR part 60, subpart Cf. EPA has made, and will continue to make, 45 C.S.R. 23, as well as the entire West Virginia plan, generally available through

www.regulations.gov, Docket No. EPA–R03–OAR–2019–0187, and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the Plans are federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve section 111(d) state plan submissions that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the State Plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving West Virginia's State Plan for existing MSW landfills may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. Section 62.12125 is revised to read as follows:

§ 62.12125 Identification of plan.

(a) West Virginia 111(d) plan for municipal solid waste landfills, including delegation of Federal plan compliance schedule and reporting requirements, as submitted to the Environmental Protection Agency on May 29, 1998, and as amended on May 15, 2000, and December 20, 2000, to implement 40 CFR part 60, subpart Cc.

(b)(1) Control of landfill gas emissions from existing municipal solid waste landfills, submitted by the West Virginia Department of Environmental Protection on September 13, 2018, to implement 40 CFR part 60, subpart Cf. The Plan includes regulatory provisions cited in paragraph (c) of this section, which the EPA incorporates by reference.

(2) After December 23, 2019, the substantive requirements of the municipal solid waste landfills state plan are contained in paragraph (b) of this section and owners and operators of municipal solid waste landfills in West Virginia must comply with the requirements in paragraph (b) of this section.

(c) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the material is available electronically through *www.regulations.gov,* Docket No. EPA–R03–OAR–2019–0187, or at the EPA Region III office, 1650 Arch Street, Philadelphia, PA 19103, 215–814–5000. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the

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

(2) State of West Virginia, Secretary of State, Code of State Regulations.

(i) 45 CSR 23: West Virginia legislative rule; Title 45, Department of Environmental Protection, Air Quality; Series 23, Control of Air Pollution from Municipal Solid Waste Landfills, effective June 1, 2018.

(ii) [Reserved]

■ 3. Section 62.12126 is revised to read as follows:

§ 62.12126 Identification of sources.

(a) The plan in § 62.12125(a) applies to all existing West Virginia municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 and that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

(b) The plan in § 62.12125(b) applies to all existing municipal solid waste landfills under the jurisdiction of the West Virginia Department of Environmental Protection for which construction, reconstruction, or modification was commenced on or before July 17, 2014.

■ 4. Section 62.12127 is revised to read as follows:

§ 62.12127 Effective date.

(a) The effective date of the plan submitted on May 29, 1998, and as amended on May 15, 2000 by the West Virginia Department of Environmental Protection for municipal solid waste landfills is July 23, 2001.

(b) The effective date of the plan submitted on September 13, 2018 by the West Virginia Department of Environmental Protection for municipal solid waste landfills is December 23, 2019.

[FR Doc. 2019–25168 Filed 11–21–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

HHS Policy for the Protection of Human Research Subjects

AGENCY: Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health (OASH), Department of Health and Human Services (HHS)

ACTION: Determination of Exception: required use of single institutional review board for cooperative research.

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health (OASH), Department of Health and Human Services (HHS), excepts two categories of research from the required use of a single institutional review board (IRB) to review cooperative research under the HHS regulations for the protection of human subjects. This determination is specific to research conducted or supported by HHS.

DATES: This exception is applicable as of November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Director, Division of Policy and Assurances, Office for Human Research Protections (OHRP), Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone: 240–453–6900 or 1–866–447–4777; facsimile: 240–453–8409; email: *Irene.stith-coleman@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Regulatory History

In a final rule published on January 19, 2017, HHS and other Federal departments and agencies revised the Federal Policy for the Protection of Human Subjects (the ''Common Rule''), codified with respect to HHS at subpart A of 45 CFR part 46. The Common Rule is followed by 19 other Federal departments and agencies, either as Common Rule signatories, or as required by Executive Order or statute. The revised Common Rule, including amendments made by a January 22, 2018 interim final rule (83 FR 2885) and June 19, 2018 final rule (83 FR 28497) (also referred to as the ''2018 Requirements''), became effective on July 19, 2018.

The revised Common Rule requires that U.S. institutions engaged in cooperative research must rely on a single institutional review board (IRB) to review and approve the portion of the research conducted at domestic sites. *See* 45 CFR 46.114(b). The compliance date for the single IRB requirement is January 20, 2020.

The revised Common Rule applies to all research initially approved by an IRB on or after January 21, 2019. *See* 45 CFR 46.101(l)(5). As of January 20, 2020, the compliance date for the single IRB requirement, all cooperative research subject to the revised Common Rule will be required to use a single IRB, whether the research was initially approved by a single IRB or multiple IRBs.

Regulatory Allowance of Exceptions to Single IRB Review Requirement

The revised Common Rule provides that the agency conducting or supporting cooperative research may except the research from the single IRB mandate. To do so, the agency must both determine and document that using a single IRB is not appropriate in the particular context. *See* 45 CFR 46.114(b)(2).

Research Contexts Qualifying for Exception

With respect to HHS-conducted or supported research, OHRP has determined that the following research is excepted from the single IRB mandate: (1) Cooperative research conducted or supported by HHS agencies other than the National Institutes of Health (NIH), if an IRB approved the research before January 20, 2020, or (2) cooperative research conducted or supported by NIH if either (a) the NIH single IRB policy [1] does not apply, and the research was initially approved by an IRB before January 20, 2020, or (b) NIH excepted the research from its single IRB policy before January 20, 2020.

Cooperative Research Approved Before January 20, 2020

In May 2019, the Association of American Medical Colleges (AAMC), the Council on Governmental Relations (COGR), the Association of American Universities (AAU), and the Association of Public Land-Grant Universities (APLGU) wrote to the director of OHRP expressing concern regarding the application of the single IRB requirement to cooperative research subject to the revised Common Rule when the research was approved before January 20, 2020 (available at *https://www.aamc.org/download/497410/data/finaljointassociationlettertoohrponsingleirb.pdf*). The organizations asserted that much of the research community did not fully understand the way this requirement would operate, and informed OHRP that shifting a multisite study in midstream to a single IRB review system would be difficult and expensive. On this basis, the organizations requested that OHRP issue an exception to the single IRB requirement for cooperative research conducted under the revised Common

[1] See ''Guidance on Exceptions to the NIH Single IRB Policy'' released October 11, 2017. Available at: *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-18-003.html.*

Rule and initiated before January 20, 2020.

OHRP has considered this request. One of the objectives of the revised Common Rule's single IRB requirement is to reduce administrative costs of cooperative research. For cooperative research that already has been initially approved by multiple IRBs, the cost savings associated with reduced IRB reviews would not be achieved by making the single IRB requirement applicable to such cooperative research. Members of the regulated community report that transitioning cooperative research from multiple IRBs to a single IRB would, conversely, be costly for most institutions. Further, excepting such research from the single IRB mandate would not adversely affect the rights and welfare of the research subjects. For these reasons, OHRP has decided to except cooperative research approved before January 20, 2020, from the single IRB mandate. This general exception does not apply to NIH research; an NIH-specific exception is discussed *infra.*

OHRP has determined that a relatively small number of HHS protocols (other than NIH research) will be eligible for exception. OHRP surveyed the HHS agency, other than NIH, that OHRP expects conducts or supports the majority of such human subjects research. Based on the information provided by that agency, OHRP understands that this agency is supporting five ongoing cooperative research studies that are subject to the revised Common Rule. Approximately three to five additional cooperative research studies supported by this agency that would be subject to the revised Common Rule are expected to be initiated before January 20, 2020.

Cooperative Research Conducted or Supported by NIH

The NIH policy on the use of a single IRB for multi-site research has been in effect since January 25, 2018. It requires all U.S. sites participating in NIH-funded multi-site (*i.e.,* two or more sites) studies involving non-exempt human subjects research where the sites are following the same protocol to use a single IRB for the review. Exceptions to this policy are made where review by the proposed IRB is prohibited by a federal, tribal, or state law, regulation, or policy, or if there is a compelling justification for the exception. NIH determines whether to grant an exception after an assessment of the need. NIH's single IRB policy is largely coextensive with the Common Rule single IRB requirement, although NIH designed its policy to exclude certain categories of cooperative research (*e.g.,* training protocols for activities that do not involve human subjects research at initiation). NIH also has issued case-specific exceptions to its single IRB policy for particular research studies. However, on January 20, 2020, the revised Common Rule single IRB requirement will take effect for certain studies, regardless of whether they are subject to NIH's policy, which would require this NIH-conducted or supported research to use a single IRB review structure.

As stated above, if more than one IRB initially reviewed and approved cooperative research, imposition of the single IRB mandate in mid-stream could result in increased costs and burdens to regulated entities, rather than cost savings. Excepting such NIH-conducted or supported research from mandated single IRB review will not adversely affect the rights and welfare of the research subjects. Further, NIH has given thoughtful consideration to these research contexts, and already determined that single IRB review should not be required. NIH deliberately structured its single IRB policy such that certain research would fall outside the scope of coverage. Likewise, in issuing case-by-case exceptions to its single IRB policy, NIH concluded that single IRB review is not appropriate for those particular research contexts. Thus, OHRP has decided to except NIH cooperative research from the Common Rule single IRB mandate if either (a) the NIH single IRB policy does not apply, and the research was initially approved by an IRB before January 20, 2020, or (b) NIH excepted the research from its single IRB policy before January 20, 2020. For more information on the NIH single IRB policy, see: *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-16-094.html.*

This exception is an exercise of OHRP's enforcement discretion, as specifically permitted by 45 CFR 46.114(b)(2), that affects relatively few research protocols for a limited time. As required by 45 CFR 46.114(b)(2), OHRP determines and documents that using a single IRB is not appropriate for the described categories of research, and, for the reasons stated above, OHRP excepts this research from the single IRB mandate. The full text of the exception is listed below, and may also be found in the ''Single IRB Requirement'' tab in the ''Regulations, Policy, & Posting'' section of the OHRP website (see *https://www.hhs.gov/ohrp/regulations-and-policy/index.html*).

II. Determination of Exception: Required Use of Single Institutional Review Board for Cooperative Research

The Office for Human Research Protections (OHRP) has determined that for HHS cooperative research subject to the 2018 Requirements, and for purposes of 45 CFR 46.114(b)(2)(ii), an institution may continue to use multiple IRBs, in lieu of a single IRB, for the following research:

(1) Cooperative research conducted or supported by HHS agencies other than the National Institutes of Health (NIH), if an IRB initially approved the research before January 20, 2020.

(2) Cooperative research conducted or supported by NIH if either:

a. The NIH single IRB policy does not apply, and the research was initially approved by an IRB before January 20, 2020, or

b. NIH excepted the research from its single IRB policy before January 20, 2020.

Note that this determination is only made for purposes of section 46.114(b)(2)(ii)—namely, for determining whether certain cooperative research may be excepted from the single IRB mandate. This determination does not prevent, nor should it be viewed as discouraging, the voluntary use of a single IRB in cooperative research subject to the 2018 Requirements that would fall within the above two categories. Further, note that category (2)(b), above, applies for the duration of NIH's exception from its policy for the particular research study; categories (1) and (2)(a) apply for the duration of the research.

Dated: November 12, 2019.

Jerry Menikoff,

Director, Office for Human Research Protections.

[FR Doc. 2019–25358 Filed 11–21–19; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RTID 0648–XY016

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Bering Sea subarea and Eastern Aleutian District (BS/EAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector. This action is necessary to prevent exceeding the 2019 total allowable catch (TAC) of Atka mackerel in the BS/EAI allocated to vessels participating in the BSAI trawl limited access sector.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 19, 2019, through 2400 hrs, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 TAC of Atka mackerel, in the BS/EAI, allocated to vessels participating in the BSAI trawl limited access sector fishery was established as a directed fishing allowance of 2,050 metric tons by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the BS/EAI by vessels participating in the BSAI trawl limited access sector fishing. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishing. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel directed fishing in the BS/EAI for vessels participating in the BSAI trawl limited access sector fishing. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 18, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 19, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–25385 Filed 11–19–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XY017

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian district (EAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2019 total allowable catch (TAC) of Pacific ocean perch in the EAI allocated to vessels participating in the BSAI trawl limited access sector fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 19, 2019, through 2400 hrs, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 TAC of Pacific ocean perch, in the EAI, allocated to vessels participating in the BSAI trawl limited access sector fishery was established as a directed fishing allowance of 973 metric tons by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the EAI by vessels participating in the BSAI trawl limited access sector fishery. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Pacific ocean perch directed fishery in the EAI for vessels participating in the BSAI trawl limited access sector fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 18, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 19, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–25378 Filed 11–19–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 226
Friday, November 22, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB–2019–0055]

Request for Information Regarding the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) Rule Assessment

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Assessment and request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is conducting an assessment of the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) Rule and certain amendments in accordance with section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Bureau is requesting public comment on its plans for assessing this rule as well as certain recommendations and information that may be useful in conducting the planned assessment.

DATES: Comments must be received on or before: January 21, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2019–0055, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2019-RFI-TRID@cfpb.gov.* Include Docket No. CFPB–2019–0055 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake—TRID Assessment, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–9169.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Dustin Beckett, Economist; Pedro De Oliveira, Senior Counsel; Alan Ellison, Small Business Program Manager; Division of Research, Markets, and Regulations at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The Bureau must publish a report of the assessment not later than five years after the effective date of such rule or order. The assessment must address, among other relevant factors, the rule or order's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau. The assessment also must reflect available evidence and any data that the Bureau reasonably may collect. Before publishing a report of its assessment, the Bureau must invite public comment on recommendations for modifying, expanding, or eliminating the rule or order.[1]

[1] 12 U.S.C. 5512(d).

In November 2013, the Bureau issued a final rule titled ''Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)'' to implement sections 1098 and 1100A of the Dodd-Frank Act and, as amended, the rule took effect on October 3, 2015.[2] This document refers to this rule as the ''2013 TILA–RESPA Final Rule.'' The Bureau amended the 2013 TILA–RESPA Final Rule on two occasions before its effective date.[3] This document refers to the rule as amended when it took effect on October 3, 2015 as ''the TRID Rule'' or ''the Rule.'' As discussed below, the Bureau has determined that the TRID Rule is a significant rule and it will conduct an assessment of the Rule.

The Bureau also amended the TRID Rule after the October 3, 2015 effective date, in amendments issued in July 2017 and April 2018.[4] While such amendments are not intended to be the subject of this assessment, the Bureau may consider certain of the amendments to the extent that doing so will facilitate a more meaningful assessment of the TRID Rule and data is available. Furthermore, the Bureau acknowledges that certain information, such as data focused on current mortgage practices, may reflect these 2017 and 2018 amendments and therefore it may be difficult to isolate the effects of the TRID Rule during this assessment. This assessment will treat and discuss the challenge of distinguishing between the effects of the TRID Rule and the effects of the 2017 and 2018 amendments to it as a factor that makes it difficult to evaluate the effectiveness of the TRID Rule. In this document, the Bureau is requesting public comment on the issues identified below as part of the planned assessment.

Assessment Process

Assessments pursuant to section 1022(d) of the Dodd-Frank Act are for informational purposes only and are not part of any formal or informal rulemaking proceedings under the Administrative Procedure Act. The

[2] 78 FR 79730 (Dec. 31, 2013), 80 FR 43911 (July 24, 2015).

[3] *See* 80 FR 8767 (Feb. 19, 2015) (January 2015 Amendments); 80 FR 43911 (July 24, 2015) (July 2015 Amendments).

[4] *See* 82 FR 37656 (Aug. 11, 2017) (July 2017 Amendments); 83 FR 19159 (May 2, 2018) (April 2018 Amendments).

Bureau plans to consider relevant comments and other information received as it conducts the assessment and prepares an assessment report. The Bureau does not, however, expect that it will respond to each comment received pursuant to this document in the assessment report. Furthermore, the Bureau does not anticipate that the assessment report will include specific proposals by the Bureau to modify any rules, although the findings made in the assessment will help to inform the Bureau's general understanding of implementation costs and regulatory benefits for future rulemakings.[5] Upon completion of the assessment, the Bureau anticipates that it will issue an assessment report not later than October 3, 2020.[6]

The TILA–RESPA Integrated Disclosure Rule

For more than 30 years, Federal law required creditors and settlement agents to provide two different sets of disclosure forms to consumers applying for and consummating consumer mortgage transactions. Two different Federal agencies, the Department of Housing and Urban Development and the Board of Governors of the Federal Reserve System, developed these disclosure forms separately, under two distinct Federal statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). In 2010, under the Dodd-Frank Act sections 1032(f), 1098, and 1100A, Congress directed the Bureau to integrate TILA and RESPA mortgage loan disclosures.[7] At the same time, Congress also enacted a number of other new provisions governing disclosures related to origination and servicing of consumer mortgages, including several new disclosure requirements added to TILA. Many of these requirements were implemented by the Bureau in the TRID Rule.[8] The major provisions of the TRID Rule are summarized below.

A. Major Provisions of the TRID Rule

The TRID Rule contains six major elements.

1. Integration of Certain Mortgage Disclosures

The TRID Rule implemented the Dodd-Frank Act's directive to combine certain disclosures that consumers received under TILA and RESPA in connection with applying for and closing on a mortgage loan. Specifically, the TRID Rule's Loan Estimate form integrated RESPA's Good Faith Estimate (GFE) and TILA's initial disclosure, while the TRID Rule's Closing Disclosure form integrated RESPA's HUD–1 settlement statement and TILA's final disclosure.

2. Disclosure Redesign

The TRID Rule not only combined previous TILA and RESPA disclosures but also required that all creditors use standardized forms (*i.e.,* the Loan Estimate and the Closing Disclosure) for most transactions, so that consumers get information in the same way across multiple applications, including applications to different creditors or for different loan products, thereby making it easier for consumers to comparison shop.[9] While Regulation X already required a standard form for RESPA disclosures,[10] TILA section 105(b) explicitly provides that nothing in TILA may be construed to require a creditor to use any model form or clause prescribed by the Bureau under that section.[11] Section 1100A (5) of the Dodd-Frank Act amended TILA section 105(b) to require that the Bureau publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of TILA in conjunction with the disclosure requirements of RESPA that, taken together, may apply to a transaction that is subject to both or either provisions of law.[12] Unlike prior TILA mortgage disclosure requirements, the TRID Rule generally does not permit creditors to make changes to the standardized forms.[13] The redesigned and standardized disclosures display key loan features in a manner intended to enable consumers to locate the features quickly through headings and labels. Moreover, the TRID Rule requires that creditors use a standardized format for most consumer mortgage transactions, so that consumers are presented information in the same manner across multiple loan types and multiple creditors.[14] The TRID Rule also requires consistent formatting in the Loan Estimate and Closing Disclosure forms, to facilitate consumer understanding to aid in consumers' ability to identify discrepancies or changes that occurred in loan terms or costs after a Loan Estimate is provided.[15]

3. Disclosure Provision Responsibility

The TRID Rule changed how certain required information was disclosed. For example, the TRID Rule changed who was responsible for disclosing title insurance premiums for federally related mortgage loans.[16] Whereas TILA required the creditor to provide the Truth in Lending disclosures and RESPA required settlement agents to provide the final HUD–1 settlement statement, the TRID Rule reconciled these statutory differences by making the creditor, rather than the settlement agent, ultimately responsible for providing the integrated Closing Disclosure.[17] While creditors were coordinating with settlement agents to provide existing TILA and RESPA disclosures before the TRID Rule, by reallocating legal responsibility to creditors to provide disclosures, the TRID Rule also reallocated to them some of the risks of liability for regulatory violations.

4. Definition of an Application

The TRID Rule revised the regulatory definition of a consumer mortgage loan ''application.'' [18] Under the Rule, an ''application'' consists of six specific items: The consumer's name, income, social security number, property address, estimated property value, and the mortgage loan amount.[19]

5. Timing Requirements

The TRID Rule changed the timing of when consumers receive certain information. The TRID Rule requires that within three business days of receiving an application, as defined by

[5] The Bureau announces its rulemaking plans in semiannual updates of its rulemaking agenda, which are posted as part of the Federal government's Unified Agenda of Regulatory and Deregulatory Actions. The current Unified Agenda can be found here: *http://www.reginfo.gov/public/do/eAgendaMain.*

[6] Section 1022(d)(2) of the Dodd-Frank Act requires the Bureau to publish a report of assessment of a significant rule or order not later than five years after the rule or order's effective date.

[7] Public Law 111–203, 124 Stat. 1376, 2007, 2103–04, 2107–09 (2010).

[8] *See* 78 FR at 79750–53.

[9] 78 FR at 80079.

[10] 12 CFR 1024.8.

[11] 15 U.S.C. 1604(b).

[12] *Id.*

[13] 12 CFR 1026.37(o); 12 CFR 1026.38(t)(3).

[14] 78 FR at 80079.

[15] 78 FR at 80074.

[16] 78 FR at 79964. Previously, the simultaneous title insurance premiums would be disclosed in accordance with State law allocations. The TRID Rule mandated disclosure of the full cost of the creditor's title insurance policy when such insurance is required by the creditor and of the incremental cost of the optional owner's title insurance policy. The Bureau decided that benefit of clearly disclosing a required cost outweighed the benefit of disclosing the lender's and owner's nominal title insurance premiums since such a nominal disclosure may result in confusion about what the consumer would actually pay if the consumer did not obtain an owner's title insurance policy.

[17] 78 FR at 79731.

[18] 78 FR at 80083–84.

[19] 12 CFR 1026.2(a)(3)(ii).

the Rule, a creditor must provide a Loan Estimate to a consumer.[20] The Rule also integrated the timing requirements of the TILA final disclosure and RESPA HUD–1 by generally requiring that consumers receive Closing Disclosures no later than three business days before consummation.[21]

For applications submitted to a mortgage broker, prior to the TRID Rule, Regulation X had already permitted a mortgage broker on a creditor's behalf to provide a RESPA GFE not later than three business days after a mortgage broker received information from a consumer sufficient to complete an application. Regulation X also assigned creditors the responsibility for ascertaining whether mortgage brokers had provided GFEs to consumers.[22] However, the TILA disclosure requirements under Regulation Z did not apply to mortgage brokers.[23] The TRID Rule reconciled these differences by making creditors responsible for ensuring that mortgage brokers provide Loan Estimates to consumers within three business days of mortgage brokers receiving the six specific application items (*i.e.,* the three-business-day period begins even if creditors have not yet received the six specific application items from mortgage brokers).

The three-business-day period may facilitate consumers identifying whether and how the terms of their loans or of their transactions may have changed from what creditors or mortgage brokers previously disclosed to them.[24] To prevent closing delays, the TRID Rule allows creditors to update Closing Disclosures in certain circumstances without triggering an additional three-business-day waiting period.[25]

6. Tolerance Rules

The TRID Rule also tightened the tolerance rules that limit creditors and third party service providers charging consumers settlement costs that exceed the estimates that had been previously disclosed.[26] Absent timely revised disclosures from the creditor based on certain valid justifications such as a borrower-requested change, the TRID Rule subjects a larger category of charges to a ''zero tolerance'' prohibition on cost increases than was the case under RESPA. Specifically, the TRID Rule expands that ''zero tolerance'' category to also include fees charged by affiliates of creditors and fees charged by service providers selected by the creditor and fees for services for which the Rule does not permit consumers to shop.[27]

B. Significant Rule Determination

The Bureau has determined that the TRID Rule is a significant rule for purposes of Dodd-Frank Act section 1022(d).[28] The Bureau made this determination based on a number of factors, including the following. First, the Bureau considered the TRID Rule's effect on the features of consumer financial products and services, that is, mortgages, and the scale of operation changes caused by the Rule. The major elements of the TRID Rule described in the preceding section have caused significant changes in business operations.

Second, while generally creditors were already responsible for the GFE, by reallocating responsibility for completing and providing settlement disclosures to the consumer, the TRID Rule reallocated from settlement agents to creditors some of the risks of liability for regulatory violations. Such legal risk in turn may increase the risk to creditors that those who purchase their loans in the secondary market will demand that creditors repurchase the loans if they were not originated in compliance with the TRID Rule. To avoid or mitigate this risk, creditors may have increased the resources they devote to quality control to eliminate or reduce such defects in the disclosures they provide to consumers during origination.

Third, the TRID Rule may have also affected quality control operations because, as described above, the Rule requires that all creditors use standardized forms for most consumer transactions,[29] which can alter the risk of formatting-related regulatory violations whether that is risk increasing due to the change from model forms under TILA to prescribed, standard forms consistent with RESPA, or risk decreasing associated with providing fewer number of forms per mortgage transaction under TRID. Moreover, quality control operations are affected because the TRID Rule subjects a larger category of charges to a ''zero tolerance'' prohibition on cost increases,[30] and implemented several new disclosure requirements added to TILA by the Dodd-Frank Act, including some disclosures that, if creditors did not give accurate ones, can give consumers private rights of action against creditors.[31]

Finally, the Bureau considered the costs of the TRID Rule. In the 1022(b)(2) cost-benefit analysis that accompanied the 2013 TILA–RESPA Final Rule, the Bureau estimated that the major costs of the Rule would be one-time implementation costs, primarily labor costs, which creditors, settlement agents or third-party providers would incur to update systems and procedures to comply with the Rule. Specifically, the Bureau estimated that the Rule would impose one-time costs of approximately $1 billion on creditors and approximately $340 million on settlement agents. In its analysis, the Bureau amortized all costs over five years, using a simple straight-line amortization, resulting in an estimate of approximately $275 million per year of cost for each of the five years. The Bureau also stated that the ongoing costs of the Rule would be ''negligible'' relative to the baseline of existing regulatory requirements.[32]

Taking these factors and others into consideration, the Bureau concluded that the TRID Rule is ''significant'' for purposes of section 1022(d) of the Dodd-Frank Act. Section 1022(d) therefore requires the Bureau to conduct an assessment of the TRID Rule.

[20] 12 CFR 1026.19(e)(1).

[21] 78 FR at 80086. TILA, as implemented by Regulation Z, generally provides that, if the early TILA disclosures contain an APR that becomes inaccurate, the creditor shall furnish corrected TILA disclosures so that they are received by the consumer not later than three business days before consummation. On the other hand, RESPA and Regulation X generally require that the RESPA settlement statement be provided to the borrower at or before settlement.

[22] 78 FR at 79799–801.

[23] *Id.*

[24] 78 FR at 80086.

[25] 12 CFR 1026.19(f)(2)(i); s*ee also* 78 FR at 80086. If, between the time the Closing Disclosure is first provided and consummation, the loan's APR becomes inaccurate (over and above the specified tolerance level), the loan product changes, or a prepayment penalty is added, a corrected Closing Disclosure must be issued with an additional three-business-day period to review the transaction. All other changes to the Closing Disclosure may be made without an additional three-business-day waiting period, but a corrected Closing Disclosure must be provided at or before consummation. *See* 12 CFR 1026.19(f)(2)(ii).

[26] 78 FR at 80084. The preexisting RESPA GFE tolerance rules generally place charges into three categories: The creditor's charges for its own services, which cannot exceed the creditor's estimates unless an exception applies (''zero tolerance''); charges for settlement services provided by third parties, which cannot exceed estimated amounts by more than ten percent unless an exception applies (''ten percent tolerance''); and other charges that are not subject to any limitation on increases (''no tolerance limit'').

[27] *Id.*

[28] For more information on how the Bureau determines a rule's significance for purposes of section 1022(d) of the Dodd-Frank Act, *see* U.S. Gov't Accountability Office, Dodd-Frank Regulations: Consumer Financial Protection Bureau Needs a Systematic Process to Prioritize Consumer Risks, December 2018, *https://www.gao.gov/assets/700/696200.pdf.*

[29] 78 FR at 79993–94.

[30] *See supra* note 23.

[31] *See supra* note 8.

[32] 78 FR at 80076.

The Assessment Plan

Pursuant to section 1022(d) of the Dodd Frank Act, this assessment must address, among other relevant factors, the Rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals of the TRID Rule as stated by the Bureau.

Purposes and Objectives of Title X. Section 1021 of the Dodd-Frank Act states that the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.[33] Section 1021 also sets forth the Bureau's objectives, which are to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services:

(a) Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(b) Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(c) Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(d) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(e) Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[34]

Specific goals of the TRID Rule. Sections 1098 and 1100A of the Dodd-Frank Act set forth two goals for the TRID Rule: ''to facilitate compliance with the disclosure requirements of [TILA and RESPA]'' and ''to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' [35]

The Bureau stated a number of goals in the final TRID Rule, the preamble to the final TRID Rule, and in public statements surrounding the release of the Rule. Generally, these goals reflect the goals set forth in the Dodd-Frank Act. In promulgating the Rule, the Bureau sought to: Aid consumers in understanding their mortgage loan transactions, facilitate cost comparisons, and assist consumers in making decisions regarding their mortgage loans, including helping consumers decide whether they can afford a loan as offered.[36]

By combining the TILA and RESPA disclosures, the TRID Rule also sought to identify and reconcile inconsistencies between TILA and RESPA requirements to reduce regulatory burdens.[37]

Scope and approach. To assess the effectiveness of the TRID Rule in meeting these goals and the purposes and objectives of the Dodd-Frank Act, the Bureau's current assessment plan is informed by a cost-benefit perspective. While section 1022(d) of the Dodd-Frank Act does not expressly require cost-benefit analysis, the Bureau believes such a cost-benefit perspective could be helpful in conducting this assessment, as a consideration of benefits and costs will assist the Bureau in evaluating the effectiveness of the TRID Rule. In particular, such an approach to evaluating the TRID Rule is consistent with the fact that the Bureau issued the TRID Rule after conducting a benefit cost analysis under section 1022(b)(2) of the Dodd-Frank Act. Research questions under the Bureau's assessment plan seek to quantify the costs and benefits of the TRID Rule as implemented, to the extent that available data and resources allow, with a focus on the: (i) Effects on consumers; (ii) effects on firms, particularly creditors, settlement service providers (including title agents), mortgage brokers, consumers, and others; and (iii) effects on markets related to mortgage origination. The Bureau believes that studying this set of effects will provide the most useful information for stakeholders, including potential future policymakers.

To the extent possible, the assessment will associate Rule requirements with observed outcomes of interest. In certain cases, data may be available that will allow the Bureau to identify effects caused by the Rule. However, more generally, the presence of multiple other factors that affect the mortgage market independently of the Rule may make it challenging to identify exact measures of the effects of the Rule. In general, any association between observed outcomes and requirements of the Rule, while informative as to the effectiveness of the Rule, does not necessarily prove the Rule caused that outcome. In conducting this assessment, the Bureau will consider existing mortgage data and data that the Bureau may reasonably collect, including third-party sources (see more detail below regarding the Bureau's research activities, data sources, and comment requests).

The Bureau has been conducting, and will continue to conduct, external outreach meetings with industry (including trade associations), other government agencies, and consumer groups (including housing counselors). The primary goal of this outreach is for the Bureau to become better informed of the potential effects of the Rule on various market segments.

Other research activities in addition to those described in the remainder of this section may also be considered as appropriate, and the Bureau is interested in suggestions from stakeholders regarding additional research activities that the Bureau could conduct to better assess the Rule.

1. Assessing Consumer Effects

The approach to examining the TRID Rule's effect on consumers is shaped by four broad research questions based on the aforementioned goals of the Rule, namely, how the TRID Rule affected consumers': (i) Understanding of their mortgage disclosures; (ii) mortgage and settlement service shopping behaviors; (iii) satisfaction with their mortgage disclosures, mortgage products, and settlement services; and (iv) ability to compare and choose among mortgages and settlement services. Internal Bureau data can provide insight on many of these research questions. The TRID disclosure testing, conducted during the process that resulted in the 2015 TRID Rule, can provide causal estimates of the effect of the new disclosures on consumer understanding and on consumers' ability to compare mortgage terms across different mortgage products. In addition, analysis of the National Survey of Mortgage Originations (NSMO) can provide correlational estimates of how much consumers' knowledge, shopping, and satisfaction changed after the Rule took effect.

2. Assessing Firm Effects

The approach to assessing the TRID Rule's effect on firms is shaped by four broad research questions: (i) What were the TRID Rule's implementation costs to firms; (ii) what are the TRID Rule's ongoing costs and cost savings to firms; (iii) how did the TRID Rule affect creditor's ability to sell mortgages to others on the secondary market; and (iv) how did the TRID Rule affect the way

[33] 12 U.S.C. 5511(a)

[34] 12 U.S.C. 5511(b)(1)–(5).

[35] 12 U.S.C. 2603(a), 15 U.S.C. 1604(b).

[36] 78 FR at 79730.

[37] 78 FR at 79730.

creditors disclose information to consumers? [38]

To address these questions, the Bureau envisions conducting structured interviews and surveys with industry participants as well as using relevant data the Bureau already possesses and third-party information that may be useful. Surveying and interviewing creditors and settlement agents will help the Bureau to assess firms' implementation costs, ongoing costs, and cost savings, and allow the assessment to assess how the accuracy and timing of disclosures changed as a result of the TRID Rule and where creditors faced particular difficulties, if any, with respect to disclosures creditors provided.

The Bureau anticipates that interviewing creditors and quality control providers will provide insight on potential difficulties the TRID Rule may cause for creditors seeking to sell mortgage loans in the secondary market. In addition, the Bureau may use loan-level securities data from the Bloomberg Terminal and aggregate secondary market data from Inside Mortgage Finance (IMF) to assess the TRID Rule's effect on creditors selling loans on the secondary market.

Additional data that would be informative to the Bureau in understanding the effects of the Rule on creditors providing disclosures to consumers include a consumer-level dataset. Such a dataset would be most informative if it covered a period before and after the effective date of the TRID Rule and if it included all or most TILA and RESPA related mortgage loan disclosures that creditors provided to consumers in the process of obtaining a mortgage loan. The ideal fields contained in this dataset would include the type of disclosure, the date it was disclosed, if the creditor re-disclosed forms, the reason for the creditor's re-disclosure, and fields for information contained on the forms (*i.e.,* loan terms, loan structure, loan fees, closing costs, etc.). This dataset would help the Bureau understand how the Rule affected the information consumers received from creditors (*e.g.,* have initial disclosures become more accurate? Or timelier?).

3. Assessing the Effects on Markets Related to Mortgage Origination

Consumer demand and firm supply interact in markets. This interaction can be measured in transaction prices, transaction volume, and market structure, among other ways. The assessment's approach to market effects is thus reflected by three broad questions: (i) Did the TRID Rule affect the price of mortgages or the volume of mortgage originations in the aggregate or for particular market segments or mortgage product types (*e.g.,* construction loans, subordinate liens, manufactured housing, etc.)?, (ii) did the TRID Rule affect entry, exit, or consolidation in any parts of the mortgage market?, and (iii) did the TRID Rule's specific provisions affect market structure by changing the relationship between various providers (*e.g.,* creditors and settlement agents or creditors and their affiliates)?

To assess market effects, the assessment will rely first on data the Bureau already possess, such as Home Mortgage Disclosure Act (HMDA) data and the National Mortgage Database (NMDB) and stress testing data from the Federal Reserve (Y–14 data). These datasets may be used to identify changes in overall loan volumes, mortgage prices, price dispersions, and the availability of mortgage products. In addition, the assessment will rely on the same survey and structured interviews with industry participants that would be used to consider costs on the firm side. The industry survey will allow the Bureau to assess specific areas of the market or mortgage product types (*e.g.,* construction loans, subordinate liens, manufactured housing, etc.). Surveying creditors and settlement agents will allow us to assess changes in the relationship between creditors and settlement agents as a result of their changing roles under the TRID Rule. Surveying creditors will also allow the Bureau to assess changes in the relationships between creditors and other entities involved in mortgage transactions as a result of the TRID Rule's changed disclosure tolerances.

Comments from the 2018 Call for Evidence. The Bureau is considering in its TRID Rule assessment plan the comments received in relation to the TRID Rule during the 2018 Call for Evidence Requests for Information (RFIs).[39] The Bureau received approximately 63 comments related to the TRID Rule. Most TRID-related comments were submitted to the Adopted Regulations and New Rulemaking Authorities RFI and to the Inherited Regulations and Inherited Rulemaking Authorities RFI (Rulemaking RFIs).[40] Trade associations, consumer advocacy groups, and others from industry provided comments relevant to the TRID Rule. The assessment plan and research questions reflect the information provided to the Bureau in response to the Calls for Evidence, to the extent the comments highlighted topics concerning the TRID Rule.

Comments to the Rulemaking RFIs generally centered on topics and issues pertaining to TRID including curing violations, secondary market issues, applicability to specific products, disclosure redesign, legal liability, and title insurance. For example, with regard to secondary market issues, two trade groups expressed concerns that creditors will need to either retain in portfolio or sell on the ''scratch and dent'' secondary market at a steep discount loans containing TRID errors. Commenters indicated that this treatment of loans results in lack of liquidity or losses for the lender. Commenters also indicated that lenders can face higher risk of receiving buyback requests, which are demands from investors (most often GSEs) that lenders buy back the loan from the creditor due to documentation errors or other irregularities. As another example, a trade group commented that many creditors have been hesitant to offer more complex mortgage products, including, among others, construction loans, for fear of misinterpreting TRID requirements. Four commenters provided comments relating to the construction loan market specifically. Most of these commenters requested additional guidance or simpler disclosures for construction loans.

In March of 2018, as part of the 2018 Call for Evidence series, the Bureau also issued the Bureau Guidance and Implementation Support Request for Information (Guidance RFI), a request for comment and information to assist the Bureau in assessing the overall effectiveness and accessibility of its guidance materials and activities (including implementation support) to

[38] In assessing the effects of the Rule on firms, the Bureau will also strive to identify outdated, unnecessary, or unduly burdensome aspects of the TRID Rule. *See* 12 U.S.C. 5511(b)(3).

[39] In January 2018, the Bureau commenced a ''Call for Evidence'' to ensure that the Bureau is fulfilling its proper and appropriate functions to best protect consumers. Over a number of weeks, the Bureau published in the **Federal Register** a series of Requests for Information (RFIs) seeking comment on enforcement, supervision, rulemaking, market monitoring, complaint handling, and education activities. These RFIs provided an opportunity for the public to submit feedback and suggest ways to improve outcomes for both consumers and covered entities. Altogether, over 88,000 comments were received across 12 dockets.

[40] For comments on the Adopted Regulations and New Rulemaking Authorities Request for Information, *see https://www.regulations.gov/docket?D=CFPB-2018-0011.* For comments on the Bureau's Inherited Regulations and Inherited Rulemaking Authorities Request for Information, *see https://www.regulations.gov/docket?D=CFPB-2018-0012.*

members of the general public and regulated entities.[41] The comments the Bureau received in response to the Guidance RFI highlight the importance of guidance and compliance aids for regulatory implementation, specifically for implementing highly technical rules such as the TRID Rule.[42] They also highlighted certain aspects of guidance that were not addressed or guidance styles that did not work well such as providing more guidance on what requirements of the TRID Rule apply to different segments of the market and providing specific examples to facilitate compliance. For assessment purposes of the TRID Rule, the Bureau is interested in learning more about any aspects of the Rule that were confusing or on which more guidance was needed, whether at the time the Rule took effect or afterwards, and the effects of this confusion or lack of guidance (including any unintended effects on market liquidity in any sectors of the housing finance system).

Request for Comment

The Bureau hereby invites members of the public to submit information and other comments relevant to the issues identified above and below, information relevant to enumerating costs and benefits of the TRID Rule to inform the assessment's cost-benefit perspective, and any other information relevant to assessing the effectiveness of the TRID Rule in meeting the purposes and objectives of title X of the Dodd-Frank Act (section 1021) and the specific goals of the Bureau. In particular, the Bureau invites the public, including consumers and their advocates, housing counselors, mortgage creditors, settlement agents, and other industry participant, industry analysts, and other interested persons to submit comments on any or all of the following:

(1) Comments on the feasibility and effectiveness of the assessment plan, the objectives of the TRID Rule that the Bureau intends to use in the assessment, and the outcomes, metrics, baselines, and analytical methods for assessing the effectiveness of the Rule as described in part IV above;

(2) Data and other factual information that the Bureau may find useful in executing its assessment plan and answering related research questions, particularly research questions that may be difficult to address with the data currently available to the Bureau, as described in part IV above;

(3) Recommendations to improve the assessment plan, as well as data, other factual information, and sources of data that would be useful and available to the Bureau to execute any recommended improvements to the assessment plan;

(4) Data and other factual information about the benefits and costs of the TRID Rule for consumers, creditors, or other stakeholders;

(5) Data and other factual information about the effects of the Rule on transparency, efficiency, access, and innovation in the mortgage market;

(6) Data and other factual information about the Rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act (section 1021), which are listed in part IV above;

(7) Data and other factual information on the disclosure dataset specified in the Assessing Firm Effects section above under part IV;

(8) Comments on any aspects of the TRID Rule that were or are confusing or on which more guidance was or is needed during implementation including whether the issues have been resolved or remain unresolved; and

(9) Recommendations for modifying, expanding, or eliminating the TRID Rule.

Dated: November 13, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

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BILLING CODE 4810–AM–P

[41] For the full electronic docket, *see https://www.regulations.gov/docket?D=CFPB-2018-0013.* The Bureau received approximately 49 comments on this RFI (42 that addressed the substance of the RFI). The Bureau received a number of comments related to guidance but for the purpose of the TRID assessment, only comments received related to TRID guidance are mentioned.

[42] The Bureau continues to update and improve its regulatory guidance and implementation aids. Several materials were, and will be, published after the implementation of the TRID Rule to provide more guidance and clarity, and the Bureau continues to work to identify and address additional guidance needs.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0906; Product Identifier 2019–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain International Aero Engines, LLC (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1129G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM model turbofan engines. This proposed AD was prompted by reports of failures of certain low-pressure turbine (LPT) 3rd-stage blades. This proposed AD would require replacement of the affected LPT 3rd-stage blades. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 6, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *https://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0906; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0906; Product Identifier 2019–NE–31–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The FAA received several reports of failures of the affected LPT 3rd-stage blades. These failures appear to be caused by debris passing through the engine. The manufacturer has determined the need to replace any affected LPT 3rd-stage blade with an LPT blade made of a different material that is less susceptible to impact damage. This condition, if not addressed, could result in uncontained release of the LPT 3rd-stage blades, failure of one or more engines, loss of thrust control, and loss of the airplane.

Related Service Information

The FAA reviewed Pratt & Whitney Service Bulletin PW1000G–C–72–00–0111–00A–930A–D, Issue No. 002, dated October 18, 2019. The service information describes procedures for removal of the affected LPT 3rd-stage blades and their replacement with parts eligible for installation.

FAA's Determination

The FAA is proposing this AD because the Agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removal from service of LPT 3rd-stage blades part/number (P/N) 5387343, 5387493, 5387473, or 5387503, and their replacement with parts eligible for installation.

Costs of Compliance

The FAA estimates that this proposed AD affects 65 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace set of LPC 3rd-stage blades ..	0 work-hours × $85 per hour = $0	$750,000 per blade set	$750,000	$48,750,000

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, the FAA certifies this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines Turbofan Engines: Docket No. FAA–2019–0906; Product Identifier 2019–NE–31–AD.

(a) Comments Due Date

The FAA must receive comments by January 6, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1129G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan model engines with low-pressure turbine (LPT) 3rd-stage blades, part number

(P/N) 5387343, 5387493, 5387473 or 5387503, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by reports of failure of certain LPT 3rd-stage blades. The FAA is issuing this AD to prevent failure of these LPT 3rd-stage blades. The unsafe condition, if not addressed, could result in uncontained release of the LPT 3rd-stage blades, failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

At the next engine shop visit after the effective date of this AD, remove from service any LPT 3rd-stage blade, P/N 5387343, 5387493, 5387473, or 5387503, and replace with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, a ''part eligible for installation'' is any LPT 3rd-stage blade that does not have a P/N 5387343, 5387493, 5387473, or 5387503.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(2) For service information identified in this AD, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *https://fleetcare.pw.utc.com.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on November 15, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–25224 Filed 11–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0873; Product Identifier 2019–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A319–112, –115, and –132 airplanes; and Model A320–214, –216, –232, and –233 airplanes. This proposed AD was prompted by a report that a possible interference was identified between 1M and 2M wiring harnesses and the tapping units, and that the interference could adversely affect the lavatory smoke detection system and/or the passenger oxygen system. This proposed AD would require modifying the 1M and 2M harness routing, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 6, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0873.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0873; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0873; Product Identifier 2019–NM–164–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0227, dated September 11, 2019 (''EASA AD 2019–0227'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A319–112, –115, and –132 airplanes; and Model A320–214, –216, –232 and –233 airplanes.

This proposed AD was prompted by a report that a possible interference was identified between 1M and 2M wiring harnesses and the tapping units. It was determined that the root cause for this interference was caused by a modified optional tapping unit design, reducing the clearance between the wire harnesses and the tapping unit. Further investigation determined that interference could adversely affect the lavatory smoke detection system and/or the passenger oxygen system. The FAA is proposing this AD to address possible loss of lavatory smoke detection and/or loss of passenger oxygen system commands, which could prevent the delivery of passenger oxygen during an emergency, and possibly result in injury to airplane occupants. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0227 describes procedures for modifying the 1M and 2M harness routing. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0227 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0227 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0227 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0227 that is required for compliance with EASA AD 2019–0227 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0873 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 6 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$180	$690	$4,140

Authority for This Rulemaking

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

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0873; Product Identifier 2019–NM–164–AD.

(a) Comments Due Date

The FAA must receive comments by January 6, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A319–112, –115, and –132 airplanes; and Model A320–214, –216, –232 and –233 airplanes; certificated in any category; as identified in European Union Aviation Safety Agency (EASA) AD 2019–0227, dated September 11, 2019 (''EASA AD 2019–0227'').

(d) Subject

Air Transport Association (ATA) of America Code 92, Electric and Electronic Common Installation.

(e) Reason

This AD was prompted by a report that a possible interference was identified between 1M and 2M wiring harnesses and the tapping units, and that the interference could adversely affect the lavatory smoke detection system and/or the passenger oxygen system. The FAA is issuing this AD to address possible loss of lavatory smoke detection and/or passenger oxygen system commands, which could prevent the delivery of passenger oxygen during an emergency and possibly result in injury to airplane occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0227.

(h) Exceptions to EASA AD 2019–0227

(1) Where EASA AD 2019–0227 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0227 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC*): For any service information referenced in EASA AD 2019–0227 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0227, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0873.

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

Issued in Des Moines, Washington, on November 15, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–25205 Filed 11–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0838]

RIN 1625–AA00

Temporary Safety Zone for Explosive Dredging, Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Tongass Narrows. This action is necessary to provide for the safety of life on all navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of the Pinnacle Rock before, during, and after the scheduled operation between December 16, 2019 and January 31, 2020. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Southeast Alaska or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before December 9, 2019. The Coast Guard has shortened the comment period to ensure the public's ability to comment on this proposed rule despite our organization's delayed notification of all details surrounding this operation.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0838 using the Federal eRulemaking Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Jesse

Collins, Sector Juneau Waterways Management Division, U.S. Coast Guard; telephone 907–463–2846, email *Jesse.O.Collins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

Contract Drilling & Blasting LLC notified the Coast Guard that it will be conducting explosive dredging from 30 minutes after sunrise to one hour before sunset between December 16, 2019 and January 31, 2020. The operation will take place approximately 300 yards southwest of Berth II in Ketchikan, AK. Hazards from explosive dredging include concussive forces. The COTP has determined that potential hazards associated with the explosives to be used in this operation would be a safety concern for anyone above the water's surface within a 500-yard radius of Pinnacle Rock (located at approximately latitude 55°20′37″ N, longitude 131°38′96″ W).

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of Pinnacle Rock before, during, and after the scheduled operation December 16, 2019 and January 31, 2020. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 30 minutes after sunrise to one hour before sunset between December 16, 2019 and January 31, 2020. The safety zone would cover all navigable waters within 500 yards of Pinnacle Rock during explosive dredging operations in the Tongass Narrows located approximately 300 yards southwest of Berth II in Ketchikan, AK. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the daily 35-minute period of explosive dredging.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, time-of-day and time-of-year of the safety zone. Vessel traffic would be able to safely transit around this safety zone, south of Pennock Island, which would impact a small designated area of the Tongass Narrows for less than one hour per day when Contract Drilling & Blasting LLC would decide to detonate the explosives. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than an hour daily for 47 days that would prohibit entry within 500 yards of an explosive dredging operation. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T17–0838 to read as follows:

§ 165.T17–0838 Safety Zone for Explosive Dredging Operations; Tongass Narrows, Ketchikan, AK.

(a) *Location.* The following area is a safety zone: All navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of Pinnacle Rock (located at approximately latitude 55°20′37″ N, longitude 131°38′96″ W) before, during, and after the scheduled operation between December 16, 2019 and January 31, 2020.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Juneau.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Southeast Alaska to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 907–463–2980 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement.* This safety zone may be enforced during the period described in paragraph (f) of this section. Contract Drilling & Blasting LLC will have two safety vessels on-scene near the location described in paragraph (a) of this section.

(f) *Enforcement period.* This section may be enforced from 30 minutes after sunrise to one hour before sunset between December 16, 2019, and January 31, 2020, during explosive dredging operations by Contract Drilling & Blasting LLC.

Dated: November 18, 2019.

Stephen R. White,

Captain, U.S. Coast Guard, Captain of the Port Southeast Alaska.

[FR Doc. 2019–25350 Filed 11–21–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[Docket No. FRA–2019–0095, Notice No. 1]

RIN 2130–AC86

Training, Qualification, and Oversight for Safety-Related Railroad Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to a petition for rulemaking, FRA proposes amending its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees by delaying the regulation's implementation dates for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more.

DATES: Written comments on the proposed rule must be received by December 23, 2019. FRA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FRA–2019–0095 and RIN 2130–AC86, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments;
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590;
- *Hand Delivery:* Docket Management Facility, located in Room W12–140, West Building Ground Floor, U.S. DOT, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number (Federal Railroad Administration, FRA–2019–0095) or Regulatory Identification Number (RIN) for this rulemaking (2130–AC86). All comments received will be posted without change to *http://www.regulations.gov;* this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents, petitions for reconsideration, or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket or visit the Docket Management Facility described above.

FOR FURTHER INFORMATION CONTACT: Robert J. Castiglione, Staff Director –Human Performance Division, Federal Railroad Administration, 4100 International Plaza, Suite 450, Fort Worth, TX 76109–4820 (telephone: 817–447–2715); or Alan H. Nagler, Senior Attorney, Federal Railroad Administration, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: On November 7, 2014, FRA published a final rule (2014 Final Rule) that established minimum training standards for each category and subcategory of safety-related railroad employees and required railroad carriers, contractors, and subcontractors to submit training programs to FRA for approval. *See* 79 FR 66459. The 2014 Final Rule was required by section 401(a) of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162. The Secretary of Transportation delegated the authority to conduct this rulemaking and implement the rule to the Federal Railroad Administrator. 49 CFR 1.89(b).

On May 3, 2017, FRA delayed implementation dates in the 2014 Final Rule by one year. On April 27, 2018, FRA responded to a petition for reconsideration of that May 2017 rule by granting the American Short Line and Regional Railroad Association's (ASLRRA) request to delay the implementation dates by an additional year.

Petition for Rulemaking

On June 27 and July 12, 2019, ASLRRA and the National Railroad Construction and Maintenance Association, Inc. (NRC) (collectively Associations) filed petitions for rulemaking that were docketed in the U.S. DOT's Docket Management System as FRA–2019–0050. In the June 27, 2019 petition, ASLRRA and NRC request that FRA make several substantive changes to the part 243 regulation. In that petition, ASLRRA and NRC assert that as the regulation currently exists, it presents short line and regional railroads and contractors with ''substantial and unnecessary regulatory burdens'' and therefore additional regulatory flexibility should be afforded to short line and regional railroads and contractors. In the July 12, 2019 petition ASLRRA and NRC request that FRA initiate a rulemaking to delay the implementation dates in part 243 as applicable to Class II and III railroads and contractors for two years while FRA considers its June 27, 2019 petition. In the alternative, ASLRRA and NRC ask that FRA suspend the current implementation dates as applied to Class II and III railroads and contractors.

ASLRRA and NRC take the position that even though some of their members are not small entities by FRA's definition of fewer than 400,000 total employee work hours annually, these other entities will likely implement model programs in the same way as the small entities, rather than develop their own programs as is expected for Class I railroads. In the June 27, 2019 petition, the Associations state that Class II regional railroads are more like Class III shortlines in terms of structure, resources, and operations than Class I railroads. For example, Class II regional railroads operate trains for shorter distances and at lower speeds than Class I railroads. Class II regional railroads also were described in the June 27, 2019 petition as typically having fewer managerial layers and without their own training facilities, which would further differentiate them from Class I railroads. That petition also asserts that even large contractors are often not comparable to Class I railroads considering that a contractor's workforce is likely to be more spreadout, resulting in the contractor incurring greater implementation costs and stretched resources than a Class I railroad. Further, the June 27, 2019 petition states that FRA's regulation treats medium and large contractors the same as a Class I railroad even if the contractor's railroad-related work is only a small percentage of its work and is equal to that of a small entity contractor.

FRA's Response

In the 2014 Final Rule's Regulatory Impact Analysis (2014 RIA), FRA made certain assumptions. For instance, FRA assumed that all seven Class I freight railroads, all 26 commuter railroads, and two intercity passenger railroads would not rely on model programs. Another assumption in the 2014 RIA was that 10 other entities (5 Class II railroads, 2 Class III railroads, and 3 contractors) would not rely on model programs. Thus, FRA agrees with the premise in ASLRRA and NRC's June 27, 2019 petition that, except for the approximately 45 employers who FRA estimated would develop their own programs, it is likely that the remainder will implement model programs because doing so would minimize costs for each employer. Treating this remainder group of employers in the same manner as the small entities would therefore reflect a more consistent approach to those employers adopting model programs.

In responding to the petitions for rulemaking, FRA is proposing to delay the implementation dates in the rule for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours

annually or more. However, FRA does not agree with the request in ASLRRA and NRC's petition to propose delaying all the implementation dates for an additional two years or to suspend the rule indefinitely while FRA considers the other requests in the June 27, 2019 petition.

FRA's proposed response is specifically targeted to equalize the implementation dates for those employers most likely to adopt model programs rather than develop their own programs as FRA identified in the 2014 RIA. The reason for this specifically targeted proposed rule is that FRA is considering whether to initiate a separate rulemaking which would be limited to amending FRA's training regulation so that the regulatory text includes the latest guidance that is intended to help small entities and other users of model training programs. Thus, without any changes to the implementation dates, the targeted employers might not understand that the regulation contains more flexibility than is commonly understood or they may not feel comfortable following the guidance believing there is regulatory uncertainty.

FRA understands that many regulated entities are on schedule to meet the deadlines in the part 243 regulation. For those regulated entities that are prepared to move forward in advance of any deadline, there is certainly no prohibition against doing so and implementing a compliant training program earlier than required should benefit the overall safety of those employers' operations.

In consideration of the foregoing, FRA is proposing to reclassify those employers that FRA anticipates will likely adopt a model program so that they have the same implementation deadlines as the small entities. For purposes of this proposed rule, the Class II and III railroads and the contractors who would get relief provide training and operations in a manner more similar to that of a small entity than a Class I railroad thereby justifying delays in the implementation schedule. The proposed implementation date delays will not impact the Class I railroads, and those commuter and intercity passenger railroads with 400,000 total employee work hours annually or more.

Section-by-Section Analysis

Subpart B—Program Components and Approval Process

Section 243.101 Employer Program Required

FRA proposes to amend the implementation date in § 243.101(a)(1) so that it is limited to Class I railroads, and those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. Also, FRA proposes to amend this section so that all employers not covered by § 243.101(a)(1) will now be covered by § 243.101(a)(2), unless the employer is commencing operations after January 1, 2020 and would be covered by § 243.101(b). In other words, § 243.101(a)(1) would specifically except all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more from complying with the January 1, 2020 training program submission implementation deadline. Instead, under proposed § 243.101(a)(2), all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, will be required to comply with a training program submission deadline of May 1, 2021. Thus, those entities that benefit from the proposed rule will have an additional 16 months to submit a training program for their safety-related railroad employees.

Subpart C—Program Implementation and Oversight Requirements

Section 243.201 Employee Qualification Requirements

FRA proposes to amend the implementation dates in paragraphs (a)(1) and (e)(1) of this section so that they are limited to Class I railroads, and those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. Also, FRA proposes to amend this section so that all employers not covered by § 243.201 (a)(1) and (e)(1) will now be covered by § 243.201(a)(2) and (e)(2). Please note that an employer commencing operations after January 1, 2020 would still be covered by § 243.201(b) and would be expected to implement a refresher training program upon commencing operations.

Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a non-significant regulatory action within the meaning of Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). The proposed rule also has followed the guidance of Executive Order 13771, which 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.'' This rulemaking is a deregulatory action under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' *See* 82 FR 9339, Jan. 30, 2017.

As explained in the Supplementary Information section, FRA published the 2014 Final Rule to fulfill a statutory mandate. On May 3, 2017, FRA delayed implementation dates in the 2014 Final Rule by one year. On April 27, 2018, FRA responded to a petition for reconsideration of that May 2017 rule by granting the ASLRRA's request to delay the implementation dates an additional year. FRA is issuing a proposed rulemaking targeted to equalize the implementation dates for Class II railroads, Class III railroads, and contractors regardless of their annual employee work hours with the exception of those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. With adoption of this proposed rule, the targeted employers will have until May 1, 2021 to submit a training program to FRA instead of the previous January 1, 2020 deadline which was applicable to railroads (regardless of whether they were Class II or III railroads), and contractors with 400,000 annual employee work hours or more.

FRA believes that the proposed rule will reduce the regulatory burden on the railroad industry by delaying the implementation dates. This proposed rule will extend the implementation deadlines for some regulated entities by a total of 16 months from the 2018 request. This proposed rule would be beneficial for regulated entities by adding time for some railroads and contractors to comply.

The costs arising from the training rule in 49 CFR part 243 over the 20-year period considered include: The costs of revising training programs to include ''hands-on'' training where appropriate, as well as the costs of creating entirely new training programs for any employer that does not have one already; the costs of customizing model training programs for those employers that choose to adopt a model program rather than create a new program; the costs of annual data review and analysis required in order to improve training programs; the costs of revising programs in later years; the costs of additional time new employees may have to spend in initial training; the costs of additional periodic oversight tests and inspections; the costs of additional qualification tests; and the

costs of additional time all safety-related railroad employees may have to spend in refresher training. FRA is proposing to reclassify those employers that FRA anticipated in the 2014 RIA would likely adopt a model program so that the regulation would reflect a more consistent approach to those employers adopting model programs. Until the petitions for rulemaking were filed, FRA did not appreciate that the Class II and III railroads and the contractors who were not identified as small entities could be expected to encounter the same types of obstacles to training program implementation as that of a small entity. The proposed implementation date delay will not impact Class I railroads, and those commuter and intercity passenger railroads with 400,000 total employee work hours annually or more. However, this rule proposes to provide all contractors, and those Class II and III railroads that are not currently identified as small entities in part 243 or commuter or intercity passenger railroads with 400,000 total employee work hours annually or more, with an additional 16 months to submit a training program for their safety-related railroad employees. FRA is also proposing that those same employers get an additional 16 months to designate each of their existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. Finally, FRA proposes that those same employers get one additional year to complete refresher training for each of their safety-related railroad employees. With this proposed rule, the training program submission date for Class II railroads, Class III railroads, and contractors regardless of their annual employee work hours, with the exception of those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, would be delayed from January 1, 2020, to a new implementation date of May 1, 2021; the designation of employee date would be delayed from September 1, 2020, to a new implementation date of January 1, 2022; and, the deadline for the first refresher training cycle would be delayed from December 31, 2024, to a new deadline of December 31, 2025.

FRA believes that additional hands-on and refresher training will reduce the frequency and severity of some future accidents and incidents. Expected safety benefits were calculated using full accident costs, which are based on past accident history, the values of preventing future fatalities and injuries sustained, and the cost of property damage. Full accident costs are determined by the number of fatalities and injuries multiplied by their respective prevention valuations, and the cost of property damage. By delaying the implementation dates, all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more will realize a cost savings. All contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more will not incur costs during the first 16 months of this analysis. Also, costs incurred in future years will be discounted an extra 16 months, which will decrease the present value burden. The present value of costs would be less than if the original implementation dates were maintained. FRA has estimated this cost savings to be approximately $3.0 million, at a 7% discount rate, for impacted railroads and contractors that will experience relief as a result of this proposed rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* and Executive Order 13272, 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''linehaul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than 15 million dollars. See ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR part 209. The $20-million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

The requirements of this proposed rule would apply to employers of safety-related railroad employees that FRA previously determined were not small entities. This proposed rule would have no direct impact on small units of government, businesses, or other organizations. State rail agencies are not required to participate in this program. State owned railroads would receive a positive impact by having additional time to comply. Therefore, the proposed rule would not impact any small entities. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this proposed rule would not have a significant impact on a substantial number of small entities. FRA requests comments on all aspects of this certification.

Paperwork Reduction Act

There are no new collection of information requirements contained in this proposed rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the recordkeeping and reporting requirements already contained in the 2014 Final Rule have been approved by OMB. The OMB approval number is OMB No. 2130–0597. Thus, FRA is not required to seek additional OMB approval under the Paperwork Reduction Act.

Federalism Implications

This proposed rule will not have a substantial 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. Thus in accordance with Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This proposed rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Environmental Impact

FRA has evaluated this proposed rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action, requiring the preparation of an environmental impact statement or environmental assessment, because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this proposed rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in such an expenditure, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). FRA evaluated this proposed rule in accordance with Executive Order 13211, and determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. 82 FR 16093 (Mar. 31, 2017). FRA determined this proposed rule will not burden the development or use of domestically produced energy resources.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 243 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES [AMENDED]

■ 1. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart B—Program Components and Approval Process

■ 2. Revise § 243.101 paragraph (a) to read as follows:

§ 243.101 Employer program required.

(a)(1) Effective January 1, 2020, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more, shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(2) Effective May 1, 2021, each employer conducting operations subject to this part not covered by paragraph (a)(1) of this section shall submit, adopt, and comply with a training program for its safety-related railroad employees.

* * * * *

Subpart C—Program Implementation and Oversight Requirements

■ 3. Revise § 243.201 paragraphs (a)(1) and (2), and (e)(1) and (2) to read as follows:

§ 243.201 Employee qualification requirements.

(a) * * *

(1) By no later than September 1, 2020, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more in operation as of January 1, 2020, shall declare the designation of each of its

existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(2) By no later than January 1, 2022, each employer conducting operations subject to this part not covered by paragraph (a)(1) of this section in operation as of January 1, 2021, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

* * * * *

(e) * * *

(1) Beginning January 1, 2022, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more, shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2024. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(2) Beginning May 1, 2023, each employer conducting operations subject to this part not covered by paragraph (e)(1) of this section shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2025. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

Issued in Washington, DC.

Ronald L. Batory,

Administrator, Federal Railroad Administration.

[FR Doc. 2019–24822 Filed 11–21–19; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 84, No. 226
Friday, November 22, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Grant Exclusive License

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to Hunter Farms dba Whispering Green Energy of 684 County Road #2 Hillier, Ontario K0K 2J0, Canada, an exclusive license to U.S. Patent Application No. 15/882,078, ''LOW TEMPERATURE AND EFFICIENT FRACTIONATION OF LIGNOCELLULOSIC BIOMASS USING RECYCLABLE ORGANIC SOLID ACIDS'', filed on January 29, 2018.

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

ADDRESSES: Send comments to: Thomas Moreland, Technology Transfer Coordinator, USDA Forest Service, 443–677–6858, *twmoreland@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Thomas Moreland, Technology Transfer Coordinator, USDA Forest Service, 443–677–6858, *twmoreland@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Hunter Farms dba Whispering Green Energy of 684 County Road #2 Hillier, Ontario K0K 2J0, Canada has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the USDA Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator, ARS.

[FR Doc. 2019–25372 Filed 11–21–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Cotton Ginning Survey. Revision to burden hours may be needed due to possible changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by January 21, 2020 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0220, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202)720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202)690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cotton Ginning Survey.

OMB Control Number: 0535–0220.

Expiration Date of Approval: March 31, 2020.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The Cotton Ginning surveys provide cotton ginning statistics from August through May by State. Data collected consists of bales of cotton ginned to date, cotton to be ginned, lint cotton produced, cottonseed produced, cottonseed sold to oil mills, cottonseed used for other uses, number of gins by type, and bales produced by county of origin. The forecasting procedure involves calculating a weighted percent ginned to date as well as an allowance for cross-state movement and bale weight adjustments. Production by State allows adjustments for year-end State and county estimates. Total pounds of lint cotton produced, is used to derive an actual bale weight which increases the precision of production estimates.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C.3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical

Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be between 10 to 15 minutes per respondent per survey.

Respondents: Active Cotton Gins.

Estimated Number of Respondents: 600.

Estimated Total Annual Burden on Respondents: 1,200 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 7, 2019.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2019–25415 Filed 11–21–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Licensing Responsibilities and Enforcement

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before January 21, 2020.

ADDRESSES: Direct all written comments to Mark Crace, IC Liaison, Bureau of Industry and Security, 1401 Constitution Avenue, Suite 2099B, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information involves ten miscellaneous activities described in Sections 744.15(b), Part 744 Supplement No. 7, paragraph (d), § 748.4 and Part 758 of the EAR that are associated with the export of items controlled by the Department of Commerce. Most of these activities do not involve submission of documents to the Bureau of Industry and Security (BIS) but instead involve exchange of documents among parties in the export transaction to ensure that each party understands its obligations under U.S. law. Others involve writing certain export control statements on shipping documents or reporting unforeseen changes in shipping and disposition of exported commodities. These activities are needed by the Office of Export Enforcement and the U.S. Customs Service to document export transactions, enforce the EAR and protect the National Security of the United States

II. Method of Collection

This information can be transmitted electronically, orally, in paper format, or by other conventional means as requested.

III. Data

OMB Control Number: 0694–0122.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,224,151.

Estimated Time per Response: 5 seconds to 2 hours per response.

Estimated Total Annual Burden Hours: 97,456 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Section 758 of the Export Administration Regulations, section 1768 of the Export Control Reform Act 2018.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–25363 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Application for NATO International Bidding

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before January 21, 2020.

ADDRESSES: Direct all written comments to Mark Crace, IC Liaison, Bureau of Industry and Security, 1401 Constitution Avenue, Suite 2099B, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). All Personally Identifiable Information (for example, name and address) voluntarily

submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

SUPPLEMENTARY INFORMATION:

I. Abstract

All U.S. firms desiring to participate in the NATO International Competitive Bidding (ICB) process under the NATO Security Investment Program (NSIP) must be certified as technically, financially and professionally competent. The U.S. Department of Commerce provides the Declaration of Eligibility that certifies these firms. Any such firm seeking certification is required to submit a completed Form BIS–4023P along with a current annual financial report and a resume of past projects in order to become certified and placed on the Consolidated List of Eligible Bidders.

II. Method of Collection

Applications are submitted to the U.S. Department of Commerce's Office of Strategic Industries and Economic Security, Defense Programs Division where the contents are reviewed for completeness and accuracy by the NATO Program Specialist. The application is a one-time effort. The information provided on the BIS–4023P form is used to certify the U.S. firm and place it in the bidders list database.

BIS has developed a form-fillable .PDF version of the BIS–4023P to enable electronic submission of this form. The form is available at the following URL: *http://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/nato-related-business-opportunities.* Completed applications and supporting documentation may be submitted electronically via email.

III. Data

OMB Control Number: 0694–0128.

Form Number(s): BIS–4023P.

Type of Review: Regular submission.

Affected Public: Business or other For Profit.

Estimated Number of Respondents: 50.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: There is no cost to the respondent other than time to answer the information request.

Respondent's Obligation: Voluntary.

Legal Authority: Section 401 (10) of Executive order 12656 (November 18, 1988), 15 U.S.C. Section 1512.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–25361 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–824]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) continues to determine that Noksel Celik Boru Sanayi A.S. (Noksel), a producer and/or exporter of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey), sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) September 1, 2017 through August 31, 2018. We also determine that Cinar Boru Profil San Ve Tic A.S. (Cinar Boru) had no shipments of HWR pipes and tubes during the POR. Based on an analysis of the comments received, we have not made changes to the weighted-average dumping margins listed in the ''Final Results of Review'' section below.

DATES: Applicable November 22, 2019.

FOR FURTHER INFORMATION CONTACT: William Horn or Alexis Cherry, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4868 or (202) 482–0607, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on July 19, 2019.[1] For events subsequent to the *Preliminary Results, see* Commerce's Issues and Decision Memorandum.[2]

Scope of the Order

The products covered by the order are HWR pipes and tubes from Turkey. A full description of the scope of the order is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

The issues raised by the petitioners in their case brief are addressed in the Issues and Decision Memorandum.[3] A list of topics included in the Issues and Decision Memorandum is attached as an Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 34863 (July 19, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] The petitioners were the only party which filed a case brief in this administrative review.

Decision Memorandum are identical in content.

Application of Adverse Facts Available

For these final results, we continue to find that Noksel withheld necessary information requested by Commerce, failed to provide information to Commerce by the required deadline, and significantly impeded the proceeding. Further, we continue to find that because Noksel received Commerce's questionnaire but did not respond to our request for information, Noksel failed to cooperate to the best of its ability. Therefore, we continue to find that the application of adverse facts available, pursuant to sections 776(a) and (b) of the Act, is warranted with respect to Noksel.

Final Determination of No Shipments

In the *Preliminary Results,* we found that Cinar Boru [4] made no shipments of the subject merchandise to the United States during the POR. Also, in the *Preliminary Results,* we stated that consistent with our practice, it was not appropriate to rescind the review with respect to Cinar Boru, but rather to complete the review and issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results of this review.[5]

After issuing the *Preliminary Results,* we received no information that contradicted our preliminary results. Therefore, for these final results, we continue to find that Cinar Boru made no shipments of subject merchandise during the POR. *See* the Issues and Decision Memorandum for further discussion.

Rate for AFA and Non-Selected Companies

For these final results, we continue to assign to Noksel as AFA the highest rate on the record of this proceeding. We will also apply to the non-selected companies the dumping margin that we are applying to Noksel in this administrative review.[6] As discussed in the *Preliminary Results,* Commerce's practice in calculating a rate for non-selected companies has been to look to section 735(c)(5) of the Act for guidance. In particular, section 735(c)(5)(B) of the Act provides that where all rates are zero, *de minimis,* or based entirely on facts available, Commerce may use ''any reasonable method'' for assigning the rate to the non-selected companies. In this review, the rate assigned to Noksel is the only rate determined for an individual respondent. Thus, in accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle Corp.* v. *United States,*[7] we continue to find that a reasonable method for determining the rate for the non-selected companies is to use the dumping margin applied to Noksel in this review.[8]

Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margins exist for the POR:

Exporter/producer	Weighted-average dumping margin (percent)
Agir Haddecilik A.S	35.66
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul	35.66
Noksel Celik Boru Sanayi A.S	35.66
Ozdemir Boru Profil San. ve Tic. Ltd. Sti[9]	35.66

Assessment Rates

Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.[10] Pursuant to section 776(a) and (b) of the Act, because Commerce has applied AFA to Noksel, we will instruct CBP to apply the rate of 35.66 percent to Noksel's suspended entries of the subject merchandise for the POR. For the companies that were not selected for individual examination, we used as the assessment rate the cash deposit rate assigned to Noksel. Because we determined that Cinar Boru had no shipments of the subject merchandise, for entries of subject merchandise during the POR produced, but not exported by, Cinar Boru, we will instruct CBP to liquidate any entries at the all-others rate (*i.e.,* 17.73 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[11]

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for each specific company listed above will be the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 17.73 percent *ad valorem,* the all-others rate established in the LTFV investigation.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

[4] Commerce initiated a review of Cinar Boru Profil San Ve Tic Stl. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018). However, the company has identified itself as Cinar Boru Profil San Ve Tic A.S. in its letters to Commerce. *See, e.g.,* Cinar Boru's Letter, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (A–489–824),'' dated March 14, 2019 (Cinar Boru's No Shipment Letter). Commerce is hereby using Cinar Boru's spelling of its name.

[5] *See Preliminary Results,* 84 FR at 34863–64; *see also, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[6] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 17527 (April 20, 2018), and accompanying Issues and Decision Memorandum at Comment 4.

[7] *See Ablemarle Corp.* v. *United States, 821 F.3d 1345 (Fed. Cir. 2016).*

[8] *See* PDM at 7–8.

[9] This rate only applies to subject merchandise that was not both exported and produced by Ozdemir Boru Profil San. ve Tic. Ltd. Sti.

[10] *See* 19 CFR 351.212(b).

[11] For a full discussion of this practice, see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

[12] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 81 FR 47355 (July 21, 2016).

antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: November 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary, for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2019–25376 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Determination of No Shipments of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) determines that no companies under review qualify for a separate rate, and that these companies are therefore considered part of the Vietnam-wide entity. The period of review (POR) is February 1, 2018 through January 31, 2019.

DATES: Applicable November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2019, Commerce published in the **Federal Register** the *Preliminary Results* [1] of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam). This review covers 73 companies preliminarily determined to be part of the Vietnam-wide entity and three companies preliminarily determined to have no reviewable transactions during the POR. We invited parties to comment on the *Preliminary Results*.[2] No interested party submitted case briefs in the instant review. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.[3]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce found that (1) BIM Foods Joint Stock Company, (2) Camranh Seafoods Co., Ltd, and (3) Vinh Hoan Corp.[4] did not have any reviewable transactions during the POR. As we have not received any information to contradict this preliminary finding, Commerce determines that these three companies did not have any reviewable entries of subject merchandise during the POR, and will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification, for these final results.

Final Results of the Review

As no parties submitted comments regarding the *Preliminary Results,* Commerce made no changes to its determinations for the final results of this review. For these final results, Commerce continues to find that the four selected mandatory respondents [5] did not respond to the questionnaire; thus, they have not established eligibility for a separate rate. Further, Commerce continues to find that 73 companies under review, including the four mandatory respondents, are part of the Vietnam-wide entity, and are thus subject to the Vietnam-wide entity rate of 25.76 percent (*see* Appendix II).

Disclosure and Public Comment

Normally, Commerce will disclose the calculations used in its analysis to parties in this review within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, here Commerce only applied the Vietnam-wide rate, established in the underlying investigation, to the 73 companies identified in Appendix II.[6] Thus, there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

[1] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Preliminary Determination of No Shipments, of Antidumping Duty Administrative Review; 2018–2019,* 84 FR 48109 (September 12, 2019) (*Preliminary Results*).

[2] *Id.*

[3] For a complete description of the scope of the order, *see* Appendix I.

[4] *See Preliminary Results,* 84 FR at 48110.

[5] The four companies selected for individual examination are: (1) Cadovimex Seafood Import-Export & Processing Joint-Stock Company; (2) Phuong Nam Co., Ltd.; (3) New Generation Seafood Joint Stock Company; and (4) Viet Asia Foods Company Limited.

[6] *See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005, 71008 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comments 6 and 10C (''we have applied a rate of 25.76 percent, a rate calculated in the initiation stage of the investigation from information provided in the petition . . .'').

With regard to the companies identified in Appendix II as part of the Vietnam-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 25.76 percent to all entries of subject merchandise during the POR which were exported by those companies. Additionally, consistent with Commerce's assessment practice in non-market economy (NME) cases, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the existing rate for the Vietnam-wide entity of 25.76 percent; (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters, not listed in this notice, that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; and (3) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[7] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: November 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[8] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.[9]

Appendix II

Companies Subject to Review Determined To Be Part of the Vietnam-Wide Entity

1. A & CDN Foods Co., Ltd.
2. Amanda Seafood Co., Ltd.
3. An Huy B.T Co. Ltd.
4. Anh Koa Seafood
5. Anh Minh Quan Joint Stock Company
6. Asia Food Stuffs Import Export Co., Ltd.
7. B.O.P Company Limited
8. B.O.P. Limited Co.

[8] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[9] On April 26, 2011, Commerce amended the order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (ITC) determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011); *see also Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011.

9. Binh Dong Fisheries Joint Stock Company
10. Binh Thuan Import–Export Joint Stock Company (THAIMEX)
11. Ca Mau Agricultural Products and Foodstuff Imp-Exp Joint Stock Company (Agrimexco Camau)
12. Cadovimex Seafood Import-Export and Processing Joint Stock Company (''Cadovimex'')
Cadovimex Seafood Import-Export and Processing Joint Stock Company (Cadovimex)
Cai Doi Vam Seafood Import-Export Co. (''CADOVIMEX'')
13. Cholimex Food Joint Stock Company
14. CJ Cau Tre Foods Joint Stock Company
15. CJ Freshway (FIDES Food System Co., Ltd.)
16. Coastal Fisheries Development Corporation (''COFIDEC'')
17. Cty Tnhh Anh Khoa Seafood
18. Danang Seaproducts Import-Export Corporation (SEADANANG)
19. Dong Do Profo., Ltd.
20. Dong Hai Seafood Limited Company
21. Dong Phuong Seafood Co., Ltd.
22. Duc Cuong Seafood Trading Co., Ltd.
23. Fine Foods Company (FFC)
Fine Foods Company (FFC) (Ca Mau Foods & Fishery Export Joint Stock Company)
24. Gallant Dachan Seafood Co., Ltd.
25. Gallant Ocean (Vietnam) Co., Ltd.
Gallant Ocean Viet Nam Co., Ltd.
26. Green Farms Joint Stock Company
Green Farms Seafood Joint Stock Company
Green Farms Seafoods Joint Stock Company
27. Ha Cat A International Co., Ltd.
28. Hanh An Trading Service Co., Ltd.
29. Hanoi Seaproducts Import & Export Joint Stock Corporation (Seaprodex Hanoi)
30. Hoa Trung Seafood Corporation (HSC)
31. Hong Ngoc Seafood Co., Ltd.
32. Hung Bang Co., Ltd.
33. HungHau Agricultural Joint Stock Company
34. Huynh Huong Seafood Processing
35. Huynh Huong Trading and Import-Export Joint Stock Company
36. JK Fish Co., Ltd.
37. Kaiyo Seafood Joint Stock Company
38. Khai Minh Trading Investment Corporation
39. Khanh Hoa Seafoods Exporting Company (KHASPEXCO)
40. Lam Son Import-Export Foodstuff Company Limited (Lamson Fimexco)
Lam Son Import-Export Foodstuffs Corporation
41. Long Toan Frozen Aquatic Products Joint Stock Company
42. Minh Bach Seafood Company (Minh Binh Seafood Foods Co., Ltd.)
Minh Bach Seafood Company Limited
43. Minh Cuong Seafood Import Export Processing Joint Stock Company (''MC Seafood'')
Minh Cuong Seafood Import-Export Processing (''MC Seafood'')
44. Minh Phu Seafood Corporation
45. Namcan Seaproducts Import Export Joint Stock Company (Seanamico)
46. New Generation Seafood Joint Stock Company
New Generation Seafood Joint Stock Company (''New Generation'')
47. New Wind Seafood Co., Ltd.
48. Nha Trang Fisheries Joint Stock Company
Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco'')
49. Nhat Duc Co., Ltd.
50. Nigico Co., Ltd.
51. Phu Cuong Jostoco Corp.
Phu Cuong Jostoco Seafood Corporation
52. Phu Minh Hung Seafood Joint Stock Company
53. Phuong Nam Foodstuff Corp.
Phuong Nam Foodstuff Corp., Ltd.
54. Quoc Ai Seafood Processing Import Export Co., Ltd.
55. Quoc Toan Seafood Processing Factory (Quoc Toan PTE)
56. Quy Nhon Frozen Seafoods Joint Stock Company
57. Saigon Aquatic Product Trading Joint Stock Company (APT Co.)
58. Saigon Food Joint Stock Company
59. Seafood Joint Stock Company No.4
60. South Ha Tinh Seaproducts Import-Export Joint Stock Company
61. Special Aquatic Products Joint Stock Company (SEASPIMEX VIETNAM)
62. T & P Seafood Company Limited
63. Tai Nguyen Seafood Co., Ltd.
64. Tan Phong Phu Seafood Co., Ltd. (''TPP Co., Ltd.'')
Tan Phong Phu Seafood Co., Ltd. (TPP Co. Ltd.)
65. Tan Thanh Loi Frozen Food Co., Ltd.
66. Thien Phu Export Seafood Processing Company Limited
67. Thinh Hung Co., Ltd.
68. Trang Corporation (Vietnam)
69. Trang Khan Seafood Co., Ltd.
70. Viet Asia Foods Co., Ltd.
71. Viet Nam Seaproducts—Joint Stock Company
72. Viet Phu Foods and Fish Corp.
73. Viet Shrimp Export Processing Joint Stock Company

[FR Doc. 2019–25374 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–888]

Certain Carbon and Alloy Steel Cut-To-Length Plate From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Countervailing Duty Determination, and Notice of Amended Final Countervailing Duty Determination

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

SUMMARY: On November 8, 2019, the United States Court of International Trade (Court) sustained the final remand results pertaining to the countervailing duty (CVD) investigation on certain carbon and alloy steel cut-to-length (CTL) plate from the Republic of Korea (Korea) covering the period January 1, 2015 through December 31, 2015. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final determination of the CVD investigation and that Commerce is amending the final determination with respect to the net countervailable subsidy rates assigned to POSCO and all other producers/exporters not individually investigated.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2017, Commerce published its *Final Determination*.[1] In the *Final Determination,* Commerce calculated a net countervailable subsidy rate of 4.31 percent for POSCO.[2]

On December 6, 2018, the Court remanded various aspects of the *Final Determination* to Commerce.[3] In its *Remand Order,* the Court upheld Commerce's application of adverse facts available (AFA) to POSCO's cross-owned company POSCO M-Tech's unreported additional government subsidies, but remanded to the agency for reconsideration its determination that the assistance received by POSCO M-Tech was countervailable.[4] Specifically, the Court held that Commerce did not sufficiently justify its application of AFA in making its benefit and specificity findings regarding this program.[5]

Separately, the Court held that Commerce did not ''evaluate the application of the highest available AFA rates'' as required by section 776(d)(2) of the Tariff Act of 1930, as amended (the Act).[6] Accordingly, it remanded the *Final Determination* to Commerce for reconsideration of ''why the highest available rate should apply to

[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination,* 82 FR 16341 (April 4, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum.

[2] *See Final Determination,* 82 FR at 16342; *see also* Memorandum, ''Countervailing Duty Investigation: Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination Calculation Memorandum for POSCO,'' dated March 29, 2017.

[3] *See POSCO* v. *United States,* 353 F. Supp. 3d 1357 (CIT 2018) (*Remand Order*).

[4] *Id.* at 1374, 1376.

[5] *Id.* at 1374.

[6] *Id.* at 1374 and 1382–83.

POSCO.'' [7] Because the Court remanded Commerce's *Final Determination* on these bases, it did not address whether the agency corroborated the AFA rates at issue.[8]

Shortly thereafter, POSCO filed a motion for reconsideration of the Court's opinion. In its *Reconsideration Order,*[9] the Court concluded that ''Commerce did not provide any additional explanation of how it determined that there was no identical program before moving to the second step of its AFA methodology—using the rate in another investigation—and, thus, did not make the requisite factual findings to address POSCO's contention that the {Industrial Technology Innovation Promotion Act} grant was an identical program in the proceeding.'' [10] Accordingly, it further remanded the *Final Determination* to Commerce for consideration of this issue.

Pursuant to the *Remand Order* and *Reconsideration Order,* Commerce issued its Final Redetermination, which addressed the Court's holdings and revised the net countervailable subsidy rate assigned to POSCO to 3.72 percent.[11] On November 8, 2019, the Court sustained Commerce's Final Redetermination and entered final judgment.[12]

Timken Notice

In its decision in *Timken,*[13] as clarified by *Diamond Sawblades,*[14] the United States Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(e) of 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 Court's November 8, 2019, judgment sustaining Commerce's Final Redetermination constitutes a final decision of that court, which is not in harmony with Commerce's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.* Commerce will continue the suspension of liquidation of the subject merchandise at issue pending a final and conclusive court decision.

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Final Determination* with respect to the net countervailable subsidy rate assigned to POSCO. Additionally, because the rate for all other producers/exporters not individually investigated was based on the net countervailable subsidy rate calculated for POSCO, Commerce is amending the all-others rate.[15] As previously indicated, in accordance with the scope of the underlying investigation, this application of POSCO's subsidy rate to all other producers/exporters applies only to subject CTL plate not within the physical description of cut-to-length carbon quality steel plate in the *1999 Korea CVD Order.*[16] The revised net countervailable subsidy rates for POSCO, and all other producers/exporters not individually investigated for the period January 1, 2015, through December 31, 2015, are as follows:

Producer/exporter	Subsidy rate (percent)
POSCO	3.72
All Others	3.72

Cash Deposit Requirements

Because POSCO does not have a superseding cash deposit rate, *i.e.,* there have been no final results published in a subsequent administrative review for POSCO, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). Effective November 18, 2019, the cash deposit rate applicable to entries of subject merchandise exported by POSCO is 3.72 percent. Similarly, Commerce will also instruct CBP to collect cash deposits for companies covered by the all-others cash deposit rate according to the table above, effective November 18, 2019.

This notice is issued and published in accordance with sections 516A(c)(1) and (e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

Dated: November 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–25392 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–810]

Polyethylene Terephthalate Resin From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that OCTAL SAOC–FZC (OCTAL) did not make sales of polyethylene terephthalate resin (PET resin) from the Sultanate of Oman (Oman) at less than normal value during the period of review (POR), May 1, 2017 through April 30, 2018.

DATES: Applicable November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2019, Commerce published the *Preliminary Results* of the 2017–2018 antidumping duty (AD) administrative review of PET resin from Oman.[1] On August 19, 2019, DAK Americas, LLC, Indorama Ventures USA, Inc., and Nan Ya Plastics Corporation, America (petitioners) requested that Commerce conduct a hearing in this proceeding.[2] On August 20, 2019, we received a case brief from the petitioners and on August 30, 2019, we received a rebuttal brief from

[7] *Id.* at 1374 and 1383.

[8] *Id.* at 1383 n.15.

[9] *See POSCO* v. *United States,* 382 F. Supp. 3d 1346 (CIT 2019) (*Reconsideration Order*).

[10] *Id.* at 1349.

[11] *See* Final Results of Redetermination Pursuant to Court Order, Consol. Court No. 17–00137, dated July 1, 2019 (Final Redetermination).

[12] *See POSCO* v. *United States,* Slip Op. 18–169, Consol. Ct. No. 17–00137 (CIT 2018).

[13] *See Timken Co.* v. *United States,* 893 F. 2d 337 (Fed. Cir. 1990) (*Timken*).

[14] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

[15] *See Final Determination,* 82 FR at 16342.

[16] *See id.* n.10 (citing *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,* 64 FR 6587 (December 29, 1999), *as amended,* 65 FR 6587 (February 10, 2000) (*1999 Korea CVD Order*)).

[1] *See Polyethylene Terephthalate Resin from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 34343 (July 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Petitioners' Letter, ''Polyethylene Terephthalate Resin from the Sultanate of Oman—Petitioners' Request for Hearing,'' dated August 19, 2019.

OCTAL.[3] On October 3, 2019, we held a public hearing.[4]

Scope of the Order

The merchandise covered by this order is PET resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The merchandise subject to this order is properly classified under subheadings 3907.60.00.30, 3907.61.0000, 3907.61.0010, 3907.61.0050, 3907.69.0000, 3907.69.0010, and 3907.69.0050 of the Harmonized Tariff Schedule of the United States (HTSUS).[5] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum (IDM).[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the IDM, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as an Appendix. The IDM is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the IDM can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic version of the IDM are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made no revisions to the preliminary dumping margin calculations for OCTAL.

Final Results of the Administrative Review

We have determined that the following weighted-average dumping margin exists for the firm listed below for the period May 1, 2017 through April 30, 2018:

Exporter\producer	Weighted-average dumping margin (percent)
OCTAL SAOC–FZC	0.00

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protections (CBP) shall assess, AD duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because OCTAL's weighted-average dumping margin is zero percent, we will instruct CBP to liquidate the appropriate entries without regard to AD duties.

For POR entries of subject merchandise produced by OCTAL for which it did not know the merchandise was destined for the United States, we will instruct CBP to liquidate these unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review in the **Federal Register** for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for OCTAL is zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the final company-specific rate published for the most recent period; (3) if the exporter was not covered in this review, a prior review, or the investigation, but the producer was, the cash deposit rate will be the rate established in the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 7.62 percent *ad valorem,* the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of AD duties occurred and the subsequent assessment of doubled AD duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: November 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[3] *See* Petitioners' Letter, ''Polyethylene Terephthalate Resin from the Sultanate of Oman: Petitioners' Case Brief,'' dated August 20, 2019'; *see also* OCTAL's Rebuttal Brief, ''OCTAL's Rebuttal Brief: Polyethylene Terephthalate Resin (PET) from the Sultanate of Oman,'' dated August 30, 2019.

[4] *See* Memorandum, ''2017–2018 Antidumping Duty Administrative Review of Polyethylene Terephthalate Resin from the Sultanate of Oman: Hearing Schedule,'' dated September 25, 2019; *see also* Public Hearing Transcript dated October 10, 2019.

[5] On January 27, 2017, Commerce added HTS numbers 3907.61.0000 and 3907.69.0000 to the Case Reference File. *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE Case Reference File: Polyethylene Terephthalate Resin form the Sultanate of Oman (A–523–810),'' dated January 31, 2017. Further, on February 28, 2019, Commerce added HTS numbers 3907.61.0010, 3907.61.0050, 3907.69.0010, and 3907.69.0050 to the Case Reference File. *See* Memorandum, ''Request from U.S. Customs and Border Protection to Update the ACE Case Reference File: Polyethylene Terephthalate Resin form the Sultanate of Oman (A–523–810),'' dated February 28, 2019.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Resin from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice.

[7] *See Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman: Amended Final Affirmative Antidumping Determination (Sultanate of Oman) and Antidumping Duty Orders,* 81 FR 27979 (May 6, 2016).

[FR Doc. 2019–25375 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–857]

Oil Country Tubular Goods From India: Final Results and No Shipments Determination of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) continues to find that GVN Fuels, Ltd. (GVN) had no shipments of subject merchandise during the period of review (POR) September 1, 2017 through August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2019, Commerce published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results,* but we received no comments. Accordingly, we made no changes to the *Preliminary Results* for purposes of these final results.

Scope of the Order

The merchandise covered by the order is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Final Determination of No Shipments

Commerce preliminarily determined that GVN had no shipments of subject merchandise during the POR.[2] As we received no comments concerning our preliminary determination, we continue to find that GVN had no shipments of subject merchandise during the POR.[3] Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on these final results.[4]

Assessment Rates

We have calculated no assessment rates in this administrative review. Pursuant to Commerce's assessment practice, because we have determined that GVN had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the all-others rate. Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of these final results.

Cash Deposit Requirements

As a result of this administrative review, there are no changes to the existing cash deposit requirements, which shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

[1] *See Oil Country Tubular Goods from India: Preliminary No Shipments Determination of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 40028 (August 13, 2019) (*Preliminary Results*).

[2] *Id.*

[3] Because Commerce did not modify its analysis from that presented in the *Preliminary Results,* no decision memorandum accompanies this **Federal Register** notice.

[4] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

These final results of administrative are issued and published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.221(b)(5).

Dated: November 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–25391 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is partially rescinding its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan for the period May 1, 2018, through April 30, 2019.

DATES: Applicable November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Hannah Falvey or Nicolas Mayora, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4889 or (202) 482–3053, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on certain circular welded carbon steel pipes and tubes from Taiwan for the period of review May 1, 2018, through April 30, 2019.[1] Pursuant to requests from interested parties, Commerce initiated an administrative review with respect to 27 companies in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[2] Subsequent to the initiation of the administrative review, several interested parties timely withdrew their requests for 26 of these companies for which a review had been requested, as discussed below. No other party requested an administrative review of these companies.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation. The request for an administrative review of the following companies was withdrawn within 90 days of the date of publication of the *Initiation Notice:* Chite Enterprises Co., Ltd.;[3] Chung Hung Steel Corp.;[4] Far East Machinery Group;[5] Far East Machinery Co., Ltd.;[6] Fine Blanking & Tool Co., Ltd.;[7] Froch Enterprises;[8] Kao Hsing Chang Iron & Steel Corp.;[9] Hou Lih Co., Ltd.;[10] Locksure Inc.;[11] Lang Hwang Corp.;[12] Pacific Star Express;[13] Pat & Jeff Enterprise Co., Ltd.;[14] Pin Tai Metal Inc.;[15] New Chance Products Co., Ltd.;[16] Shanghai TR Steel Building Products Co., LTD.;[17] Shang Jouh Industrial Co., Ltd.;[18] Shengyu Steel Co., Ltd.;[19] Shuan Hwa Industrial Co., Ltd;[20] Ta Chen Stainless Pipe Co., Ltd.;[21] Tension Steel Industries Co., Ltd.;[22] Titan Fastech Ltd.;[23] YC Inox Co., Ltd.;[24] Yeong Shien Industrial Co., Ltd.;[25] Yieh Hsing Enterprise Co., Ltd.;[26] Yousing Precision Industry Co., Ltd.[27] and Yujin Steel Industry Co., Ltd.[28] All review requests were withdrawn for each of these 26 companies, as detailed above. As a result, pursuant to 19 CFR 351.213(d)(1), Commerce is rescinding the administrative review of the AD order on certain circular welded carbon steel pipes and tubes with respect to these 26 companies. The instant review will continue with respect to the remaining company for which a review was initiated.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instruction to CBP 15 days after publication of this notice in the **Federal Register**, if appropriate.

Notification to Importers

This notice 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 any antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of any antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[3] *See* Independence Tube Corporation and Southland Tube, Incorporated (Nucor Pipe Mills) Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from Taiwan: Partial Withdrawal of Request for Administrative Review,'' dated October 15, 2019 (Nucor Pipe Mills Withdrawal Letter).

[4] *See* Nucor Pipe Mills Withdrawal Letter; *see also* Wheatland Tube Letter, ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Withdrawal of Request for Administrative Review,'' dated October 15, 2019 (Petitioner Withdrawal Letter).

[5] *See* Nucor Pipe Mills Withdrawal Letter.

[6] *See* Nucor Pipe Mills Withdrawal Letter; *see also* Petitioner Withdrawal Letter.

[7] *Id.*

[8] *See* Nucor Pipe Mills Withdrawal Letter.

[9] *See* Nucor Pipe Mills Withdrawal Letter; *see also* Petitioner Withdrawal Letter.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *See* Nucor Pipe Mills Withdrawal Letter.

[14] *See* Nucor Pipe Mills Withdrawal Letter; *see also* Petitioner Withdrawal Letter.

[15] *See* Nucor Pipe Mills Withdrawal Letter.

[16] *See* Nucor Pipe Mills Withdrawal Letter; *see also* Petitioner Withdrawal Letter.

[17] *See* Nucor Pipe Mills Withdrawal Letter.

[18] *Id.*

[19] *See* Nucor Pipe Mills Withdrawal Letter; *see also* Petitioner Withdrawal Letter.

[20] *See* Nucor Pipe Mills Withdrawal Letter.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See* Petitioner Withdrawal Letter.

[27] *See* Nucor Pipe Mills Withdrawal Letter.

[28] *Id.*

proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 15, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–25379 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Analysis of and Participation in Ocean Exploration Video Products

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before January 21, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher ''J'' Dunn, LTJG/NOAA. NOAA Office of Ocean Exploration and Research, 215 South Ferry Road, Narragansett, RI 02882; 401–874–6478; *christopher.dunn@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision of an existing information collection.

NOAA's Office of Ocean Exploration and Research (OER) is the only federal organization dedicated to ocean exploration. By using unique capabilities in terms of personnel, technology, infrastructure, and exploration missions, OER is reducing unknowns in deep-ocean areas and providing high-value environmental intelligence needed by NOAA and the nation to address both current and emerging science and management needs. Our expertise, work products, and services generally fall into the areas of expedition planning and operations; marine archaeology; coastal and ocean mapping; science; technology; data management; and education.

Since the inception of NOAA's exploration program in 2001, OER data management has been guided by the 2000 President's Panel Report recommendations which prioritized rapid and unrestricted data sharing as one of five critical exploration program components. More recently, Public law 111–11 [Section XII Ocean Exploration] reinforced and expanded OER data management objectives, continuing to stress the importance of sharing unique exploration data and information to improve public understanding of the oceans, and for research and management purposes.

Telepresence satellite communication from the ship to shore brings the unknown ocean to the screens of both scientists and the general public in their homes, schools or offices in near real time. With technology constantly evolving it is important to address the needs of the shore-based scientists and public to maintain a high level of participation. We use voluntary surveys to identify the needs of users of data and best approaches to leverage expertise of shore-based participants for meaningful public engagement focused on ocean exploration.

This information collection consists of four forms. (1) Sailing Contact Information (new). This form is sent to the few scientists that directly sail on NOAA Ship *Okeanos Explorer.* The ship's operational officer needs certain information such as: If a sailing individual has securely submitted their proper medical documents to NOAA's Office of Marine and Aviation Operations, if the person is up to date with required security documents such as a passport, if the ship is traveling to a foreign port, or any dietary restrictions so that the person will be served food that is safe. (2) *Okeanos Explorer* Participation Assessment. This voluntary form is sent to the scientists that sailed on any *Okeanos Explorer* cruise funded by NOAA's Office of Ocean Exploration and Research to record any feedback they wish to provide to the office about their experience. The office uses their feedback in assessments for improving the utility and experience of these scientific guests sailing on the *Okeanos Explorer.* (3) EX Collaboration Tools Feedback (new). This voluntary form is sent to members of the marine scientific community at the beginning of a fiscal year to ask if members would like to participate in any of the upcoming cruises and to what degree, such as simply asking to be included in emailed updates or if they want to be on a direct line to the ship for remotely operated vehicle dive operations. (4) Citizen Scientist. This voluntary form is available to general members of the public and is used for members to improve the annotation efforts when watching short video clips of 30 seconds to 5 minutes.

II. Method of Collection

Information is only collected via online form.

III. Data

OMB Control Number: 0648–0748.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal government.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 10 minutes

Estimated Total Annual Burden Hours: 166 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–25271 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XT021]

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2020 Research Fishery

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

ACTION: Notice of intent; request for applications.

SUMMARY: NMFS announces its request for applications for the 2020 shark research fishery from commercial shark fishermen with directed or incidental shark limited access permits. The shark research fishery allows for the collection of fishery-dependent and biological data for future stock assessments and to meet the research objectives of the Agency. The only commercial vessels authorized to land sandbar sharks are those participating in the shark research fishery. Shark research fishery permittees may also land other large coastal sharks (LCS), small coastal sharks (SCS), smoothhound, and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application in order to be considered.

DATES: Shark Research Fishery Applications must be received no later than December 23, 2019.

ADDRESSES: Please submit completed applications to the HMS Management Division at:

- *Mail:* Attn: Lauren Latchford or Delisse M Ortiz, HMS Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- *Email: NMFS.Research.Fishery@noaa.gov.*

For copies of the Shark Research Fishery Permit Application, please write to the HMS Management Division at the address listed above, call (301) 427–8503 (phone), or email a request to *NMFS.Research.Fishery@noaa.gov.* Copies of the Shark Research Fishery Application are also available at the HMS website at *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-permits-and-reporting-forms.* Additionally, please be advised that your application may be released under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Lauren Latchford at (301) 427–8503 (phone) or Delisse Ortiz at (240) 681–9037 or email *NMFS.research.fishery@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS Fishery Management Plan (FMP), as amended, is implemented by regulations at 50 CFR part 635.

The shark research fishery was established, in part, to maintain time series data for stock assessments and to meet NMFS' research objectives. Since the shark research fishery was established in 2008, the research fishery has allowed for: The collection of fishery-dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks and collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks; and collection of sharks to determine the weight conversion factor from dressed weight to whole weight.

The shark research fishery allows selected commercial fishermen the opportunity to earn revenue from selling additional sharks, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land sandbar sharks subject to the sandbar quota available each year. The base quota is 90.7 metric tons (mt) dressed weight (dw) per year, although this number may be reduced in the event of overharvests, if any. The selected shark research fishery permittees will also be allowed to land other LCS, SCS, smoothhound, and pelagic sharks consistent with any restrictions established on their shark research fishery permit. Generally, the shark research fishery permits are valid only for the calendar year for which they are issued.

The specific 2020 trip limits and number of trips per month will depend on the availability of funding, number of selected vessels, the availability of observers, the available quota, and the objectives of the research fishery, and will be included in the permit terms at time of issuance. The number of participants in the research fishery changes each year. In 2019, five fishermen were chosen to participate. From 2008 through 2019, there has been an average of seven participants each year with the range from five to eleven. The number of trips allowed per month can change, but in the last few years this number has remained constant with partipating vessels on average been able to take one trip per month. However, the number of trips taken per month are limited by the scientific and research needs of the Agency and the number of NMFS-approved observers available. Participants may also be limited on the amount of gear they can deploy on a given set (*e.g.,* number of hooks and sets, soak times, length of longline). These limits may change both between years and during the year depending on research goals and bycatch limits.

In the 2019 fishing season, NMFS split 90 percent of the sandbar and LCS research fishery quotas equally among selected participants, with each vessel allocated 16.3 mt dw (35,992 lb dw) of sandbar shark research fishery quota and 9.0 mt dw (19,841 lb dw) of other LCS research fishery quota. The remaining quota was held in reserve to ensure the overall sandbar and LCS research fishery quotas were not exceeded. NMFS also established a regional dusky bycatch limit, which was implemented in 2013, specific to this small research fishery, where once three or more dusky sharks were brought to the vessel dead in any of four regions across the Gulf of Mexico and Atlantic through the entire year, any shark research fishery permit holder in that region was not able to soak their gear for longer than 3 hours. If, after the change in soak time, there were two additional

dusky shark interactions (alive or dead) observed, shark research fishery permit holders were not able to make a trip in that region for the remainder of the year, unless otherwise permitted by NMFS. There were slightly different measures established for shark research fishery participants in the mid-Atlantic shark closed area in order to allow NMFS observers to place satellite archival tags on dusky sharks and collect other scientific information on dusky sharks while also minimizing any dusky shark mortality.

Participants were also required to land any dead sharks, unless they were a prohibited species, in which case they were required to discard them. All prohibited species must be released, unless the observer requests that the shark be retained for research purposes. If the regional non-blacknose SCS, blacknose, and/or pelagic shark commercial management group quotas were closed, then any shark research fishery permit holder fishing in the region was required to discard all of the species from the closed management groups regardless of condition. Any sharks, except prohibited species or species from closed commercial management groups, caught and brought to the vessel alive could be released alive or landed. The vessels participating in the shark research fishery took on average 9 trips in 2019, but the timing, and number of the trips varied based on seasonal availability of certain species and individual allocated quotas.

In order to participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Application by the deadline noted above (see **DATES**) showing that the vessel and owner(s) meet the specific criteria outlined below.

Research Objectives

Each year, the research objectives are developed by a shark board, which is comprised of representatives within NMFS, including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, the Southeast Regional Office Protected Resources Division, and the HMS Management Division. The research objectives for 2020 are based on various documents, including the 2012 Biological Opinion for the Continued Authorization of the Atlantic Shark Fisheries and the Federal Authorization of a Smoothhound Fishery, as well as recent stock assessments for the U.S. South Atlantic blacknose, U.S Gulf of Mexico blacknose, U.S. Gulf of Mexico blacktip, sandbar, and dusky sharks (all these stock assessments can be found at *http://sedarweb.org/*). The 2020 research objectives are:

- Collect reproductive, length, sex, and age data from sandbar and other sharks throughout the calendar year for species-specific stock assessments;
- Monitor the size distribution of sandbar sharks and other species captured in the fishery;
- Continue on-going tagging shark programs for identification of migration corridors and stock structure using dart and/or spaghetti tags;
- Maintain time-series of abundance from previously derived indices for the shark bottom longline observer program;
- Sample fin sets (*e.g.,* dorsal, pectoral) from prioritized species to further develop fin identification guides;
- Acquire fin-clip samples of all shark and other species for genetic analysis;
- Attach satellite archival tags to endangered smalltooth sawfish to provide information on critical habitat and preferred depth, consistent with the requirements listed in the take permit issued under section 10 of the Endangered Species Act to the SEFSC observer program;
- Attach satellite archival tags to prohibited dusky and other sharks, as needed, to provide information on daily and seasonal movement patterns, and preferred depth;
- Evaluate hooking mortality and post-release survivorship of dusky, hammerhead, blacktip, and other sharks using hook-timers and temperature-depth recorders;
- Evaluate the effects of controlled gear experiments in order to determine the effects of potential hook changes to prohibited species interactions and fishery yields;
- Examine the size distribution of sandbar and other sharks captured throughout the fishery including in the Mid-Atlantic shark time/area closure off the coast of North Carolina from January 1 through July 31;
- Develop allometric and weight relationships of selected species of sharks (*e.g.,* hammerhead, sandbar, blacktip shark); and
- Collect samples such as liver and muscle plugs for stable isotope analysis as a part of a trophic level-based ecosystem study.

Selection Criteria

Shark Research Fishery Permit Applications will only be accepted from commercial shark fishermen who hold a current directed or incidental shark limited access permit. While incidental permit holders are welcome to submit an application, to ensure that an appropriate number of sharks are landed to meet the research objectives for this year, NMFS will give priority to directed permit holders as recommended by the shark board. As such, qualified incidental permit holders will be selected only if there are not enough qualified directed permit holders to meet research objectives.

The Shark Research Fishery Permit Application includes, but is not limited to, a request for the following information: Type of commercial shark permit possessed; past participation and availability in the commercial shark fishery (not including sharks caught for display); past involvement and compliance with HMS observer programs per 50 CFR 635.7; past compliance with HMS regulations at 50 CFR part 635; past and present availability to participate in the shark research fishery year-round; ability to fish in the regions and season requested; ability to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and ability to carry out the research objectives of the Agency. Preference will be given to those applicants who are willing and available to fish year-round and who affirmatively state that they intend to do so, in order to ensure the timely and accurate data collection NMFS needs to meet this year's research objectives. An applicant who has been charged criminally or civilly (*e.g.,* issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS-related violation will not be considered for participation in the shark research fishery. In addition, applicants who were selected to carry an observer in the previous two years for any HMS fishery, but failed to contact NMFS to arrange the placement of an observer as required per 50 CFR 635.7, will not be considered for participation in the 2020 shark research fishery. Applicants who were selected to carry an observer in the previous two years for any HMS fishery and failed to comply with all the observer regulations per 50 CFR 635.7 will also not be considered. Exceptions will be made for vessels that were selected for HMS observer coverage but did not fish in the quarter when selected and thus did not require an observer. Applicants who do not possess a valid USCG safety inspection decal when the application is submitted will not be considered. Applicants who have been non-compliant with any of the HMS observer program regulations in the previous two years, as described above, may be eligible for future participation in shark

research fishery activities by demonstrating two subsequent years of compliance with observer regulations at 50 CFR 635.7.

Selection Process

The HMS Management Division will review all submitted applications and develop a list of qualified applicants from those applications that are deemed complete. A qualified applicant is an applicant that has submitted a complete application by the deadline (see **DATES**) and has met the selection criteria listed above. Qualified applicants are eligible to be selected to participate in the shark research fishery for 2020. The HMS Management Division will provide the list of qualified applicants without identifying information to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of observers, the availability of qualified applicants, and the available quota for a given year, will randomly select qualified applicants to conduct the prescribed research. Where there are multiple qualified applicants that meet the criteria, permittees will be randomly selected through a lottery system. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, NMFS will notify the selected applicants and issue the shark research fishery permits. The shark research fishery permits will be valid through December 31, 2020, unless otherwise specified. If needed, NMFS will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. NMFS usually holds mandatory captain's meetings before observers are placed on vessels and may hold one for the 2020 shark research fishery in early 2020. Once the fishery starts, the shark research fishery permit holders must contact the NMFS observer coordinator to arrange the placement of a NMFS-approved observer for each shark research trip. Additionally, selected applicants are expected to allow observers the opportunity to perform their duties as required and assist observers as necessary.

A shark research fishery permit will only be valid for the vessel and owner(s) and terms and conditions listed on the permit, and, thus, cannot be transferred to another vessel or owner(s). Shark research fishery permit holders must carry a NMFS-approved observer in order to land sandbar sharks. Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in 50 CFR 635.24(a). These retention limits will be based on available quota, number of vessels participating in the 2020 shark research fishery, the research objectives set forth by the shark board, the extent of other restrictions placed on the vessel, and may vary by vessel and/or location. When not operating under the auspices of the shark research fishery, the vessel would still be able to land LCS, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS-approved observer.

NMFS annually invites commercial shark permit holders (directed and incidental) to submit an application to participate in the shark research fishery. Permit applications can be found on the HMS Management Division's website at *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-permits-and-reporting-forms* or by calling (301) 427–8503. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information by the deadline (see **DATES**), and NMFS' review of applicant information as outlined above. The 2020 shark research fishery will start after the opening of the shark fishery and under available quotas as published in a separate **Federal Register** final rule.

Dated: November 18, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–25307 Filed 11–21–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services to the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* December 22, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Deletions

On 10/11/2019 and 10/18/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
MR 1173—Refill, Sweeper Set, Dry Cloths, 16 Count
MR 1175—Refill, Sweeper Set, Wet Cloths, 24 Count
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 339—Slicer, Banana, Plastic
MR 400—Bag, Shopping Tote, Laminated, Small, ''Live Spicy''
MR 401—Bag, Shopping Tote, Laminated, Small, ''Live Fresh''
MR 408—Bag, Insulated, Thermal, Reusable, Small

Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

Services

Service Type: Janitorial/Custodial
Mandatory for: Jimmy Carter National Historic Site, Plains, GA
Mandatory Source of Supply: Middle Flint Behavioral HealthCare—Sumter County MR Center, Americus, GA
Contracting Activity: NATIONAL PARK SERVICE, SER REGIONAL CONTRACTING OPO

Amy B. Jensen,

Deputy Director, Business Operations.

[FR Doc. 2019–25394 Filed 11–21–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: *Comments must be received on or before:* December 22, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type: Custodial Service
Mandatory for: US Air Force, Hurlburt Field, FL
Mandatory Source of Supply: Brevard Achievement Center, Inc. Rockledge, FL
Contracting Activity: FA4417 1 SOCONS LGC

Service Type: Operations and Maintenance Services
Mandatory for: U.S. Department of Health & Human Services, Hubert H. Humphrey Building, Washington, DC
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: HHS, PROGRAM SUPPORT CENTER ACQ MGMT SVC

Service Type: Hospitality Services
Mandatory for: Customs and Border Protection, Advanced Training Center (ATC) Lodge and Conference Center, (ATC Lodge only), Harpers Ferry, WV
Mandatory Source of Supply: Professional Contract Services, Inc., Austin, TX
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, MISSION SUPPORT CTR DIV

Service Type: Warehouse and Distribution Services
Mandatory for: US Department of Justice, Office of Community Oriented Policing Services, Washington, DC
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: OFFICES, BOARDS AND DIVISIONS, U.S. DEPT OF JUSTICE

Service Type: Administrative Support Service
Mandatory for: Defense Threat Reduction Agency (DTRA), DTRA Headquarters, Fort Belvoir, VA
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: DEFENSE THREAT REDUCTION AGENCY (DTRA), DEFENSE THREAT REDUCTION AGENCY

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
7510–00–NIB–1783—Portfolio Pad Holder, with Pad, Custom Logo & Color, 9″ x 12″
Mandatory Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
2540–00–T27–8865—Chock Block
2540–00–T27–9043—Chock Block
Mandatory Source of Supply: NewView Oklahoma, Inc., Oklahoma City, OK
Contracting Activity: DLA SUPPORT SERVICES—DSS, FORT BELVOIR, VA

NSN(s)—Product Name(s):
7210–01–245–4393—Cover, Mattress
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Services

Service Type: Administrative Services
Mandatory for: Robert C. Byrd Federal Building: United States Courthouse, Charleston, WV
Mandatory Source of Supply: Goodwill Industries of Kanawha Valley, Charleston, WV
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Dining Facility Attendant Services
Mandatory for: 29th Engineering Battalion: Building 503B, Fort Shafter, HI
Mandatory for: 65th Engineering Battalion: Building 1492, Schofield Barracks, HI
Mandatory Source of Supply: Opportunities and Resources, Inc., Wahiawa, HI
Contracting Activity: DEPT OF THE ARMY, W40M RHCO-ATLANTIC USAHCA

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building, Courthouse and Post Office: Main and Poplar Streets, Greenville, MS
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Grounds Maintenance Service
Mandatory for: U.S. Coast Guard Facility, 9640 Clinton Drive, Houston, TX
Mandatory Source of Supply: On Our Own Services, Inc., Houston, TX
Contracting Activity: U.S. COAST GUARD, BASE NEW ORLEANS

Service Type: Mailing Services
Mandatory for: Centers for Disease Control and Prevention, National Center for Infectious Diseases, Atlanta, GA
Mandatory Source of Supply: Nobis Enterprises, Inc., Marietta, GA
Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

Service Type: Janitorial/Custodial
Mandatory for: Fort McPherson, GA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FDO FT SAM HOUSTON

Amy B. Jensen,

Deputy Director, Business Operations.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0127]

Department of Defense Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration (Demo) Project in the U.S. Army Research Institute for the Behavioral and Social Sciences (ARI)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Notice of proposal to adopt a demonstration project plan and additional flexibilities.

SUMMARY: This **Federal Register** Notice (FRN) serves as notice of the proposed adoption by the U.S. Army Research Institute for the Behavioral and Social Sciences (ARI) of the personnel demonstration project flexibilities implemented by the Combat Capabilities Development Command (CCDC) Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance (C5ISR) Center (previously designated as the U.S. Army Communications–Electronics Research, Development and Engineering Center and the U.S. Army Communications–Electronics Command, Research, Development and Engineering), the CCDC Chemical Biological Center (CBC) (previously designated as the Edgewood Chemical Biological Center), and the CCDC Soldier Center (SC) (previously designated as the Natick Soldier Research, Development and Engineering Center). The majority of flexibilities and administrative procedures are adopted without changes. However, modifications were made when necessary to address ARI's specific organizational, management structure, workforce, and approval needs and to conform to changes in applicable law and regulations after the publication of the adopted personnel demonstration project flexibilities. In addition, changes were made based on current law, best practices, and administrative guidance.

DATES: The ARI demonstration project proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final FRN published. To be considered, written comments must be submitted on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** (FR) document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

- *ARI:* Dr. Scott Shadrick, U.S ARI, Research Program Manager (DAPE–ARI), 6000 6th Street, Fort Belvoir, VA 22060, (254) 288–3800.
- *DoD:* Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 4800 Mark Center Drive, Alexandria, VA 22350, (571) 372–6372.

SUPPLEMENTARY INFORMATION: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337, as amended, authorizes the Secretary of Defense (SECDEF), through the USD(R&E), to conduct personnel demonstration projects at DoD laboratories designated as STRLs.

1. Background

Since 1966, many studies of DoD laboratories have been conducted on laboratory quality and personnel. Most of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of the NDAA for FY 1995, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are ''generally similar in nature'' to the Department of Navy's ''China Lake'' Personnel Demonstration Project. The terminology, ''generally similar in nature,'' does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

ARI conducted a thorough review of the personnel practices of existing DoD laboratories designated as STRLs and applicable laws, regulations, and guidance to identify potential flexibilities that would allow ARI to (1) improve effectiveness through a more flexible, responsive personnel system; (2) increase management authority over human resources management; (3) recruit, develop, motivate, and retain a high quality workforce; and (4) adjust workforce levels to meet strategic program and organizational needs.

This demonstration project involves:

(1) New appointment authorities;

(2) Extended probationary periods;

(3) Supervisory probationary periods;

(4) Pay banding;

(5) Streamlined delegated examining;

(6) Simplified job classification;

(7) A pay-for-performance based appraisal system;

(8) A sabbatical program;

(9) Academic degree and certificate training;

(10) A Volunteer Emeritus Corps; and

(11) Senior Scientific Technical Manager (SSTM) positions.

The demonstration project also involves the use of numerous direct hire authorities, as appropriate and in accordance with guidance. Many aspects of a demonstration project are experimental. Modifications may be made from time to time as we gain experience, analyze results, and reach conclusions on how the system is working. The provisions of Department of Defense Instruction (''DoDI'') 1400.37, ''Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/140037p.pdf*) (including subsequently issued or superseding instructions), will be followed to modify, supplement through adoption, or otherwise change this demonstration project plan.

2. Overview

ARI intends to build its demonstration project using flexibilities adopted from existing STRL demonstration programs with significant overlap with the CCDC C5ISR, CCDC CBC, and CCDC SC.

As described in 73 FR 73248, December 2, 2008, flexibilities are defined as those features described in a STRL FRN; amendments thereto published in an FRN; minor changes made within the authorities of a demonstration project plan, documented in laboratory internal issuances and disseminated to employees; and official laboratory implementing issuances that have been distributed.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this FR will be available for use by all STRLs listed enumerated in section 1105(a) of Public Law 111–84, as amended, in accordance with DoDI 1400.37 (including revised or superseded instructions) and after the

fulfillment of any collective bargaining obligations.

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I. Executive Summary

ARI operates as a Field Activity of the Deputy Chief of Staff, G–1. As a Science and Technology (S&T) lab, ARI has the core mission of inventing for the future while maintaining an organizational culture of action in support of emerging Army needs. ARI's S&T program is focused on developing innovative measures and methods to optimize the Soldier lifecycle and talent management, developing theories and investigating new domains in the behavioral and social sciences, conducting scientific assessments, providing behavioral and social science advice to human resource authorities and informing human resource policies.

To sustain these unique capabilities, ARI must be able to hire, retain, and continuously motivate enthusiastic, innovative, and highly-educated scientists, supported by skilled business management and administrative professionals, as well as a skilled administrative and technical support staff.

The goal of the current project is to enhance the quality and professionalism of the ARI workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the ARI mission, adjust the workforce for change, and improve workforce satisfaction. This demonstration project extends the CCDC C5ISR/CCDC CBC/CCDC SC demonstration projects to ARI. The CCDC C5ISR/CCDC CBC/CCDC SC projects built on the concepts, and use much of the same language, as the demonstration projects developed by the CCDC Army Research Laboratory (ARL) (previously designated as the ARL); the CCDC Aviation and Missile Center (previously designated as the Aviation and Missile Research, Development, and Engineering Center); the Navy's ''China Lake;'' as well as other laboratories designated as an STRL. The results of this project will be evaluated by ARI within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

While many aspects of a demonstration project were once considered experimental, many have been implemented in various DoD laboratories for a number of years. Modifications have been made based on the implementation experience of other DoD laboratories, best practices, and formative evaluation efforts. Additional modifications may be needed from time to time as additional experience is gained during this specific implementation based on evaluations of how the system is working to meet the goals and objectives of the personnel demonstration project.

B. Problems With the Present System

The current Civil Service GS system has existed in essentially the same form since the 1920s. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself. In addition, the GS system makes it difficult for the DoD labs to recruit and retain the best and the brightest scientists.

The need to change the current hiring system is essential, as ARI must be able to recruit and retain professional scientific researchers, support staff, and other professionals and skilled technicians. ARI must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high-quality employees.

Finally, current limitations on training, retraining, and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of research needed to meet the Army's changing missions and emerging technology requirements.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy ''China Lake'' and subsequent demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. Similar results have been demonstrated in more recent STRL demonstration projects and other alternative personnel systems implemented in the DoD and other agencies.

This project will demonstrate that a human resource system tailored to the mission and needs of the ARI workforce will facilitate:

(1) Increased quality in the workforce and resultant research products and outcomes,

(2) More effective, efficient, and adaptable organizational systems required to respond to Army needs,

(3) Increased timeliness of key personnel processes,

(4) Increased retention of excellent performers,

(5) Increased success in recruitment of personnel with critical skills,

(6) Increased management authority and accountability,

(7) Simpler and more effective human resources management process, and

(8) Increased workforce satisfaction with the personnel management system.

D. Participating Organizations

ARI is comprised of the ARI Headquarters located at Fort Belvoir, Virginia, and ARI research, technical, and support personnel located at Fort Belvoir, with geographically dispersed research units located at key strategic locations at Fort Benning, Georgia; Fort Hood, Texas; and Fort Leavenworth, Kansas. ARI also has a small number of employees dispersed at other locations in small numbers required to meet Army needs and mission requirements. As in the past and as expected in the future, there may be modifications to organizational structure and locations based on changing needs.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 114 ARI civilian employees under Title 5 U.S.C. in the occupations listed in Appendix B. Additional employees and other occupations may be added after implementation of the project. The project plan does not cover members of the Senior Executive Service (SES), Senior Level (SL), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, and employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS).

Department of the Army, Army Command centrally funded, local interns, and Pathways Program employees (hired prior to implementation of the project) will not be converted to the demonstration project until they reach their full performance level. Pathways employees will continue to follow the Defense Performance Management and Appraisal Program (DPMAP) until they have reached their full performance level and are transitioned to the STRL personnel system.

The American Federation of Government Employees (AFGE) Local 1920 represents a small percentage of ARI's workforce located at one research location. Those represented employees may or may not participate in the personnel demonstration project depending on negotiations with the Union, specific hiring actions, and other factors. Of those employees assigned to ARI, approximately seven percent are represented by a labor union.

F. Project Design

Upon notification of the initial authority granted by Congress designating ARI as an STRL, the ARI Director assigned an experienced and tenured leader within the organization to contact appropriate agencies to develop the project plan. Initial guidance was provided by the DoD, Defense Civilian Personnel Advisory Services (DCPAS) and HQDA, Office of the Assistant Chief of Staff, G–1, Civilian Personnel Staffing and Classification Division. As a result of those initial discussions, ARI conducted a comprehensive review of the personnel practices of existing DoD laboratories designated as STRLs. That review resulted in a detailed list of personnel flexibilities adopted by the various DoD laboratories. As a part of the initial review, the Laboratory Quality Enhancement Program (LQEP)—Personnel Subpanel was contacted. The LQEP—Personnel Subpanel (LQEP–P) consists of STRL/Personnel Management Demonstration professionals and experts. LQEP–P members provided extensive advice and example materials for consideration. Detailed discussions with LQEP–P members focused on the capabilities provided by the various flexibilities employed, lessons learned and best practices, and implementation guidance. Concurrent to the review of existing flexibilities, a review of ARI's specific organizational personnel needs and requirements was conducted. Finally, a review of innovative personnel practices used outside of the federal government was conducted.

The initial set of existing flexibilities, with descriptions, waiver requirements, and expected benefits was briefed to ARI leadership and supervisors. Detailed discussion focused on how the proposed flexibility would help ARI accomplish its personnel management goals and how it would impact the workforce. The briefing and subsequent discussions resulted in a set of flexibilities for further research and consideration that were aligned with ARI personnel management needs. Those flexibilities were then extensively researched and discussed with LQEP–P members to determine if the proposed flexibility would meet those needs and to determine the cost and benefit of implementing the specific flexibility. The LQEP–P members were invaluable in this process. This resulted in a subset of personnel demonstration flexibilities that were best matched to ARI personnel needs and requirements. A team of senior leaders reviewed the potential flexibilities and provided recommendations for further consideration.

This preparatory work resulted in a proposed IOP that fully described how the proposed personnel management program would be implemented in ARI. The IOP was reviewed by and discussed with senior managers and supervisors to determine if the proposed system would meet ARI needs and workforce expectations. Following these internal reviews, final changes were made to the IOP and the associated FRN.

G. Personnel Management Board

ARI will create a Personnel Management Board (PMB) to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board will be senior ARI managers/supervisors and independent contributors appointed by the ARI Director. As needed, ad hoc members (such as Human Resources representatives), will serve as advisory members to the board.

Based on guidance and consistent interaction with the ARI Director, the board will execute the following:

(1) Carry out the guidance and procedures in all aspects of the personnel demonstration program in accordance with the direction given by the ARI Director.

(2) Determine the composition of the pay-for-performance pay pools in accordance with the guidelines of the IOP;

(3) Review operation of pay pools and provide guidance to pay pool managers;

(4) Oversee disputes in pay pool issues;

(5) Formulate and execute the civilian pay budget;

(6) Manage the awards pools;

(7) Determine hiring and promotion base pay as well as exceptions to pay-for-performance base pay increases;

(8) Conduct classification review and oversight, monitoring, and adjusting classification practices and deciding broad classification issues;

(9) Approve major changes in position structure;

(10) Address issues associated with multiple pay systems during the demonstration project;

(11) Establish Standard Performance Elements and Benchmarks;

(12) Assess the need for changes to demonstration project procedures and policies;

(13) Review requests for Supervisory/Team Leader Base Pay Adjustments and provide recommendations to the ARI Director;

(14) Ensure in-house personnel budget discipline;

(15) Develop policies and procedures for administering Developmental Opportunity Programs;

(16) Ensure all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project; and

(17) Conduct a formative evaluation of the project.

In executing these duties and responsibilities, the board will keep in close contact and consultation with the ARI Director to ensure policies and procedures are executed consistently across the organization and aligned with the Director's guidance.

H. Organizational Structure and Design

To optimize the effectiveness and efficiency of ARI during the adoption of the new STRL personnel system, the ARI Director will review and realign the organization structure to best meet mission needs and requirements. Realignment may include removing limitations in terms of supervisory ratios consistent with section 342(b) of the NDAA for FY 1995 as amended by section 1109 of the NDAA for FY 2000, and the alignment and organization of the workforce required to accomplish the mission of the STRL consistent with 10 U.S.C. 2358a.

The ARI Director will manage workforce strength, structure, positions, and compensation without regard to any limitation on appointments, positions, or funding in a manner consistent with the budget available in accordance with 10 U.S.C. 2358a.

I. Funding Levels

The Under Secretary of Defense (Personnel & Readiness), may, at his/her discretion, adjust the minimum funding levels to take into account factors such as the Department's fiscal condition, guidance from the Office of Management and Budget, and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

III. Personnel System Changes

A. Pay Banding

The design of the ARI pay banding system takes advantage of the many reviews performed by DA and DoD. The design has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the Navy's ''China Lake'' experiment and subsequent demo/STRL demonstration projects. In addition, the pay plans, occupational families, pay bands, and general schedule equivalent grade structures for all the existing DoD laboratories were reviewed. ARI's pay banding system will replace the current GS structure. Currently, the fifteen grades of the GS are used to classify positions and, therefore, to set pay. The GS covers all white-collar work: administrative, technical, clerical and professional. Changes in this rigid structure are required to allow flexibility in hiring, developing, retaining, and motivating the workforce. The pay banding structure adopted by ARI's STRL is similar to the one employed by the U.S. Army Armament Research, Development, and Engineering Center as well as other DoD laboratories.

1. Occupational Families

Occupations with similar characteristics will be grouped together into one of three occupational families with pay band levels designed to facilitate pay progression. The naming structure and other occupational family features adopted for ARI's STRL are consistent with other Army laboratories implementing a similar system. Each occupational family will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These pay bands will replace individual grades and will not be the same for each occupational family. Each occupational family will be divided into three to six pay bands with each pay band covering the same pay range now covered by one or more GS grades. Employees track into an occupational family based on their current series as provided in Appendix B. The upper and lower pay rate for base pay of each pay band is defined by the GS rate for the grade and step as indicated in Figure 1 except for Pay Band VI of the Engineering & Scientist (E&S) occupational family. Comparison to the GS grades was used in setting the upper and lower base pay dollar limits of the pay band levels. However, once employees are moved into the demonstration project, GS grades will no longer apply. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following three occupational families: Engineering and Science (E&S), Business & Technical (B&T), and General Support (GEN).

Engineering and Science (E&S) (Pay Plan DB): This occupational family includes technical professional positions, such as psychologist and statisticians. Additional occupational series may be added in the future. Specific course work or educational degrees are required for these occupations. Six pay bands have been established for the E&S occupational family:

(1) Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

(2) Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

(3) Band III is a full-performance technical track covering GS–12, step 1 through GS–13, step 10.

(4) Band IV includes senior technical/team leader positions covering GS–14, step 1 through GS–14, step 10.

(5) Band V includes supervisor/manager/senior technical positions covering GS–15, step 1 through GS–15, step 10.

(6) Band VI includes SSTM positions. The pay range is: Minimum base pay is 120 percent of the minimum base pay of GS–15; maximum base pay is Level IV of the Executive Schedule (EX–IV); and maximum adjusted base pay is Level III of the Executive Schedule (EX–III).

Business & Technical (B&T) (Pay Plan DE): This occupational family includes such positions as procurement specialists, finance, accounting, management analysis, computer specialists, and quality assurance specialists. Employees in these positions may or may not require specific course work or educational degrees. Five pay bands have been established for the B&T occupational family:

(1) Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

(2) Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

(3) Band III is a full performance track covering GS–12, step 1 through GS–13, step 10.

(4) Band IV includes first-level supervisors and senior technical personnel covering GS–14, step 1 through GS–14, step 10.

(5) Band V is a supervisor/manager track covering GS–15, step 1 through GS–15, step 10.

General Support (GEN) (Pay Plan DK): This occupational family is composed of positions for which specific course work or educational degrees are not required.

Clerical work usually involves the processing and maintaining of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office automation clerks, and budget/program/computer assistants. Three pay bands have been established for the GEN occupational family:

(1) Band I includes entry-level positions covering GS–1, step 1 through GS–4, step 10.

(2) Band II includes full-performance positions covering GS–5, step 1 through GS–8, step 10.

(3) Band III includes senior technicians/assistants/secretaries covering GS–9 step 1 through GS–10, step 10.

2. Pay Band Design

The pay bands for the occupational families and how they relate to the current GS framework are shown in Figure 1.

FIGURE 1—PAY BAND CHART

	Equivalent GS grades					
	I	II	III	IV	V	VI
Engineering & Science (DB)	GS-01 to 04	GS-05 to 11	GS-12 & 13	GS-14	GS-15	>GS-15
Business & Technical (DE)	GS-01 to 04	GS-05 to 11	GS-12 & 13	GS-14	GS-15	
General Support (DK)	GS-01 to 04	GS-05 to 08	GS-9 & 10			

Employees will be converted into the occupational family and pay band that corresponds to their GS series and grade. Each employee converted to the demonstration project is assured, upon conversion, an initial place in the system without loss of pay. However, exceptional qualifications or other compelling reasons based on specific criteria may lead to a higher entrance base pay within a band, commensurate with the employee's experience and qualifications. As the pay rates of the GS scale are increased due to the annual general pay increases, the upper and lower base pay rates of the pay bands will also increase. Since pay progression through the bands depends directly on performance, there will be no scheduled Within-Grade Increases (WGIs) or Quality Step Increases (QSIs) for employees once the pay banding system is in place.

3. Pay Band VI

The pay banding plan expands the pay banding concept used at ''China Lake'' and other laboratories by creating Pay Band VI for the E&S occupational family. The band is designed for SSTM as authorized in 10 U.S.C. 2358a and described in 79 FR 43722. Pay Band VI will apply exclusively to positions designated as SSTMs.

The primary function of these positions is to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the ARI mission and to carry out technical supervisory responsibilities.

As a part of the initial implementation of the STRL, the Director will review organizational and mission requirements to determine appropriate use of available SSTM positions and, if appropriate, will establish SSTM positions consistent with long-term organizational plans and limitations set forth by Congress (*e.g.,* number of SSTM positions based on percent of workforce requirements). The pay range for SSTM positions is as follows: Minimum base pay is 120 percent of the minimum base pay of GS–15, maximum rate of base pay is Level IV of the Executive Schedule (EX–IV), and maximum adjusted base pay is Level III of the Executive Schedule (EX–III). Adjusted base pay is base rate plus locality or supervisory pay differential as appropriate.

After full implementation of the STRL, newly vacant SSTM positions will be filled competitively. Panels will be created to assist in the review of candidates for SSTM positions. Panel members typically will be SES members, ST employees, and, after full implementation, those employees designated as SSTMs. In addition, General Officers and recognized technical experts from outside ARI may serve, as appropriate. The panel will apply criteria developed largely from the OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level and other OPM guidance related to positions exceeding the GS–15 level. The purpose of the panel is to ensure impartiality and a rigorous and demanding review.

Consistent with 10 U.S.C. 2358a, the demonstration project will implement SSTM flexibilities described in 79 FR 43722.

B. Classification

1. Occupational Series

The present GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. ARI currently has positions in fewer than 20 occupational series. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions and agency requirements.

2. Classification Standards and Position Descriptions

If available, ARI will use a fully automated classification system modeled after the Navy's ''China Lake'' and ARL's automated systems. The Web-based automation tool is a fully

integrated classification system that can create standardized, classified position descriptions under the new pay banding system. The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM position classification standards, in some cases, will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the competencies required. The classification standard for each pay band will serve as an important component to update existing position descriptions, which will include position-specific information, and provide data element information pertinent to the job. The computer-assisted process will produce information necessary for position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes (narrative descriptions) will be used to further differentiate types of work and the competencies required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria. As a general rule, the FLSA status can be matched to occupational family and pay band as indicated in Figure 2. For example, positions classified in Pay Band I of the E&S occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers whose primary duties meet the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. The Director/manager/or supervisor with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each pay band and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the servicing Civilian Personnel Advisory Center (CPAC) will be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC.

FIGURE 2—FLSA STATUS

[Pay bands]

Occupational Family	I	II	III	IV	V	VI
E&S.....	N	N/E	E	E	E	E
B&T.....	N	N/E	E	E		
GEN.....	N	N	E			

N—Non-Exempt from FLSA; E—Exempt from FLSA.

N/E—Exemption status determined on a case-by-case basis.

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The ARI Director will have classification authority and may, in turn, delegate this authority to appropriate levels. Any individual with delegated classification authority must complete required training. Position descriptions will be developed to assist in exercising delegated position classification authority. Those leaders with classification authority will identify the occupational family, job

series, functional code, specialty work code, pay band level, and other critical information. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented in the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the Personnel Management Board. A final appeal may be made to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Time periods for cases processed under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a pay schedule; or matters grievable under an administrative or negotiated grievance procedure, or an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPAC providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

1. Overview

The purpose of the pay-for-performance system is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the ARI workforce. It is essential for the development of a highly productive workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. The pay-for-performance system allows for greater employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for pay changes by linking pay and performance.

The pay-for-performance system uses annual performance payouts based on the employee's total performance score rather than within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same pay band (*i.e.,* there are no within-band promotions), and performance awards. The standard rating period will be one year. The minimum rating period will be 120 days. Pay-for-performance payouts can be in the form of increases to base pay, cash bonuses and time off awards; the bonuses are not added to base pay but, rather, are given as a lump sum bonus. Other awards, such as Special Acts, will be retained separately from the pay-for-performance payouts.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

2. Performance Objectives

Performance objectives define a target level of activity, expressed as tangible, measurable objective statements against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of three to ten results-oriented statements. Employees are encouraged to participate in developing their performance objectives with their supervisor at the beginning of the rating cycle. These are to be reflective of the employee's duties/responsibilities and pay band along with the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in pay reflecting increased responsibilities commensurate with pay increases. Supervisors will make the final decision for approving their employee's performance objective. Use of generic one-size-fits-all objectives will be avoided, as performance objectives are meant to define an individual's specific responsibilities and expected accomplishments. While generic objectives will be avoided, objectives will be commensurate to the employees pay and employees at similar positions in the pay band are expected to have objectives of similar complexity, responsibility, and/or another defining characteristic. Thus, exemplar, baseline, objectives will be developed and provided to supervisors and employees to highlight appropriate performance requirements at various pay levels. These exemplars will be used to help define performance expectations commensurate to employee pay.

In contrast, performance elements as described in the next paragraph will identify generic performance characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives and the development of performance objectives will be held for both supervisors and employees. Performance objectives may be jointly modified, changed, or deleted as appropriate during the rating cycle. Changes initiated by employees must be approved by their supervisor. As a general rule, performance objectives should only be changed when the employee successfully meets or exceeds the original objectives or circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur. Objectives will not be changed when an employee's lack of performance prevents or hinders successful performance.

3. Performance Elements

Performance elements define generic performance characteristics that will be used to evaluate the employee's success in accomplishing his/her performance objectives. The use of generic characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. This pay-for-performance system will utilize those performance elements provided in Appendix C; as adapted from the system of performance elements implemented at other DoD Labs designated as STRLs.

All elements are critical. A critical performance element is defined as an attribute of job performance that is of sufficient importance that performance below the minimally acceptable level requires remedial action and may be the basis for removing an employee from his/her position. Non-critical elements will not be used. Each of the performance elements will be assigned a weight, which reflects its importance in accomplishing an individual's performance objectives. A minimum weight (expressed as a percentage) is set for each performance element. The sum of the weights for all of the elements must equal 100.

A single set of performance elements will be used for evaluating the annual performance of all ARI personnel covered by this plan. This set of performance elements may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical competencies that enable the workforce to meet individual and organizational performance objectives. The evolving nature of performance elements may be particularly necessary in an environment where mission requirements, technology, and work processes are changing at an increasingly rapid pace. Thus, the ARI Personnel Management Board will annually review the set of performance elements and set them for the entire organization before the beginning of the rating period. The following is an initial set of performance elements:

(1) Technical Rigor
(2) Interpersonal Effectiveness
(3) Managing Time and Other Resources
(4) Driving Organizational Success
(5) Team Leadership
(6) Supervision/Leadership, and Equal Employment Opportunity (EEO).

All employees will be rated against the first four (Core) performance elements. Team Leadership is mandatory for team leaders (within this document ''team leader'' refers to non-supervisory team leaders as determined by the OPM GS Leader Grade Evaluation Guide).

Supervision/Leadership, and Equal Employment Opportunity is mandatory for all managers/supervisors. At the beginning of the rating period, pay pool managers will review the objectives and weights assigned to employees within the pay pool, to verify consistency and appropriateness across the organization.

4. Performance Feedback and Formal Ratings

The most effective means of communicating job requirements, performance goals, and desired results is person-to-person discussion between supervisors and employees. Employees and supervisors alike are expected to actively participate in these discussions to clarify expectations and identify potential obstacles to meeting performance goals. To the extent possible, employees should describe what they need from their supervisors to support goal accomplishment. The timing of performance feedback and discussions will vary based on the nature of work performed, but at a minimum will occur formally at the beginning, mid-point, and end of the rating period. If employees are unsure of their performance goals or quality at any time, they are encouraged to initiate discussions with their supervisor. In addition, supervisors will initiate discussions at the earliest possible sign of unacceptable performance or as needed to maintain successful performance. The supervisor and employee will discuss job performance and accomplishments in relation to the performance objectives and performance elements. At least two reviews, normally the mid-point review and annual review, will be documented as a formal progress review. More frequent informal task-specific discussions may be appropriate in certain circumstances. In cases where work is accomplished by a team, team discussions regarding goals and expectations may also be conducted as appropriate.

Employees will provide a summary of their accomplishments to their supervisor at both the mid-point and end of the rating period and, at a minimum, will highlight the three most important performance outcomes. Space limitations may be imposed in the performance management system to limit the length of the employee's self-summary of their accomplishments. The goal of employee self-reports is to highlight significant employee accomplishments rather than to describe job processes at a granular level of detail.

At the end of the rating period and following a review of the employee's accomplishments, the supervisor will rate each performance element by assigning a score between 0 and 50. Supervisors will use benchmark performance standards that describe the level of performance associated with a score. Benchmark standards ensure the employee's performance is accurately captured and ensures different supervisors apply a similar rating standard and scoring approach to their employees during the rating process. During the rating and point assignment process, the supervisor reflects on the specific objectives for each employee and rates the individual on each performance element using specific descriptors of performance related to the benchmark performance criteria. It should be noted these scores are not discussed with the employee or considered final until scores for all employees are reconciled and approved by the Pay Pool Manager. The element scores will then be multiplied by the element-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each element will then be totaled to determine the employee's overall appraisal score and rounded to a whole number as follows: If the digit to the right of the decimal is between five and nine, it should be rounded to the next higher whole number; if the digit to the right of the decimal is between one and four, it should be dropped.

For each performance element, a total, unweighted score of 10 or above will result in a rating of acceptable. A total, unweighted score of 9 or below will result in a rating of unacceptable, and requires the employee be placed on a Performance Improvement Plan (PIP) within 30 days of the rating. An unweighted score of nine or below in a single performance element also will result in a rating of unacceptable, and requires the employee be placed on a PIP. An out-of-cycle rating of record will be issued if the employee's performance improves to an acceptable level at the conclusion of the PIP.

5. Unacceptable Performance

Informal employee performance reviews will be a continuous process so that corrective action, to include placing an employee on a PIP, may be taken at any time during the rating cycle. Whenever a supervisor recognizes an employee's performance on one or more performance elements is unacceptable, the supervisor will immediately inform the employee. Efforts will be made to identify the possible reasons for the unacceptable performance. An employee who is on a PIP is not eligible to receive the general pay increase.

If an employee performs at an unacceptable level or has received an unacceptable rating, a PIP will be provided to the employee as well as an opportunity period for the employee to improve his/her performance. The supervisor will identify the items/actions that need to be corrected or improved, outline required time frames (generally 30 days) for such improvement, and provide the employee with available assistance as appropriate. Progress will be monitored during the PIP, and all counseling/feedback sessions will be documented.

If the employee's performance is acceptable at the conclusion of the PIP, the servicing CPAC should be contacted for additional guidance. If a PIP ends prior to the end of the annual performance cycle and the employee's performance improves to, and remains at, an acceptable level, the employee is appraised again at the end of the annual performance cycle. If the employee's performance deteriorates to an unacceptable level in any element within two years from the beginning of a PIP, follow-on actions may be initiated with no additional opportunity to improve. If an employee's performance

is at an acceptable level for two years from the beginning of the PIP, and performance once again declines to an unacceptable level, the employee will be given an additional opportunity to improve before management proposes follow-on actions.

If the employee fails to improve at the conclusion of the PIP, the employee will be given notice of proposed appropriate action. This action can include removal from the Federal service, placement in a lower pay band with a corresponding reduction in pay (demotion), reduction in pay within the same pay band, or change in position or occupational family. In many situations, employees with an unacceptable rating will not be permitted to remain at their current pay and may be reduced in pay band.

Reductions in base pay within the same pay band or changes to a lower pay band will be accomplished with a minimum of a five-percent decrease in an employee's base pay.

Note: Nothing in this subsection will preclude action under 5 U.S.C. chapter 75 [Adverse Actions], when appropriate.

All relevant documentation concerning a reduction in pay or removal based on unacceptable performance will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the record will consist of a copy of the notice of proposed personnel action, the employee's written reply, if provided, or a summary when the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefore along with any supporting material (including documentation regarding the opportunity afforded the employee to demonstrate improved performance).

6. Reconciliation Process

Following the initial scoring of each employee by the supervisor, a panel of rating officials and supervisors will meet in a structured review and reconciliation process panel managed by the Pay Pool Manager. In this step, each employee's performance objectives, accomplishments, preliminary scores, and pay are compared. Through discussion and consensus building, consistent and equitable ratings are reached. There will not be a prescribed distribution of total scores. The Pay Pool Manager will chair a final review with the rating officials/supervisors to validate these ratings and resolve any remaining scoring issues. If consensus on scoring cannot be reached for one or more employees in this process, the Pay Pool Manager makes all final decisions. IOPs will provide details on this process to employees and supervisors.

Given the unique organizational structure of ARI, the reconciliation process of employees who report directly to the ARI Director may be different from the procedures described above. In those cases, the ARI Director will review and resolve all ratings as pay pool manager for those direct reports. Should the organization's structure change to allow for a pay pool process comparable to the one previously described, the procedures for the ARI Director's direct reports are likely to change to incorporate pay pool panel participation and reconciliation.

After the reconciliation process is complete, scores are finalized. Payouts proceed according to each employee's final score and adjusted base pay. Information pertaining to the reconciliation process will be made available to all employees.

7. Pay Pools

ARI will have one or more pay pools, and each ARI employee will be placed into one of these pools. Pay pools are combinations of organizational elements that are defined for the purpose of determining performance payouts under the pay-for-performance system. The next paragraph provides the guidelines for determining pay pools. These guidelines will normally be followed, but deviations may occur if there is a compelling need. The rationale for any deviations will be documented in writing, and final procedures will be published prior to start of the rating period.

The ARI Director will establish pay pools. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Supervisory personnel will be placed in a pay pool separate from subordinate non-supervisory personnel. Neither the Pay Pool Manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Funds within a pay pool available for performance payouts are calculated from anticipated pay increases under the existing system and divided into two components, base pay and bonus. The funds within a pay pool used for base pay increases are those that would have been available from within-grade increases, quality step increases, and promotions. This amount will be defined based on historical data and will be set at no less than two percent of total adjusted base pay annually. The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. This amount will be defined based on historical data and at no less than one percent of total adjusted base pay annually. The pay pool funding percentages are the same for all pay pools. The sum of these two factors is referred to as the pay pool percentage factor.

The ARI Personnel Management Board will annually review the pay pool funding and recommend adjustments to the ARI Director to ensure cost discipline over the life of the demonstration project. The ARI Director makes the final decision on pay pool funding.

8. Performance Payout Determination

The performance payout an employee will receive is based on the total performance score from the pay for performance assessment process. An employee will receive a performance payout as a percentage of adjusted base pay. This percentage is based on the number of shares that equates to an employee's final appraisal score. Shares will be awarded on a continuum as follows:

Total Performance Score = Share
50 = 3
40 = 2
30 = 1
21 = 0.1
10 – 20 = 0
< = 9 = 0 (Performance Improvement Plan required).

Fractional shares will be awarded for scores that fall between these scores. For example, a score of 38 will equate to 1.8 shares, and a score of 44 will equate to 2.4 shares.

The value of a share cannot be exactly determined until the rating and reconciliation process is completed and scores for all employees are finalized. The share value is expressed as a percentage. The formula that computes the value of each share uses base pay rates and is based on (1) the sum of the base pay of all employees in the pay pool times the pay pool percentage factor, (2) the employee's base pay, (3) the number of shares awarded to each employee in the pay pool, and (4) the total number of shares awarded in the pay pool. This formula assures that each employee within the pool receives a share amount equal to other employees in the same pool who are at the same rate of base pay and receive the same score. The formula is shown in Figure 3.

FIGURE 3—SHARE VALUE FORMULA

$$\text{Share value} = \frac{\text{Sum of base pay of employees in pool * pay pool percentage factor}}{\text{Sum of (base pay * shares earned) for each employee}}$$

An individual payout is calculated by first multiplying the shares earned by the share value and multiplying that product by base pay. An adjustment is then made to account for locality pay.

A pay pool manager is accountable for staying within pay pool limits. The pay pool manager makes the final decision on base pay increases and/or bonuses to individuals based on rater recommendation, the final score, the pay pool funds available, and the employee's pay.

9. Base Pay Increases and Bonuses

The amount of money available for performance payouts is divided into two components: Base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus as determined by the rules set forth in this FRN and IOPs, such that all the allocated funds are disbursed. To provide performance incentives while ensuring cost discipline, base pay increases may be limited or capped.

Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band, when the mid-point rule applies (see below) or when the Significant Accomplishment/Contribution rule applies (see below). Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the base pay for any purpose (*e.g.,* lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this personnel demonstration project will be the unadjusted base pay rate of GS–15/step 10, except for employees in Pay Band VI of the E&S occupational family.

Based on pay pool operating procedures and business rules, the organization may re-allocate a portion (up to the maximum possible amount) of the unexpended base pay funds. This re-allocation will be determined by the Pay Pool Manager. Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's total performance payout is unchanged. This re-allocation could be required for a number of reasons to include the use of re-allocation of to reduce extreme pay-for-performance gaps.

In addition, the pay pool manager may request approval from the PMB for use of an Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee that is higher than the one generated by the compensation formula for that employee. The funds available for an Extraordinary Achievement Recognition are separately funded within the constraints of the

organization's budget. Extraordinary Achievement Recognition, if warranted, will be determined by the Review and Reconciliation Panel, and the pay pool manager will provide the request to the PMB who will make the final decision based on the merits and funds available.

10. Mid-Point Rule

To provide added performance incentives as an employee progresses through a pay band, a mid-point rule will be used to determine base pay increases. The mid-point rule dictates that any employee must receive a score of 30 or higher for his/her base pay to cross the mid-point of the base pay range for his/her pay band. Also, once an employee's base pay exceeds the mid-point, the employee must receive a score of 30 or higher to receive any additional base pay increases. Any amount of an employee's performance payout, not paid in the form of a base pay increase because of the mid-point rule, will be paid as a bonus. This rule effectively raises the standard of performance expected of an employee once the mid-point of a band is crossed. This applies to all employees in every occupational family and pay band. The performance rating of 30 is set as an initial value and may be changed by the PMB, as necessary, with a goal of continuously increasing employee and organizational performance.

11. Significant Accomplishment/ Contribution Rule

The purpose of this rule is to maintain cost discipline while ensuring that employee payouts are in consonance with accomplishments and levels of responsibility. The rule will apply only to employees in E&S Pay Band III whose base pay would fall within the top 15 percent of the band. For employees meeting these criteria, the following provisions will apply:

(1) If an employee's score falls in the top third of scores received in his/her pay pool, he/she will receive the full allowable base pay increase portion of the performance payout. The balance of the payout will be paid as a lump sum bonus.

(2) If an employee's score falls in the middle third of scores received in his/her pay pool, the base pay increase portion will not exceed one percent of base pay. The balance of the payout will be paid as a lump sum bonus.

(3) If an employee's appraisal score falls in the bottom third of scores received in his/her pay pool, the full payout will be paid as a lump sum bonus.

12. Awards

In addition to the annual performance evaluation and payout process, the ARI Director may recognize outstanding individual or group achievements as they occur. Awards may include, but are not limited to, honorary, special act or on-the-spot monetary awards, and time-off awards. The ARI Director may re-delegate this authority. The ARI Director will have the authority to grant special act awards to covered employees of up to $10,000 IAW the criteria of AR 672–20, Incentive Awards. The funds available to be used for traditional 5 U.S.C. awards are separately funded within the constraints of the organization's budget.

13. General Pay Increase—Limitations for Unacceptable Performance

Employees on a PIP at the time pay determinations are made do not receive performance payouts or the annual general pay increase. An employee who receives an unacceptable rating of record will not receive any portion of the general pay increase until such time as his/her performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the general pay increase will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment. These actions may result in a base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

14. Retention Counteroffers

The Director, working with the PMB, may offer a retention counteroffer to retain high performing employees with critical scientific or technical skills who present evidence of an alternative employment opportunity with higher compensation. Such employees may be provided increased base pay (up to the ceiling of the payband) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. Further details will be published in the IOP. This flexibility addresses the expected benefits described in paragraph II. C, particularly ''increased retention of high quality employees.'' Retention allowances, either in the form of a base pay increase and/or a bonus, count toward the Executive Level I aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Further details will be published in the IOP.

15. Grievances

An employee may grieve the performance rating/score received under the pay-for-performance system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance rating grievances must file under those negotiated procedures.

16. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

D. Hiring Authority

1. Qualifications

A candidate's basic eligibility will be determined using OPM's Qualification Standards Handbook for General Schedule Positions. Candidates must meet the minimum standards for entry into the payband. For example, if the payband includes positions in grades GS–5 and GS–7, the candidate must meet the qualifications for positions at the GS–5 level. Specific experience/ education requirements will be determined based on whether a position to be filled is at the lower or higher end of the band. Selective placement factors can be established in accordance with the OPM Qualification Handbook, when judged to be critical to successful job performance. These factors will be communicated to all candidates for particular position vacancies and must be met for basic eligibility. Restructuring the examining process and providing an authority to appoint candidates meeting distinguished scholastic achievements will allow the laboratory to compete more effectively for high quality personnel and strengthen the manager's role in personnel management as well as the goals of the demonstration project.

2. Delegated Examining

Competitive service positions will be filled through Merit Staffing, and through direct-hire authority or under Delegated Examining. Section 1108 of the NDAA for FY 2009, as amended by section 1103 of the NDAA for FY 2012, provides for delegation of direct-hire authority for qualified candidates with an advanced degree to scientific and engineering positions within STRL

laboratories designated under section 1105 of NDAA FY2010. Direct-hire authority will be exercised in accordance with the requirements of the delegation of authority.

When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking may occur when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Category rating may be used to provide for a more streamlined and responsive hiring system to increase the number of eligible candidates referred to selecting officials. This provides for the grouping of eligible candidates into quality categories and the elimination of consideration according to the ''rule of three.'' This includes the coordination of recruitment and public notices, the administration of the examining process, the administration of veterans' preference, the certification of candidates, and selection and appointment consistent with merit principles. Specific procedures used for competitive examining authority will be detailed in the IOP.

Statutes and regulations covering veterans' preference will be observed in the selection process when rating and ranking are required. Veterans with preference will be referred ahead of non-veterans with the same score/category.

3. Direct Hire

ARI will use the direct-hire authorities authorized by section 1108 of the NDAA for FY 2009, as amended by section 1103 of the NDAA for FY 2012, the direct hire authorities published in 79 FR 43722, and the direct hire authorities in 10 U.S.C. 2358a, as appropriate, to appoint the following:

(1) Candidates with advanced degrees to scientific and engineering positions;

(2) Candidates with bachelor's degrees to scientific and engineering positions;

(3) Veteran candidates to scientific, technical, engineering, and mathematics positions (STEM), including technicians; and

(4) Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline.

In addition, other Direct Hire authorities, documented in FRNs and available to all DoD STRL laboratories, may be utilized, as appropriate.

4. Legal Authority

For actions taken under the auspices of the demonstration project, the first legal authority code (LAC)/legal authority Z2U/Public Law 103–337 will be used. The second LAC/legal authority may identify the authority utilized (*e.g.,* Direct Hires). For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

5. Revisions to Term Appointments

ARI will continue to have career and career-conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, ARI will have the added authority to hire individuals under a modified term appointment, and the Flexible Length and Renewable Term Technical Appointments authorized by section 1109(b)(1) of the NDAA for FY 2016, as amended by section 1106 of the NDAA for FY 2019, and published in 82 FR 43339.

Employees hired under the modified term appointment authority are in a non-permanent status in the competitive service for up to five years. The ARI Director is authorized to extend a modified term appointment for up to one additional year. Employees on modified term appointments may be eligible for conversion to career conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional appointment at a later date; (2) have served two years of continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) be performing at the acceptable level of performance with a current score of 30 or greater.

The Flexible Length and Renewable Term Technical Appointment authority will allow ARI to appoint qualified candidates who are not currently DoD civilian employees, or who are DoD civilian employees in term appointments, into any scientific, technical, engineering, and mathematic positions, including technicians, for a period of more than one year but not more than six years. The appointment of any individual under this authority may be extended without limit in up to six year increments at any time during any term of service under conditions set forth by the ARI Director. These appointments will allow ARI to dynamically shape the workforce to respond to mission requirements. Consistent with section 1109(b)(1) of the NDAA for FY 2016, as amended, employees hired under this provision will be counted as fractional employees of the laboratory for the purpose of determining workforce size of the laboratory. All waivers published in 82 FR 43339 apply to this demonstration project.

Employees appointed under Flexible Length and Renewable Term Technical Appointments may be eligible for noncompetitive conversion to a permanent appointment if the job announcement clearly states the possibility of being made permanent, in addition to any other provision in the STRL's modified term appointment authority. Unless otherwise eligible for a noncompetitive hiring authority, positions filled under this authority must be competed. Job opportunity announcements must clearly identify the type of appointment and the expected duration of initial appointment (up to six years). Appointees will also be afforded the opportunity to apply for vacancies that are otherwise limited to ''status'' candidates as described in 82 FR 43339.

Employees serving under term appointments will be covered by the plan's pay-for-performance system.

6. Extended Probationary or Trial Period

The current two-year probationary period (Pub. L. 114–92) for DoD employees will be extended to three years for all newly hired permanent career-conditional employees. Trial periods for term appointments will also be extended to three years. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete cycles of work and to fully assess an employee's contribution and conduct. The three-year probationary period will apply only to new hires subject to a probationary period.

Aside from extending the time period for probationary or trial periods, all other features of the current probationary and trial period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee appointed prior to the implementation date will not be affected.

7. Termination of Probationary Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor will terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice will, at a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's performance or conduct, or those conditions arising before employment that support the termination.

8. Supervisory Probationary Periods

Supervisory probationary periods will be consistent with 5 CFR part 315, subpart I. Existing Federal employees who are competitively selected or reassigned to a supervisory position will be required to complete a two-year supervisory probationary period for initial appointment to a supervisory position. Newly appointed supervisors, new to Federal service, must complete the probationary periods in accordance with section III.D.6 of this FRN for Extended Probationary Periods. Consistent with 5 U.S.C. 3321, if, during this supervisory probationary period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance, the employee will be returned to a position comparable in pay and job duties to the position from which they were originally promoted or reassigned.

Supervisors hired, new to the Government, who have not demonstrated successful performance in a lower position at ARI and who do not successfully complete their probationary period may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. As with non-supervisors and consistent with 5 U.S.C. 3321, a supervisor who is not performing at an acceptable level may be moved to another position in a different pay band. Such a move would result in a reduction of pay of no less than 6 percent or to the top of the lower pay band, whichever reduction is greater.

The ARI Director may place the supervisor on a Performance Improvement Plan (PIP) at any time during the supervisory probationary period to help improve performance to a successful level.

9. Volunteer Emeritus Program (VEP)

The ARI Director will have the authority to offer former Federal employees who have retired or separated from the Federal service, voluntary assignments in ARI. VEP assignments are not considered ''employment'' by the Federal government. Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The VEP will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The VEP may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the ARI's mission.

To be accepted into the VEP, a candidate must be recommended by an ARI manager to the ARI Director. Everyone who applies is not entitled to participate in the program. The Director will document the decision process for each candidate and retain selection and non-selection documentation for the duration of the assignment or two years, whichever is longer.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer and the ARI Director. The agreement will be reviewed by the servicing legal office. The agreement must be finalized before the assumption of duties and will include:

(1) A statement that the service provided is gratuitous, that the volunteer assignment does not constitute an appointment in the civil service and is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government (stemming from or in connection with the volunteer assignment) are waived by the volunteer;

(2) a statement that the volunteer will be considered a federal employee for the purpose of:

(a) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(b) 31 U.S.C. 1343, 1344, and 1349(b);

(c) 5 U.S.C. chapters 73 and 81;

(d) The Ethics in Government Act of 1978;

(e) 41 U.S.C. chapter 21;

(f) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;

(g) 5 U.S.C. 552a (records maintained on individuals); and

(3) The volunteer's work schedule;

(4) The length of agreement (defined by length of project or time defined by weeks, months, or years);

(5) The support to be provided by ARI (travel, administrative, office space, supplies);

(6) The volunteer's duties;

(7) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the VEP;

(8) A provision allowing either party to void the agreement with 10 working days written notice;

(9) The level of security access required (any security clearance required by the assignment will be managed by ARI while the volunteer is a participant in the VEP);

(10) A provision that any written products prepared for publication that are related to VEP participation will be submitted to the ARI Director for review and must be approved prior to publication;

(11) A statement that the volunteer accepts accountability for loss or damage to Government property occasioned by the volunteer's negligence or willful action;

(12) A statement that the volunteer's activities on the premises will conform to the ARI's regulations and requirements;

(13) A statement that the volunteer will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the VEP participant or any non-Federal entities. VEP participants will handle all non-public information in a manner that reduces the possibility of improper disclosure.

(14) A statement that the volunteer agrees to disclose any inventions made in the course of work performed at ARI. The ARI Director will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the Director elect not to take title, the Center will retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

(15) A statement that the VEP participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies, and ethics training in accordance with office of Government Ethics regulations prior to implementation of the agreement; and

(16) A statement that the VEP participant must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. VEP participants are deemed Federal employees for purposes of post-government employment restrictions.

E. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same occupational family or to another pay band in a different occupational family, wherein the band in the new family has a higher maximum base pay than the band from which the employee is moving. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Movement from one occupational family to another will depend upon individual competencies, qualifications, and the needs of the organization.

Progression within a pay band is based upon performance based pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local merit promotion plan.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of 30 or better, or equivalent under a different performance appraisal system. The minimum performance rating of 30 is set as an initial value and may be changed by the PMB, as necessary, with a goal of continuously increasing employee and laboratory performance. If an employee does not have a current performance rating, the employee will be treated the same as an employee with an ''acceptable'' rating as long as there is no documented evidence of unacceptable performance.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same occupational family and pay band or to another occupational family and pay band wherein the band in the new family has the same maximum base pay. The employee must meet the qualifications requirements for the occupational family and pay band.

3. Demotion or Placement in a Lower Pay Band

A demotion is a placement of an employee into a lower pay band within the same occupational family or placement into a pay band in a different occupational family with a lower maximum base pay. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request—if approved, placement actions resulting from reduction-in-force ((RIF) procedures).

4. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with no change in base pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a Research Psychologist could be assigned to any project, task, or function requiring similar expertise. Likewise, a manager/supervisor could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

5. Details and Expanded Temporary Promotions

Employees may be detailed or temporarily promoted to a position in the same band (requiring a different level of expertise and qualifications) or lower pay band (or its equivalent in a different occupational family) or to a position in a higher band for up to two years. Details and temporary promotions may be determined by a competitive or a non-competitive process.

6. Exceptions to Competitive Procedures for Assignment to a Position

The following actions are excepted from competitive procedures:

(1) Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

(2) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(3) A position change permitted by RIF procedures.

(4) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(5) A temporary promotion, or detail to a position in a higher pay band, of two years or less.

(6) A promotion due to the reclassification of positions based on accretion (addition) of duties.

(7) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(8) Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

F. Pay Setting

1. General

Pay administration policies will be established by the PMB. These policies will be exempt from Army Regulations

or local pay fixing policies. Employees whose performance is acceptable will receive the full annual general pay increase and the full locality pay. The ARI Director shall have delegated authority to may make full use of recruitment, retention, and relocation payments as currently provided for by OPM.

Grade and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in Section IX, the waiver section of this plan. The ARI Director may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

2. Pay and Compensation Ceilings

An demonstration project employee's total monetary compensation paid in a calendar year may not exceed the base pay of Level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B. In addition, each pay band will have its own pay ceiling, just as grades do in the GS system. Base pay rates for the various pay bands will be directly keyed to the GS rates, except as noted for the Pay Band VI of the Engineer and Scientist occupational family. Other than where retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

3. Pay Setting for Appointment

For initial appointments to Federal service, the individual's pay may be set at the lowest base pay in the pay band or anywhere within the band level consistent with the special qualifications of the individual, specific organizational requirements, the unique requirements of the position, or other compelling reason. These special qualifications may be in the form of education, training, experience or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be established by the PMB and documented in IOPs.

Highest Previous Rate (HPR) may be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Request to use HPR must be made to the PMB and is subject to policies established by the PMB, as approved by the ARI Director. To maintain consistent application of pay setting decisions, the PMB will collect and track pay setting data, qualifications, and other relevant information.

4. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of a pay increase for a promotion is 20 percent but will not normally exceed $10,000 or other such amount as established by the Personnel Management Board. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. For employees assigned to occupational categories and geographic areas covered by special rates, the minimum base pay rate in the pay band to which promoted is the minimum base pay for the corresponding special rate or locality rate, whichever is greater. For employees covered by a staffing supplement (described in III.F.9.), the demonstration staffing supplement adjusted pay is considered base pay for promotion calculations. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the PMB. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay range maximum base pay rate.

5. Pay Setting for Reassignment

A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, authority, or for other compelling reasons. Such an increase is subject to the specific guidelines established by the PMB.

6. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a five percent decrease in base pay. Employees demoted for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, or placement actions resulting from RIF procedures) may be entitled to pay and grade retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in Section IX of this plan.

Employees who receive an unacceptable rating or who are on a PIP at the time pay determinations are made do not receive performance payouts or the general pay increase. This action may result in a base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

A supervisor who fails to successfully complete a supervisory probationary period will no longer receive a supervisory pay adjustment (supervisory differential/adjustment).

7. Supervisory and Team Leader Pay Adjustments

Supervisory and team leader pay adjustments may be approved by the ARI Director at his/her discretion, based on the recommendation of the PMB, to compensate employees with supervisory or team leader responsibilities. Supervisory and team leader pay adjustments are a tool that may be implemented at the discretion of the ARI Director and are not to be considered an employee entitlement due solely to his/her position as a supervisor or team leader. Only employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade Evaluation Guide may be considered for the pay adjustment. These pay adjustments are funded separately from performance pay pools. These pay adjustments are increases to base pay, ranging up to 10 percent of that pay rate for supervisors and for team leaders. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's base pay to exceed the pay band maximum base pay. Criteria to be considered in determining the pay increase percentage include:

(1) Needs of the organization to attract, retain, and motivate high-quality supervisors/team leaders;

(2) Budgetary constraints;

(3) Years and quality of related experience;

(4) Relevant training;

(5) Performance appraisals and experience as a supervisor/team leader;

(6) Unique requirements of a specific position or level of complexity compared to other positions of a similar nature;

(7) Organizational level of position; and

(8) Impact on the organization.

A pay adjustment may be considered under the following conditions:

(1) New supervisory/team leader positions will have their initial rate of base pay set within the pay range of the applicable pay band and rules established by the PMB. Request for initial rate of pay will be made to the PMB and approved by the ARI Director or delegated official. This rate of pay may include a pay adjustment determined by using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory/team leader position may also be considered for a base pay adjustment. If a supervisor/team leader is already authorized a base pay adjustment and is subsequently selected for another supervisor/team leader position, then the base pay adjustment will be re-determined. Upon initial conversion into the demonstration project into the same or substantially similar position, supervisors/team leaders will be converted at their existing base rate of pay and will not be eligible for a base pay adjustment.

(3) The supervisory/team leader pay adjustment will be reviewed annually, or more often as needed, and may be increased or decreased by a portion or by the entire amount of the supervisory/team leader pay adjustment based upon the employee's performance appraisal score for the performance element, Team Project Leadership or Supervision/EEO, needs of the organization, and/or criteria outlined above. If the entire portion of the supervisory/team leader pay adjustment is to be decreased, the initial dollar amount of the supervisory/team leader pay adjustment will be removed. A decrease to the supervisory/team leader pay adjustment as a result of the annual review or when an employee voluntarily leaves a position is not an adverse action and is not subject to appeal.

8. Supervisory/Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used by the ARI Director to provide an incentive and reward supervisors and team leaders. Supervisory and team leader pay differentials are a tool that may be implemented at the discretion of the ARI Director and is not to be considered an entitlement due to an employee solely due to their position as a supervisor or team leader. Pay differentials are not funded from performance pay pools. A pay differential is a cash incentive that may range up to 10 percent of base pay for supervisors and for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory/Team Leader Pay Adjustments.

The pay differential may be considered, either during conversion into or after initiation of the demonstration project. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

After initiation of the demonstration project, all personnel actions involving a supervisory/team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the ARI Director. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

9. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted base pay for the banded GS grades (*i.e.,* the maximum GS locality rate) to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. Specific provisions will be described in IOPs.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training; rotational job assignments; developmental assignments to ARI, Army, or DoD; and self-directed study via correspondence courses, local colleges, and universities. Each developmental opportunity must result in a product, service, report, or study that will benefit ARI or customer organization as well as increase the employee's individual effectiveness. The PMB will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities. These expanded developmental opportunities may be made available when there is a critical skill, need, or gap that must be filled for organizational success. Determinations for sabbaticals and critical skills training shall be made based on the needs of ARI and the relationship to the research mission, merit, organization fill rates, current, near- and mid-term workload requirements, budget, and employee performance scores.

(1) Sabbatical. The ARI Director has the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit employees to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the ARI mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as research, self-directed or guided study, and on-the-job work experience. Limitations and eligibility requirements for sabbaticals will be published in the IOP. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in ARI for a period of three times the length of the sabbatical. If an employee voluntarily leaves ARI before the service obligation is completed he/she is liable for repayment of expenses incurred by ARI that are associated with the sabbatical. Expenses do not include salary costs. The ARI Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures. Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

(2) Critical Skills Training. The ARI Director has the authority to approve academic degree training. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a tool for maintaining required knowledge and skills critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure a fully competitive approval process for expanded critical skills training. Employees approved for degree training must sign a service obligation agreement to continue service in the ARI for a period three times the length of the training period commencing after the completion of the entire degree program. If an employee voluntarily leaves ARI before the service obligation is completed, he/she is liable for repayment of expenses incurred by

ARI that are related to the critical skills training. Expenses do not include salary costs. The ARI Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

IV. Implementation Training

Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. Training will be tailored to address employee concerns and to encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

A training program will begin prior to implementation and will include modules tailored for employees, supervisors, and administrative staff. Typical modules are:

(1) An overview of the demonstration project personnel system.

(2) How employees are converted into and out of the system.

(3) Pay banding.

(4) The pay-for-performance system.

(5) Defining performance objectives.

(6) How to assign weights to performance elements.

(7) Assessing performance and giving feedback.

(8) New position descriptions.

(9) Demonstration project administration and formal evaluation.

Various types of training are being considered, including videos, video-teleconference tutorials, and train-the-trainer concepts. To the extent possible, materials already developed from other STRLs will be utilized when appropriate to reduce implementation cost and to maintain consistency in application of similar procedures across laboratories.

V. Conversion

A. Conversion to the Demonstration Project

Conversion from current GS grade and pay into the new pay band system will be accomplished during implementation of the demonstration project. Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay on conversion.

Under the GS pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of conversion. As under the current system, supervisors will be able to withhold these partial step increases if the employee's performance is below an acceptable level of competence.

Rules governing WGIs will continue in effect until conversion. Adjustments to the employee's base salary for WGI equity will be computed as of the effective date of conversion. WGI equity will be acknowledged by increasing base pay by a prorated share based upon the number of full weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10, or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. Employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

Employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment will be subject to the same pay conversion rules as above. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

B. Conversion or Movement From a Project Position to a General Schedule Position

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rate of pay to GS equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For employee movement from within DoD (transfers), promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(1) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step four rates on the highest applicable GS rate range. (For this purpose, a ''GS rate range'' includes a rate in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(2) If the employee's adjusted project rate equals or exceeds the applicable step four rate of the highest GS grade in the band, the employee is converted to that grade.

(3) If the employee's adjusted project rate is lower than the applicable step four rate of the highest grade, the adjusted rate is compared with the step four rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step four rate of the second highest grade, the employee is converted to that grade.

(4) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step four rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step four rate of the lowest grade in the band, the employee is converted to the lowest grade.

(5) *Exception:* An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or transfer from within DoD into the project, unless

since that time the employee has undergone a reduction in band or accepted a lower grade/band position.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to GS rate of pay in accordance with the following rules:

(1) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(2) An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement) is converted to the GS adjusted rate on the highest applicable rate range for the converted GS grade. (For this purpose, a ''GS rate range'' includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(3) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

(4) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rates must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

3. E&S Pay Band III Employees

An employee in Pay band III of the E&S Occupational family will convert out of the demonstration project at no higher than the GS–13, step 10 level. ARI, in consultation with the CPAC, will develop a procedure to ensure that employees entering E&S Pay band III understand that if they leave the demonstration project and their adjusted pay exceeds the GS–13, step 10 rate, there is no entitlement to retained pay; their GS-equivalent rate will be deemed to be the rate for GS–13, step 10. These procedures will be documented in IOPs.

4. E&S Pay Band VI Employees

E&S Pay Band VI Employees: An employee in Pay Band VI of the E&S occupational family will convert out of the demonstration project at the GS–15 level. Procedures will be documented in IOPs to ensure that employees entering Pay Band VI understand that if they leave the demonstration project and their adjusted base pay under the demonstration project exceeds the highest applicable GS–15, step 10 rate, there is no entitlement to retained pay. However, consistent with 79 FR 43722, July 28, 2014, pay retention may be provided to SSTM members under criteria established by the PMB (and approved by the Director) who are impacted by a reduction in force, work realignment, or other planned management action that would necessitate moving the incumbent to a position in a lower pay band within the STRL. Pay retention may also be provided under criteria established when an SES or ST employee is placed in a SSTM position as a result of reduction in force or other management action. SSTM positions not entitled to pay retention above the GS–15, step 10 rate will be deemed to be the rate for GS–15, step 10. For those Pay Band VI employees paid below the adjusted GS–15, step 10 rate, the converted rates will be set in accordance with paragraph 2.

5. Employees With Band or Pay Retention

(1) If an employee is retaining a band level under the demonstration project, apply the procedures in paragraphs 1.a. and 1.b. (Grade-Setting Provisions) above, using the grades encompassed in the employee's retained band to determine the employee's GS-equivalent retained grade and pay rate. The time in a retained band under the demonstration project counts toward the 2-year limit on grade retention in 5 U.S.C. 5382.

(2) If an employee is retaining rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. ARI will coordinate with DoD to prescribe a procedure for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

6. Within-Grade Increase

Equivalent Increase Determinations: Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

C. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing CPAC(s) will continue to process personnel-related actions and provide consultative and other appropriate services.

D. Automation

ARI will use the DoD approved automated personnel system for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

An automated tool or other appropriate procedures will be used to support computation of performance related pay increases and awards and other personnel processes and systems associated with this project.

E. Revision

Constant assessment and refinement is needed to maximize the effectiveness of the system. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. Modifications will be made in accordance with the provisions of DoDI 1400.37, or applicable superseding instructions.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration project. ARI, DA, and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission, and any potential adverse impact on any employee groups.

VII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This

plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction). That plan, while useful, is dated and does not fully afford the laboratories the ability to evaluate all aspects of the demonstration project in a way that fully facilitates assessment and effective modification based on actionable data. Therefore, in conducting the evaluation ARI will ensure USD(R&E) evaluation requirements are met in addition to applying knowledge gained from other DoD laboratories and their evaluations to ensure a timely, useful evaluation of the demonstration project.

B. Method of Data Collection

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual survey data from employees will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of qualitative and/or quantitative data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and, (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 1. Project evaluation costs are not expected to continue beyond the first five years unless the results warrant further evaluation. Additional cost may be incurred as a part of the implementation and operation of the project.

TABLE 1—PROJECTED DEVELOPMENTAL COSTS

[In thousands of dollars]

	FY19	FY20	FY21	FY22	FY23
Training	15K	15K	10K	10K	5K
Project Evaluation	0K	0K	5K	5K	30K
Automation	15K	25K	25K	25K	25K
	30K	40K	40K	40K	60K

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain Title 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, United States Code

Chapter 5, section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Volunteer Emeritus Corps are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3104: Employment of specially qualified scientific and professional personnel. Waived to allow SSTMs.

Chapter 31, section 3132: The Senior Executive Service: Definitions and exclusions. Waived as necessary to allow for the Pay Band VI of the E&S Occupational Family.

Chapter 33, section 3317(a): Competitive Service; certification from registers. Waived insofar as ''rule of three'' is eliminated under the demonstration projects.

Chapter 33, section 3318(a): Competitive Service, selection from certificate. Waived to the extent necessary to eliminate the requirement

for selection using the ''Rule of Three'' and other limitations on recruitment list.

Chapter 33, section 3321: Competitive service; probationary period. This section waived only to the extent necessary to replace grade with ''pay band.''

Chapter 33, section 3324 and section 3325: Appointments to positions classified above GS–15. Waived in entirety to fully allow for positions above GS–15.

Chapter 33, section 3341: Details. Waived as necessary to extend the time limits for details.

Chapter 41, section 4107: Pay for Degrees. Waived in entirety.

Chapter 41, section 4108(a)–(c): Employee agreements; service after training. Waived to the extent necessary to require the employee to continue in the service of ARI for the period of the required service and to the extent necessary to permit the Director, ARI, to waive in whole or in part a right of recovery.

Chapter 43, sections 4301–4305: Related to performance appraisal. These sections are waived to the extent necessary to allow provisions of the performance management system as described in this FRN.

Chapter 51, sections 5101–5112: Classification. Waived as necessary to allow for the demonstration project pay banding system.

Chapter 53, sections 5301–5307: Related to pay comparability system and GS pay rates. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as GS employees, and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed EX III.

Chapter 53, sections 5331–5336: GS pay rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and pay retention. Waived to the extent necessary to allow pay retention provisions described in this FR notice and to allow SSTMs to receive pay retention as described in 79 FR 43722.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band VI of the E&S occupational family.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation, bonuses, retention allowances and supervisory differentials. Waived to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS, (2) employees in Pay Band VI of the E&S occupational family to be treated as ST and/or GS employees as appropriate, (3) previsions of the retention counteroffer and incentives as described in this FRN, and (4) to allow SSTMs to receive supervisory pay differentials as described in 79 FR 43722.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost-of-living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse actions—definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference. Waived to the extent necessary to allow for two-year supervisory probationary periods and to permit re-assignment of supervisors during the probationary period without adverse action procedures for those employees serving in a supervisory probationary period.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace ''grade'' with ''pay band.''

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) reductions in pay due to the removal of a supervisory or team leader pay adjustment/differential upon voluntary movement to a non-supervisory or non-team leader position or (2) decreases in the amount of a supervisory or team leader pay adjustment/differential during the annual review process.

B. Waivers to Title 5, Code of Federal Regulations

Part 300–330: Employment (general) other than subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722 and 82 FR 29280.

Part 300, sections 300.601 through 605: Time-in-grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e) and 315.802(a) and (b)(1): Probationary period and length of probationary period. Waived to the extent necessary to (1) allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference and (2) to the extent necessary to allow for supervisory probationary periods to permit reassignment during the supervisory probationary period without using adverse action procedures for employees serving a probationary period.

Part 315, section 315.804: Termination of probationers for unsatisfactory performance or conduct. Waived to the extent necessary to reduce a supervisor who fails to successfully complete a supervisory probationary period to a lower grade/band.

Part 315, section 315.805: Termination of probationers for conditions arising before appointment. Waived to the extent necessary to permit termination during the extended probationary period without using adverse procedures.

Part 315, section 315.901–315.909: Statutory requirement. Waived to the extent necessary to (1) replace ''grade'' with ''pay band;'' (2) establish a two-year supervisory probationary period; and (3) allow the movement of a newly hired supervisor who fails to meet requirements to a lower grade/band.

Part 316, sections 316.301, 316.303, and 316.304: Term employment. Waived to the extent necessary to allow modified term appointments and Flexible Length and Renewable Term Technical Appointments as described in this FRN and in 82 FR 43339.

Part 332, section 332.401, 332.402 and 332.404: Order of selection from certificates. Waived to the extent necessary to eliminate the requirement for selection using the ''Rule of Three'' or other procedures to limit recruitment lists.

Part 335, section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without

rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 340, subpart A, subpart B, and subpart C: Other than full-time career employment. These subparts are waived to the extent necessary to allow a Volunteer Emeritus Corps.

Part 359, section 359.705: Pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES or ST placed on an SSTM position.

Part 410, section 410.308(a–e): Training to obtain an academic degree. Waived to the extent necessary to allow provisions described in this FR.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the ARI Director to determine requirements related to continued service agreements.

Part 430, subpart B: Performance appraisal for GS, prevailing rate, and certain other employees. Waived to the extent necessary to be consistent with the demonstration project's pay-for-performance system.

Part 432, section 432.102–432.106: Performance based reduction in grade and removal actions. Waived to the extent necessary to allow provisions described in the FRN.

Part 511: Classification under the general schedule. Waived to the extent necessary to allow classification provisions outlined in this FR to include the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate occupational families; and to allow appeals to be decided by the ARI Director. If the employee is not satisfied with the ARI Director's response to the appeal, he/she may then appeal to the DoD appellate level.

Part 530, subpart C: Special rate schedules for recruitment and retention. Waived in its entirety to allow for staffing supplements, if applicable.

Part 531, subpart B: Determining rate of basic pay. Waived to the extent necessary to allow for pay setting and pay-for-performance under the provisions of the demonstration project.

Part 531, subparts D and E: Within-grade increases and quality step increases. Waived in its entirety.

Part 531, subpart F: Locality-based comparability payments. Waived to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band VI of the E&S occupational family, to be treated as GS employees; and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 536: Grade and pay retention. Waived to the extent necessary to (1) replace ''grade'' with ''pay band;'' (2) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; (3) allow demonstration project employees to be treated as GS employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of ''Unacceptable;'' (5) provide that an employee on pay retention whose rating of record is ''Unacceptable'' is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (6) ensure that for employees of Pay Band VI in the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of base pay for GS–15, step 10 (*i.e.,* there is no entitlement to retained rate); and (7) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement. This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 536, section 536.306(a): Limitation on retained rates. Waived to the extent necessary to allow SSTMs to receive pay retention as described in 79 FR 43727.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level.''

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band VI of the E&S occupational family.

Part 575, subparts A, B, C, and D: Recruitment incentives, relocation incentives, retention incentives and supervisory differentials. Waived to the extent necessary to allow (1) employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS system, (2) to allow SSTMs to receive supervisory pay differentials as described in 73 FR 43727, and (3) to allow the Director to pay an offer up to 50 percent of basic pay of either a base pay and/or a cash payment to retain quality employees; and to the extent necessary to allow SSTMs to receive supervisory pay differentials. Criteria for retention determination and preparing written service agreements will be as prescribed in 5 U.S.C. 5754 and as waived herein.

Part 591, subpart B: Cost-of-living allowance and post differential—Non-foreign Areas. Waived to the extent necessary to allow demonstration project employees to be treated as employees under the GS system.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and coverage. Waived to the extent necessary to (1) allow for up to a three-year probationary period; (2) permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference; (3) allow for supervisory probationary periods and to permit reassignment during the supervisory probationary period without use of adverse action procedures for those employees serving a probationary period under a supervisory probationary period; (4) replace ''grade'' with ''pay band;'' and (5) provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment/differential upon voluntary movement to a non-supervisory or non-team leader position or decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

BILLING CODE 5001–06–P

APPENDIX A: ARI EMPLOYEES BY DUTY LOCATION

[Totals exclude SES and ST]

Duty Location	Employees
Fort Belvoir, VA	78
Fort Benning, GA	12
Fort Eustis, VA	1
Fort Hood TX	11
Fort Leavenworth, KS	12
Total All Employees	114

APPENDIX B: OCCUPATIONAL SERIES BY OCCUPATIONAL FAMILY

I. Engineering & Science (DB)

0180 Psychologist Series

1530 Statistics Series

II. Business/ Technical (DE)

0301 Miscellaneous Administration and Program Series

0340 Program Management Series

0341 Administrative Officer Series

0343 Management and Program Analysis Series

0560 Budget Analysis Series

1410 Librarian Series

2001 General Supply Series

2210 Information Technology Management Series

III. General Support (DK)

0303 Miscellaneous Clerk and Assistant Series

0318 Secretary Series

NOTE: Additional occupational series may be added as needed to support mission requirements.

APPENDIX C: PERFORMANCE ELEMENTS

Each performance element is assigned a minimum weight. The total weight of all elements in a performance plan must equal 100. The supervisor assigns each element a weight represented as a percentage of the 100 in accordance with individual duties/ responsibilities, objectives, and the organization's mission and goals. All employees will be rated against the first four performance elements listed below. Those employees whose duties require team leader responsibilities will be rated on element five. All supervisors will be rated on element six.

1. Technical Rigor

The extent to which an employee applies professional and technical rigor (i.e., knowledge, skills, abilities, and other attributes) to work products and processes. An employee demonstrates technical rigor by producing products that rise to the standards of one's profession or job series. Technical rigor embodies both the quality/accuracy of work produced and the approach used to accomplish the work. Technical rigor also is demonstrated through innovative approaches to technical challenges, technically sound decisions and recommendations, the ability and initiative to recognize and solve technical problems, and the initiative to maintain and improve one's technical skills through professional growth, training, and developmental assignments.

2. Interpersonal Effectiveness

The extent to which an employee is effective in his or her interpersonal interactions with others, promotes a professional and positive work environment, and works effectively with others in group contexts. An employee demonstrates interpersonal effectiveness through treating others with courtesy and respect, communicating information and ideas through verbal and written channels, and understanding how to convey information effectively to different types of

audiences. An interpersonally effective employee builds and maintains relationships with others within and outside the organization to accomplish one's work and the goals of the organization.

3. Managing Time and Other Resources

The extent to which an employee effectively manages resources (e.g., time, finances, projects, government assets) and creates efficiencies to accomplish his or her work and achieve objectives. An employee demonstrates effective management of his or her resources by meeting schedules and milestones, prioritizing and balancing tasks, and utilizing and properly controlling resources. Effective resource management also includes adapting to changing requirements, determining and obtaining the resources needed to complete a task/project, and creating or implementing new ideas to improve work efficiencies.

4. Driving Organizational Success

The extent to which an employee effectively understands, contributes to, and promotes the effective performance of ARI's mission within the Army S&T enterprise. An employee demonstrates effective performance in this element by understanding his or her internal and external stakeholder's needs and being responsive to the needs of the organization and relevant stakeholders. Additionally, an employee can help drive the success of the organization by lending his or her expertise to coworkers, management, organizational efforts, and Army initiatives.

5. Team Leadership

The extent to which a Team Leader guides a team to produce plans and products in alignment with the organization and unit's strategic plan, mission, and vision. An effective Team Leader communicates the organization and unit's strategic vision to his/her team and helps translate strategic vision into meaningful actions at the team member level. Team leaders are responsible

for proactively identifying new projects, tasks, and actions collaboratively to enable the unit to accomplish its mission. An effective Team Leader also ensures both the quality and timeliness of team member work by monitoring and coordinating team activities. A Team Leader will resolve simple, informal complaints of team members and inform the supervisor of any performance management issues and/or problems. (This performance element is mandatory for all non-supervisory Team Leaders, but can be used also for an employee who is temporarily assigned to lead a large-scale project and team commensurate with work performed by a Team Leader.)

6. Supervision and EEO

The extent to which a supervisor leads, manages, plans, communicates, and assures implementation of strategic/operational goals and objectives of the organization. An effective supervisor manages and monitors employee performance by developing employee performance objectives and communicating performance expectations, evaluating employee performance, providing timely feedback, and recognizing exceptional performance throughout the performance period. An effective supervisor develops and sustains a positive unit climate and professional work environment. An effective supervisor also develops and grows the skills of his or her employees by ensuring employees complete training requirements, providing developmental tasks and activities, and maintaining a technically challenging work environment. Effective supervision and leadership also require proactive action to recruit and staff the unit with employees who possess the potential to perform well. Importantly, an effective supervisor is one who adheres to EEO and Merit principles, creates a physically safe work environment, and ensures proper management controls to prevent fraud, waste, or abuse. (Mandatory for managers/supervisors.)

Dated: November 15, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–25201 Filed 11–21–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0126]

Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project in the Naval Facilities Engineering Command, Engineering and Expeditionary Warfare Center (NAVFAC EXWC)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Notice of proposal to adopt and modify an existing personnel management demonstration project.

SUMMARY: This **Federal Register** Notice (FRN) serves as notice of the proposed adoption of an existing STRL Personnel Management Demonstration Project by the Naval Facilities Engineering Command, Engineering and Expeditionary Warfare Center (NAVFAC EXWC). NAVFAC EXWC proposes to adopt, with some modifications, the STRL Personnel Demonstration Project implemented at the: Naval Air Systems Command (NAVAIR) Naval Warfare Center, Aircraft Division, Naval Air Warfare Center, Weapons Division; Naval Information Warfare Centers Atlantic and Pacific (NIWC Atlantic and Pacific) (previously designated as the Space and Naval Warfare Systems Command, Space and Naval Warfare Systems Centers Atlantic and Pacific), Naval Sea Systems Command Warfare Centers (NAVSEA), and the Combat Capabilities Development Command (CCDC) Army Research Laboratory (ARL) (previously designated as ARL).

DATES: NAVFAC EXWC's personnel demonstration project proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final FRN published. To be considered, written comments must be submitted on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

NAVFAC EXWC: Ms. Carol Frash, 1000 23rd Avenue, Port Hueneme, CA 93043 (805) 982–2422, or *reinventnavfacexwc@navy.mil.*

DoD: Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 4800 Mark Center Drive, Alexandria, VA 22350, (571) 372–6372, *jagadeesh.pamulapati.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337; as amended, authorizes the Secretary of Defense (SECDEF), through the USD(R&E), to conduct personnel demonstration projects at DoD laboratories designated as STRLs. All STRLs authorized by section 1105(a) of the NDAA for FY 2010, Public Law 111–84, as well as any newly designated STRLs authorized by SECDEF, or future legislation, may use the provisions described in this FRN.

1. Background

Many studies have been conducted since 1966 on the quality of the laboratories and personnel. Most of the studies recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. The demonstration projects are ''generally similar in nature'' to the Department of Navy's China Lake Personnel Demonstration Project. The terminology, ''generally similar in nature,'' does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

2. Overview

Section 1104 of the FY18 NDAA, Public Law 115–91 authorizes NAVFAC EXWC to implement a STRL Personnel Demonstration Project. Upon designation, NAVFAC EXWC chartered an Implementation Team (Team) to design and implement a new demonstration project plan. The Team is developing all associated deliverables, proposals and implementation details. The Team is working with the Laboratories and Personnel Office (L&PO), the Lab Quality Enhancement Program Panel on Personnel, Workforce Development, and Talent Management (LQEP–P) and organizations with ongoing demonstration projects for information and advice. NAVFAC EXWC employees are updated through ongoing communications such as fact sheets, briefings and small group meetings. This FRN is based on specific flexibilities adopted by other STRLs and global flexibilities available for use by all DoD STRLs.

NAVFAC EXWC will adopt, with some modifications, flexibilities from the following approved STRL personnel demonstration projects:

- *Department of the Navy:* NAVAIR—76 FR 8530, February 14, 2011.
- *Department of the Navy:* NIWC Atlantic and Pacific—76 FR 1924, January 11, 2011.
- *Department of the Navy:* NAVSEA—62 FR 64050, December 3, 1997.
- *Department of the Army:* CCDC ARL—63 FR 10679, March 4, 1998.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this FRN will be available for use by the STRLs enumerated in section 1105(a) of the NDAA for FY 2010, Public Law 111–84 as amended, if they wish to adopt them in accordance with DoD Instruction 1400.37, ''Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/140037p.pdf*) (including revised or superseded instructions) and after the fulfillment of any collective bargaining obligations.

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I. Executive Summary

NAVFAC EXWC is a Warfare Center and distinguished DoD laboratory established in 2012. NAVFAC EXWC's dedicated workforce provides specialized facilities engineering, technology solutions, and life-cycle management of expeditionary equipment to the Navy, Marine Corps, Federal agencies, and other DoD customers. A majority of NAVFAC EXWC's civilian employees were hired in the General Schedule (GS) classification and pay scale. The GS classification and pay scale does not offer the same flexibilities and tools to attract, retain, motivate and fully compensate staff as the NAVFAC EXWC personnel demonstration project.

Through this project, NAVFAC EXWC competes with the private sector for the best talent by making timely job offers with attractive compensation packages that land high-quality employees. Once these employees are hired, NAVFAC EXWC incentivizes performance and rewards innovation and motivation through compensation directly linked to individual performance. Linking compensation to performance increases job satisfaction and retention of high performing employees and encourages continued performance because reduced performance will draw less reward.

NAVFAC EXWC's personnel demonstration project takes advantage of flexibilities to simplify and speed classification and staffing actions for employees, such as direct hire authorities, expanded details, temporary promotions, and modified/flexible term appointments.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by greater managerial control over personnel functions and to expand the opportunities available to employees through a more responsive and flexible personnel system. The NAVFAC EXWC personnel demonstration project will incorporate legal authorities and adopt practices from other STRLs to meet the specific needs of this command. These tools will enable NAVFAC EXWC to dynamically shape the mix of technical skills and expertise in the laboratory workforce. As the Navy's leader in specialized facilities engineering, technology solutions, and life-cycle management of expeditionary equipment, NAVFAC EXWC must have the flexibility needed to quickly respond to changes in mission, organizational constraints, workload, and market conditions.

NAVFAC EXWC's Technical Director has overall oversight and management of these authorities. Unless specifically stated otherwise, the Technical Director of NAVFAC EXWC may delegate authority to effectively implement the provisions of this notice. NAVFAC EXWC Internal Operating Procedures (IOPs) will document any delegation, including details of implementation.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as we gain experience, analyze results, and reach conclusions on how the system is working. The provisions of Department of Defense Instruction (''DoDI'') 1400.37, ''Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects'' (including subsequently issued or superseding instructions) will be followed to modify, supplement through adoption, or otherwise change this demonstration project plan.

B. Problems With the Present System

Using the current Federal personnel system is incompatible with NAVFAC EXWC's need for a highly specialized, quality workforce to support the DoD and the Department of the Navy's overall strategic objectives. The characteristics of the current general schedule (GS) system have remained unchanged since its inception many years ago. Under the GS system, work is classified into 15 grades with 10 interim steps within each grade. It is rigidly defined by occupational series and grade with precise qualifications for each position. This system does not enable management to respond quickly to new ways of designing work or changes in the work itself. It does not offer flexibilities to accurately capture employee performance or to quickly adjust management expectations for critical scientific, engineering, acquisition support and other professional positions, including skilled technicians. The current hiring system's inability to provide job offers in a timely manner also hampers the NAVFAC EXWC's ability to attract high quality candidates.

C. Expected Benefits

To remain the Department of the Navy's leader in supporting combatant capabilities and sustainable facilities, NAVFAC EXWC must compete with the private sector for the most talented, technically proficient candidates. NAVFAC EXWC must have a human resource system that fosters employee development, enhances performance and experience, and provides a strong retention incentive. This personnel demonstration project is expected to enable and enhance:

1. Recruitment of highly qualified scientific, technical, business, and support employees in today's competitive environment;

2. Selection of candidates and extension of job offers in a timely and efficient manner, with compensation sufficient to attract high quality, in-demand employees;

3. Employee satisfaction with pay setting and adjustment, recognition, and career advancement opportunities;

4. A quality workforce that rapidly adjusts to evolving requirements for the future;

5. Retention of high-level performers;

6. Simple and cost-effective HR management processes.

To effectively meet the above expectations, this notice identifies and establishes those features and flexibilities this demonstration project will use to achieve these objectives. The demonstration project primarily emphasizes streamlined hiring, a more flexible performance-based compensation system, talent acquisition and retention, and professional human capital planning and execution. Those features and flexibilities alone, however, will not ensure success. Delivering that vision requires a human resources service model that is highly proactive, expertly skilled in analytical tools, and fully engaged as a strategic partner and trusted agent of this modern multi-faceted defense laboratory.

D. Participating Organizations, Employees and Union Representation

NAVFAC EXWC has major facilities in three geographic locations: Port Hueneme, California, Gulfport, Mississippi, and Washington, DC. Additionally, the organization employs personnel at more than ten sites worldwide. The sites are diverse in employment profiles and size and have bargaining unit populations. The organization operates throughout the full spectrum of research, development, test and evaluation, engineering and fleet support delivered by five business lines and six support lines. Wage Grade positions will not be included in this personnel demonstration project; however, NAVFAC EXWC will continue to evaluate possible future inclusion. Prior to including bargaining unit employees in the personnel demonstration project, NAVFAC EXWC will fulfill its obligation to consult and/or negotiate with the labor organizations in accordance with 5 U.S.C. 4703(f) and 7117 as appropriate.

NAVFAC EXWC is predominantly a Navy Working Capital Fund (NWCF) activity. Over 60 percent of the employees to be initially included in the personnel demonstration project are funded by NWCF. Under NWCF, the cost of business and operations is built into the Stabilized Billing Rate (SBR) paid by customers for work performed; by maximizing management flexibility, NAVFAC EXWC can remain cost competitive.

E. Project Design

There are four fundamental elements of this personnel demonstration project: (1) Hiring and staffing flexibilities, (2) simplified classification, (3) pay banding, and (4) performance-based compensation and assessment. The hiring and staffing flexibilities will help to better recruit, hire, and retain the most capable, qualified, and competent workforce in the job market today. Simplified classification will streamline the job classification process, reduce the effect of administrative processes on personnel, and allow for more flexibility in making job reassignments. The pay banding structure will create four career paths with multiple pay bands within each career path representing the phases of career progression that are typical for the respective career paths. This banding structure will enable managers to more appropriately reward and retain a diverse workforce using principles of pay equity and career progression. The performance-based compensation system is characterized by an assessment of an employee's performance and an appropriate pay allocation predicated on the assessed level of performance.

F. Executive STRL Policy Board

The Executive STRL Policy Board (ESPB) will oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the ESPB will be appointed by the Technical Director. Ad hoc members may serve in an advisory capacity to the ESPB. The ESPB duties will include the following:

- Establish policies and issue guidance on composition of pay pools in accordance with the guidelines of this proposal and internal procedures;
- Review pay pool operation and resolve pay pool disputes;
- Establish policies and issue guidance concerning the civilian pay budget, pay administration, awards and performance based pay increases;
- Establish policies and issue guidance to ensure in-house budget discipline and implement workforce staffing and budget plans;
- Develop policies and procedures for administering Developmental Opportunity Programs; ensure all employees are treated in a fair, equitable manner.

G. Funding Level

The Under Secretary of Defense (Personnel & Readiness) may, at his/her discretion, adjust the minimum funding levels to take into account factors such as the Department's fiscal condition, guidance from the Office of Management and Budget, and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

III. Personnel System Changes

A. Hiring, Appointment, and Related Authorities

1. Qualifications

OPM's ''Qualification Standards for General Schedule Positions,'' with minor modifications to address application of OPM qualifications in a pay banding environment, are used to determine qualifications for personnel demonstration project positions. ''Band'' is substituted for ''Grade'' where appropriate and time in grade requirements are eliminated.

Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the S&E career path Pay Band II, individuals must meet the basic requirements for a GS–5 as specified in the OPM ''Qualification Standard for Professional and Scientific Positions.''

Selective factors may be established for a position in accordance with the OPM's ''Operating Manual: Qualifications Standards for General Schedule Positions,'' when determined to be critical to successful job performance. These factors may become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Science and Engineering Direct Hire Authorities

a. NAVFAC EXWC will use the direct hire authorities authorized by section 1108 of the NDAA for FY 2009, as amended by section 1103 of the NDAA FY 2012; the direct hire authorities published in 79 FR 43722, and the direct hire authorities in 10 U.S.C. 2358a to appoint the following:

(1) Candidates with advanced degrees to scientific and engineering positions;

(2) Candidates with bachelor's degrees to scientific and engineering positions;

(3) Veteran candidates to scientific, technical, engineering, and mathematics positions (STEM), including technician positions; and

(4) Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline.

b. STEM Student Employment Program (SSEP).

NAVFAC EXWC will use this direct hire authority for students in a scientific, technical, engineering, and mathematical course of study at an accredited institution of higher education. The purpose of this direct hire authority is to provide a streamlined and accelerated hiring process that allows NAVFAC EXWC to compete successfully with private industry for high quality scientific, technical, engineering, or mathematics students for filling scientific and engineering positions. Students appointed under the SSEP are afforded an opportunity for non-competitive conversion to a permanent scientific or engineering position upon graduation from an accredited institution of higher education. Use of this authority will be consistent with the merit system principles. The SSEP student employment standards will be similar to the Pathways qualification standards, which will allow students appointed

under this authority to be aligned to a pay band commensurate with the highest level of education completed and/or prior experience. SSEP students will remain on a term appointment until the completion of their educational program.

3. Distinguished Scholastic Achievement Appointments (DSAA)

NAVFAC EXWC will use the Distinguished Scholastic Achievement Appointment Authority (DSAA) for pay banded positions. The DSAA uses an alternative examining process which provides the authority to appoint candidates possessing a bachelor's degree or higher to positions up to the equivalent of GS–12 for positions in the Science and Engineering (S&E) pay bands. This enables NAVFAC EXWC to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements.

The alternative examining process specifies that candidates may be appointed provided they meet the minimum standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' plus any selective placement factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 (on a 4.0 scale) or better in their field of study (or other equivalent score) or are within the top 10 percent in their field of study in a graduate program.

4. Reemployment of Annuitants

NAVFAC EXWC will use the authorities provided by 5 U.S.C. 9902(g) and 82 FR 43339 to appoint reemployed annuitants, as appropriate. The laboratory director may approve the appointment of reemployed annuitants and determine the salary, to include whether the annuitant's salary will be reduced by any portion of the annuity received, up to the amount of the full annuity as a condition of employment. Use of this authority will be consistent with merit system principles.

5. Volunteer Emeritus Program (VEP)

NAVFAC EXWC Director will have the authority to offer former Federal employees who have retired or separated from the Federal service, voluntary assignments in NAVFAC EXWC. Volunteer Emeritus Program assignments are not considered ''employment'' by the Federal government. Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Volunteer Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The Volunteer Emeritus Program may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the NAVFAC EXWC mission.

To be accepted into the Volunteer Emeritus Program, a candidate must be recommended by a NAVFAC EXWC manager to the Director. Everyone who applies is not entitled to participate in the program. The NAVFAC EXWC Director will document the decision process for each candidate and retain selection and non-selection documentation for the duration of the assignment or two years, whichever is longer.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer and the NAVFAC EXWC Director. The agreement will be reviewed by the servicing legal office. The agreement must be finalized before the assumption of duties and will include:

a. A statement that the service provided is gratuitous, that the volunteer assignment does not constitute an appointment in the civil service and is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government (stemming from or in connection with the volunteer assignment) are waived by the volunteer;

b. A statement that the volunteer will be considered a federal employee for the purpose of:

(1) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(2) 31 U.S.C. 1343, 1344, and 1349(b);

(3) 5 U.S.C. chapters 73 and 81;

(4) The Ethics in Government Act of 1978;

(5) 41 U.S.C. chapter 21;

(6) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;

(7) 5 U.S.C. 552a (records maintained on individuals); and

c. The volunteer's work schedule;

d. The length of agreement (defined by length of project or time defined by weeks, months, or years),

e. The support to be provided by the NAVFAC EXWC (travel, administrative, office space, supplies),

f. The volunteer's duties,

g. A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the Volunteer Emeritus Program,

h. A provision allowing either party to void the agreement with 10 working days written notice;

i. The level of security access required (any security clearance required by the assignment will be managed by the NAVFAC EXWC while the volunteer is a participant in the Volunteer Emeritus Program);

j. A provision that any written products prepared for publication that are related to Volunteer Emeritus Program participation will be submitted to the NAVFAC EXWC Director for review and must be approved prior to publication;

k. A statement that the volunteer accepts accountability for loss or damage to Government property occasioned by the volunteer's negligence or willful action;

1. A statement that the volunteer's activities on the premises will conform to the NAVFAC EXWC regulations and requirements;

m. A statement that the volunteer will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the Volunteer Emeritus Program participant or any non-Federal entities. Volunteer Emeritus Program

participants will handle all non-public information in a manner that reduces the possibility of improper disclosure.

n. A statement that the volunteer agrees to disclose any inventions made in the course of work performed at NAVFAC EXWC. The NAFVAC EXWC Director will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the Director elect not to take title, the Center will retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

o. A statement that the Volunteer Emeritus Program participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies, and ethics training in accordance with office of Government Ethics regulations prior to implementation of the agreement; and

p. A statement that the Volunteer Emeritus Program participant must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. Volunteer Emeritus Program participants are deemed Federal employees for purposes of post-government employment restrictions.

6. Expanded Detail Authority and Temporary Promotions

NAVFAC EXWC will have an Expanded Detail and Temporary Promotion Authority providing the ability to:

(1) Effect details up to one year to specified positions at the same or similar level (positions in a pay band with the same maximum salary) without the current 120-day renewal requirement specified at 5 U.S.C. 3341; and

(2) Effect details or temporary promotions to a higher-level position up to 1 year within a 24-month period without competition. Details to higher-level positions beyond one year in a 24-month period require approval of the Technical Director and are subject to competitive procedures. The specifics of these authorities will be stipulated by NAVFAC EXWC IOPs.

7. Flexible Length and Renewable Term Technical Appointments

NAVFAC EXWC may use the Flexible Length and Renewable Term Technical Appointments workforce shaping tool temporarily authorized by section 1109 (b) of the NDAA for FY 2016, as amended by section 1112(b) of the NDAA for FY 2019. Further details on the implementation of this authority are contained in 82 FR 43339. Until this authority expires or is rescinded, it may be used to appoint qualified candidates who are not currently DoD civilian employees, or DoD employees on term appointments into any scientific, technical, engineering, and mathematic positions, including technicians, for a period of more than one year but not more than six years. The appointment of any individual under this authority may be extended without limit in up to six-year increments at any time during any term of service under conditions set forth by the Technical Director.

The Technical Director, or designee, will establish implementing guidance and procedures on the use of this authority.

B. Classification, Career Paths and Pay Banding

1. Delegation of Classification Authority

Managers will provide input to classification requests as a means of increasing managerial effectiveness and expediting the classification function. Classification authority will be delegated as follows: The NAVFAC EXWC Technical Director may delegate classification authority to the Human Resources Office (HRO) Director. The HRO Director may further delegate authority to Human Resource professionals of the immediate organization of the position being classified. If so delegated, the HRO Director will exercise oversight to ensure consistency across the organization.

2. Classification

The present system of OPM classification standards will be used for the identification of the proper occupational series of positions and certain occupational titles within the NAVFAC EXWC demonstration project. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The classification standard for each pay band will serve as an important component in the creation of Standard Level Descriptors (SLDs) that record the essential criteria for each pay band within each career path by stating the characteristics of the work, the responsibilities of the position, and the competencies required. SLDs replace current position descriptions. SLDs combined with the Position Requirements Document (PRD) will include position specific information such as Fair Labor Standards Act (FLSA) coverage; selective placement factors or specialized knowledge, skills and abilities; degree requirements or other professional certification requirements; staffing requirements; and other data element information pertinent to the position.

3. Simplified Assignment Process

Today's environment of rapid technology development and workforce transition mandates that the organization have maximum flexibility to assign individuals. Pay banding may be used to address these needs. As a result of the assignment to a particular pay band descriptor, the organization will have maximum flexibility to assign an employee within pay band descriptors consistent with the needs of the organization, the individual's qualifications and rank, and pay band. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same area of expertise and qualifications would not constitute an assignment outside the scope or coverage of the employee's pay band descriptor.

4. Career Paths

A fundamental element of the NAVFAC EXWC personnel demonstration project is a simplified classification and pay component. Like other STRL demonstration projects, the proposed pay banding approach is tied to the 15 GS grade levels and the above GS–15 grade level. Career paths at NAVFAC EXWC are grouped by four career paths based on similarities in the type of work and customary requirements for formal education, training and credentials. Common patterns of advancement within the occupations as practiced at NAVFAC EXWC were considered. Current occupations and grades were examined and their characteristics and distribution were used to develop the career paths described below:

a. *Science and Engineering (ND Pay Plan):* This career path includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations analysts, and computer scientists. Specific course work or educational degrees are required for these occupations.

b. *Science and Engineering Technician (NR Pay Plan):* This career path includes technician positions such as engineering technicians, electronics technicians, and physical science technicians. These occupations require practical expertise in scientific or engineering support but specific course work or educational degrees are not required for these occupations.

c. *Administrative/Professional (NT Pay Plan):* This career path includes positions such as attorneys, IT specialists, paralegals, program managers, accountants, budget analysts, administrative officers, human resources specialists, and management analysts. Employees in these positions may or may not require specific course work or educational degrees.

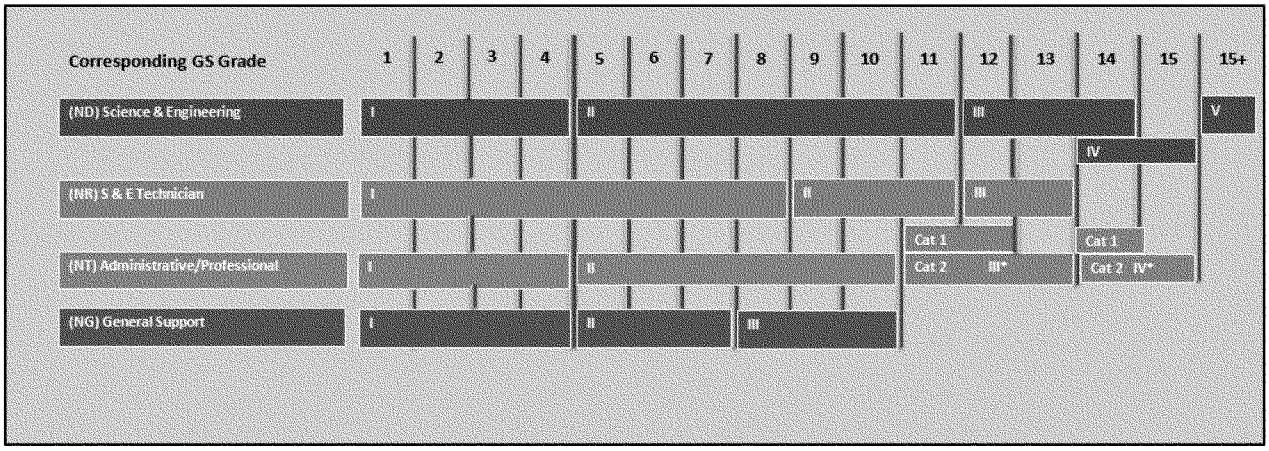
d. *General Support (NG Pay Plan):* This career path includes the clerical and administrative support positions providing support in such fields as finance, supply, and human resources; positions applying typing, clerical or secretarial knowledge and skills; and student positions for training in these disciplines.

Each career path is composed of discrete pay bands (levels) corresponding to recognized advancement within these occupations. These pay bands replace grades and are not the same for all career paths. Each career path is divided into three to five pay bands; each pay band covering the same pay range formerly covered by one or more GS grades. The salary range of each band begins with step 1 of the lowest grade in that pay band and ends with step 10 of the highest grade in the pay band. The grouping of GS grades into a particular band was based on a careful examination of NAVFAC EXWC's occupations, grade levels, and career development practices. Career paths and the associated classification occupational series for each are provided in Appendix A. The distribution of the occupational series to career paths reflects only those occupational series that currently exist within NAVFAC EXWC. Additional occupational series may be added as a result of changes in mission requirements or OPM-recognized occupations. These additional occupational series will be placed in the appropriate career path consistent with the established career path definitions.

5. Pay Band Structure

The pay banding structure is the structure in use at the CCDC ARL. The pay bands and their relation to the current GS framework are shown in Figure 1. This pay band structure allows greater flexibility to define and classify work assignments and to reward performance. A key feature is the overlap in Science and Engineering (ND) career path between bands III and IV. ND–III begins at GS–12, step 1, and ends at GS–14, step 10. ND–IV begins at GS–14, step 1, and ends at GS–15, step 10. A second noteworthy feature is the introduction of categories within the Administrative/Professional (NT) career path, Bands III and IV. These bands contain two full performance levels because not all work assignments support movement to the top of the band. The NT–III band includes Category I, where the full performance maximum salary rate is equivalent to GS–12, step 10, and Category II, where the full performance maximum salary rate is equivalent to GS–13, step 10. The NT–IV band includes Category I, where the full performance maximum salary rate is equivalent to GS–14 step 10, and Category II, where the full performance maximum salary rate is equivalent to GS–15, Step 10. In order to move beyond Category I, duties and work assignments must satisfy the highest level of the criteria in the classification for the applicable pay band.

Figure 1. Career Paths and Pay Band Structure.



6. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and nonexempt determinations will be made consistent with criteria found in 5 CFR part 551. Generally, employees will be converted to the demonstration project with the same FLSA status they had previously. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria.

7. Senior Scientific Technical Managers (SSTM)

The SSTM program will be managed and administered by the Technical Director, consistent with the provisions 10 U.S.C. 2358a and NAVFAC EXWC IOPs. The primary function of these positions is to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the NAVFAC EXWC mission and to carry out technical supervisory responsibilities. The number of such positions may not exceed two percent of the number of scientists and engineers employed at the Technical Center as of the close of the last fiscal year before the fiscal year in which any appointments subject to the numerical limitation are made. This authority is expected to provide an opportunity for career development and expansion of a pool of experienced, prominent technical candidates meeting the levels of proficiency and leadership essential to create and maintain a DoD state-of-the-art scientific, engineering and technological facility. The minimum basic pay for SSTM positions is 120 percent of the minimum rate of basic

pay for GS–15. Maximum SSTM basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV. The contribution management system used to evaluate an SSTM employee will be documented in the NAVFAC EXWC IOPs. Pay retention may be provided to SSTM, under criteria required by NAVFAC EXWC IOPs for those impacted by a reduction in force, work realignment or other planned management action that would necessitate moving the incumbent to a position in a lower pay band within the STRL for other than cause (performance or conduct).

8. Professional Licensure Designations for Architectural and Engineering Positions

The Technical Director and the NAVFAC EXWC Chief Engineer have non-delegable authority to designate those positions within NAVFAC EXWC requiring professional licensure. Engineering and Architectural positions requiring professional licensure will be monitored by the EXWC Chief Engineer. It is the policy of NAVFAC EXWC to recruit, hire, professionally develop, and maintain a professional workforce of the highest caliber. Professional licensing is required for any position, regardless of pay band, in responsible charge of engineering/architectural work, whether performed in-house or by contract. The specific guidelines will be documented in NAVFAC EXWC's IOPs. However, the Technical Director has final authority regarding professional licensure requirements.

9. Classification Appeals

Employees have the right to appeal the classification of their position at any time. A classification complaint is an employee's request for a review, at the activity level, of the pay plan, occupational series, position title, and pay band of their position. The employee must formally make a complaint which raises the area of concern to their immediate supervisor to initiate the classification complaint review process. The Human Resource Office will review the complaint and issue a determination. If the employee is dissatisfied with the outcome of the classification complaint review, the employee may appeal the classification of the position to the Technical Director. If the employee is dissatisfied with the decision rendered by the Technical Director, the employee may initiate a formal classification appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions that exceed the equivalent of a GS–15 level. An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the career path; the propriety of a pay schedule; command developed position titles; or matters covered by an administrative or negotiated grievance procedure or an alternative dispute resolution procedure. The evaluations of classification appeal are based upon the demonstration project classification criteria. Additional guidance will be documented in NAVFAC EXWC IOPs.

C. Pay and Compensation

Pay administration policies are established by the ESPB. The following definitions and policies will apply to the pay setting of new hires, movement of employees within the demonstration project from one career path or pay band to another, as well as any other pay action outside the performance-based assessment system.

1. Pay Setting for Appointment

For initial appointments to the Federal service, base pay may be set anywhere within the pay band consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, and/or experience. Unique position requirements may include scarcity of qualified candidates, labor market considerations, programmatic urgency, or any combination thereof that is pertinent to the position in which the employee is being placed. Specific guidelines for application of pay setting for appointments will be contained in NAVFAC EXWC IOPs.

2. Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the minimum base pay rate of the new pay band, whichever is greater. A promotion is the movement of an employee to a higher pay band in the same career path or to a higher pay band in a different career path. It also includes movement of an employee currently covered by a non-demonstration project personnel system to a demonstration project position in a pay band with a higher level of work. Positions with a known promotion potential to a specific band will be identified when they are filled. Not all positions in a career path will have promotion potential to the same band. Movement from one career path to another will depend upon individual competencies, and qualifications.

Progression within a pay band is based upon performance-based pay increases; as such, these actions are not considered promotions and are not subject to provisions of this section. Promotions will follow Merit System Principles and basic Federal Merit Staffing policy that provides for competitive and non-competitive promotions. To be promoted competitively or non-competitively, from one pay band to the next, an employee must meet the minimum qualifications for the job and have a current rating of record of ''mission success'' or better, or equivalent under a different appraisal system. Other specific guidelines regarding promotions will be documented in NAVFAC EXWC IOPs.

3. Reassignment

A reassignment occurs when an employee moves, voluntarily or involuntarily, to a different position or set of duties within their pay band or to a position in a comparable pay band at a comparable level of work, or from a non-demonstration project position to a demonstration project position at a comparable level of work, on either a temporary or permanent basis. Under this system, employees may be eligible for an increase to base pay upon temporary or permanent reassignment. Such an increase is subject to the specific guidelines established by the ESPB and documented in NAVFAC EXWC IOPs.

4. Demotion or Change to Lower Pay Band

A demotion is the placement of an employee into a lower pay band or movement from a non-demonstration project position to a demonstration project position at a lower level of work. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from Reduction-in-Force (RIF) procedures). In cases where change to a lower pay band is involuntary and accompanied by a reduction in pay, procedures under 5 CFR part 752 and 432 remain unchanged.

5. Locality Pay

Employees will be entitled to the locality pay authorized for their official

duty station in accordance with 5 CFR part 531 subpart F. The locality adjusted pay of any employee may not exceed the rate for Executive Level IV. Geographic movement within the demonstration project will result in the employee's locality pay being recomputed using the newly applicable locality pay percentage which may result in a higher or lower locality payment.

6. Staffing Supplements

Employees assigned to occupational categories and geographic areas where GS special rates apply may be entitled to a staffing supplement if the maximum adjusted base pay rate for the demonstration band to which the employee is assigned is exceeded by a GS special rate for the employee's occupational category and geographic area. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, retained pay provisions will be applied. If at any time after establishment of the demonstration project, special salary rates (SSRs) are deemed necessary by NAVFAC EXWC leadership, they will be implemented via a staffing supplement, and also documented in NAVFAC EXWC IOPs.

7. Grade and Pay Retention

The project will eliminate retained grade under 5 CFR part 536. Pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363, and 5 CFR part 536, except as modified in the Staffing Supplements section and waived in Section IX of this plan. If an employee is receiving retained pay under the personnel demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in their pay band level.

8. Recruitment, Retention, and Relocation Incentives

The project will continue to employ recruitment, retention, and relocation incentives as described in 5 CFR part 575. Approval for use of recruitment, retention, and relocation incentives is delegated to the Technical Director and further described in an NAVFAC EXWC IOP.

9. Extraordinary Achievement Allowance (EAA)

NAVFAC EXWC will employ an Extraordinary Achievement Allowance (EAA) designed to optimize organizational effectiveness. An EAA is defined as a temporary monetary allowance up to 25 percent of base pay, provided that an employee's total compensation does not exceed the rate of basic pay for Executive Level IV in effect at the end of such calendar year. It is paid on either a bi-weekly basis concurrent with normal pay days, or as a lump sum following completion of a designated contribution period, or combination of these, at the discretion of the Technical Director (or designee). It is not base pay for any purpose, *e.g.,* retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of base pay. The EAA will be available to certain employees whose present contributions are worthy of a higher career level and whose level of achievement is expected to continue at the higher career level for at least one year as specified by the ESPB and outlined in NAVFAC EXWC IOPs.

10. Pay Differential for Supervisory Positions

NAVFAC EXWC will establish a pay differential to be provided at the discretion of the Technical Director or assigned delegates to incentivize and reward personnel in supervisory positions. A pay differential is a cash incentive that may range up to 10 percent of the employee's base rate of pay. It is paid on a pay period basis and is not included as part of the employee's base rate of pay. The pay differential must be terminated if the employee is removed from the supervisory position (and is not placed in another supervisory position), regardless of cause. All personnel actions involving a pay differential will require a statement signed by the employee acknowledging that the differential is not part of base pay for any purpose and may be terminated or reduced as dictated by fiscal limitations, changes in assignment or scope of work, or by the Technical Director. Positions, titles, duties and responsibilities that are eligible for supervisory differential, as well as standards for differential awards, will be defined in an NAVFAC EXWC IOP. Any adjustment or termination of a supervisory pay differential will be in accordance with NAVFAC EXWC's IOPs and all applicable laws and regulations. The termination or reduction of the differential is not an adverse action and is not subject to appeal or grievance.

11. Educational Base Pay Adjustment

NAVFAC EXWC will establish an educational base pay adjustment that is separate from other incentive pay and may not exceed the top of the employee's assigned pay band. The educational base pay adjustment may be used to adjust the base pay of individuals who have acquired a level of mission-related education that would otherwise make the employee qualified for an appointment at a higher level and would be used in lieu of a new appointment. For example, this authority may be used to adjust the base pay of employees who are participating in a graduate level Student Educational Employment Program, or employees who have obtained an advanced degree, such as a Ph.D., in a field related to the work of their position or the mission of their organization.

D. Employee Development and Awards

1. Expanded Development Opportunities Program

NAVFAC EXWC will establish an Expanded Development Opportunities Program that will cover all demonstration project employees. Expanded development opportunities include: (1) Long term training, (2) one-year work experiences in an industrial setting via the Relations With Industry Program, (3) one-year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program, (4) rotational job assignments within NAVFAC EXWC, (5) developmental assignments in higher headquarters within the DON and DoD, (6) self-directed study via correspondence courses and at colleges and universities, (7) details within NAVFAC EXWC and to other Federal agencies, (8) Intergovernmental Personnel Act Program Agreements, and (9) sabbaticals. Each developmental opportunity period should benefit the organization and increase the employee's individual effectiveness as well. Various learning or developmental work experiences may be considered, such as advanced academic teaching or research and sabbaticals. An expanded developmental opportunity period will not result in loss of or reduction in base pay, loss of leave to which the employee is otherwise entitled, or any loss of credit for time or service.

Program openings will be announced as opportunities arise. Instructions for application and the selection criteria will be included in the announcement. Final selection/approval for participation in the program will be made by the Technical Director. The position of an employee participating in an expanded development opportunity may be backfilled by temporary assignment of other employee or temporary redistribution of work. However, that position or its equivalent must be made available to the employee upon return from the expanded developmental opportunity. An

employee accepting an Expanded Developmental Opportunity must sign a continuing service agreement up to three times the length of the assignment, with the service obligation to NAVFAC EXWC. If the employee voluntarily leaves the organization before the service obligation is completed, the employee is liable for repayment unless the service agreement or the repayment is waived by Technical Director. Conditions for waiver of service agreements or repayments will be established in the NAVFAC EXWC IOP.

2. Skills Training

a. Training is essential for an organization that requires continuous development of advanced and specialized knowledge. Degree studies are also critical tools for recruiting and retaining employees with skills essential to the NAVFAC EXWC mission. The Technical Director has the authority to approve training.

b. Individual training programs may be approved based upon a complete individual study program plan. Such training programs will ensure continuous development of advanced specialized knowledge essential to the organization and enhance the ability to recruit and retain personnel critical to the present and future requirements of the organization. Tuition payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of training and those decisions will be fully documented. Employees approved for training must sign a service obligation agreement to continue service at NAVFAC EXWC for a period three times the length of the training period commencing after the completion of the entire training program. If an employee voluntarily leaves NAVFAC EXWC before the service obligation is completed, he/she is liable for repayment of expenses incurred by NAVFAC EXWC that are related to the training. Expenses do not include salary costs. The Technical Director has the authority to waive this requirement. Criteria for such waivers will be addressed in NAVFAC EXWC IOPs.

3. Developmental Promotions

NAVFAC EXWC will continue to utilize student training, internship programs (such as Pathways, SSEP), and career development positions under the demonstration project to recognize growth and development in the acquisition of job related competencies combined with successful performance. Promotions for such employees are limited to: (1) Employees in developmental or trainee level positions and (2) those employees in Pathways or other career training or internship programs. Promotions for those employees in developmental positions will be provided in NAVFAC EXWC IOPs.

4. Awards

To provide additional flexibility to motivate and reward individuals and groups, some portion of the performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, recognition for special/extraordinary achievements, patents, inventions, suggestions, and on-the-spot awards. The funds available for awards are separately funded within the constraints of the organization's overall award budget. While not directly linked to the mission aligned objectives and performance compensation system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing NAVFAC EXWC's diverse missions. Additionally, group awards may be given to foster and encourage teamwork. The Technical Director will have the authority to grant special act or achievement awards to covered employees of up to $25,000.

E. Performance Management

1. Mission Aligned Objectives and Performance Compensation

The purpose of mission aligned objectives and performance compensation is to link the work of the employee to the mission of the organization and to provide a mechanism for recognizing the impact of the employee's accomplishments and performance to help achieve that mission. It provides an effective, efficient, and flexible method for assessing, compensating, and managing NAVFAC EXWC's workforce. This performance management system better aligns with developing a highly productive workforce and for providing the authority, control, and flexibility to achieve a quality organization and meet mission requirements. Mission aligned objectives and performance compensation encourages more employee involvement in the assessment process, strives to increase communication between supervisor and employee and promotes performance accountability. By linking mission directly to both annual evaluations and compensation outcomes, objectives facilitate employee career progression and provide an understandable and rational basis for pay changes. The normal rating period will be one year.

Objectives, developed jointly by employees and their supervisors must be in place within 30 days from the beginning of each rating period. The minimum rating period is 90 days. Employees who do not meet the 90-day minimum requirement will be ineligible for a normal rating and will be given a presumptive rating. They may receive only the general pay increase and they may also receive Title 5 cash awards, if appropriate. First-time hires must have performance plans in place within 30 days of their demonstration project entry effective date. Current demonstration performance project employees who change positions during the performance year should have their plans updated with new objectives no later than 30 days after assignment to their new position.

Mission aligned objective and performance compensation can be in the form of increases to base pay and/or lump sum cash bonuses that are not added to base pay. The system can be modified, if necessary, as more experience is gained under the project. The flexibilities in this mission aligned objectives and performance compensation section are similar in nature to the authority granted to: (1) The Naval Ocean Systems Center and the Naval Weapons Center, China Lake, 45 FR 26504, (2) the CCDC ARL, 65 FR 3500, and (3) NAVAIR Aircraft and Weapons Divisions, 76 FR 8529.

2. Individual Mission Objectives

Individual mission objectives are directly related to achieving the NAVFAC EXWC mission. Objectives identify expectations and typically consist of 3 to 10 results-oriented statements. Objectives are tangible and measurable so that achievements can be identified. These objectives incorporate important behavioral practices such as teamwork and cooperation where they are key to a successful outcome. One supervisory objective, including adherence to EEO principles, is mandatory for all managers/supervisors. The employee and their supervisor will jointly develop the employee's individual mission objectives at the beginning of the rating period. The supervisor has final approval authority of the objectives. Objectives will reflect the employee's duties/responsibilities, pay band and pay level in the pay band as well as support the NAVFAC EXWC mission, organizational goals and priorities. Objectives will be reviewed

annually and revised to reflect increased responsibilities commensurate with pay increases. Generic one-size-fits-all objectives are to be avoided, so that individual mission objectives define an individual's specific responsibilities and expected accomplishments for the performance year. Supervisors and employees should focus on overall organizational objectives and develop supporting individual mission objectives.

Individual mission objectives may be jointly modified, changed, or deleted as appropriate during the rating cycle. As a general rule, objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

All objectives are critical. A critical mission objective is defined as an attribute of job performance that is of sufficient importance that achievement below the minimally acceptable level requires remedial action and may be the basis for removing an employee from his/her position. Each objective may be assigned a weight, which reflects its importance in accomplishing an individual's mission objectives. The minimum weight that can be assigned is 10 percent. The sum of the weights for all of the objectives must equal 100 percent. At the beginning of the rating period, higher-level managers will review the objectives and weights assigned to employees within the pay pool to verify consistency and appropriateness.

3. Rating Benchmarks

Rating benchmarks define characteristics that will be used to evaluate the employee's success in accomplishing their individual mission objectives. Scoring characteristics help to ensure comparable scores are assigned while accommodating diverse individual objectives. A single set of rating benchmarks for each band or career stage may be used for evaluating the annual performance of all NAVFAC EXWC personnel covered by this plan. An example of rating benchmarks is shown in Appendix B. The set of benchmarks used may evolve over time, based on experience gained during each rating cycle. Critical characteristics evolve as our workforce actively moves toward meeting their individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The ESPB will annually review the set of benchmarks and set them for the entire organization before the beginning of the rating period.

4. Performance Feedback and Formal Ratings

Employees, and supervisors, are expected to actively discuss expectations and identify potential obstacles to meeting goals. Employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed, but will occur at least 30 days from the beginning of each rating period, at the mid-point, and at the end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the expectations in the mission aligned objectives. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific, discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate. The employee may provide a statement of their accomplishments to the supervisor at both the mid-point and end of the rating period. However, this provision does not preclude an employee from providing a statement of their accomplishments to their supervisor that are outside the mid-year and year-end evaluations and rating period.

Following a review of the employee's accomplishments at the end of the rating period, the supervisor will rate each of the individual mission objectives. Benchmark performance standards will be developed that describe the level of performance associated with a score. The supervisor decides where each employee's achievements and performance most closely match the benchmarks and assigns an appropriate score. These scores are not discussed with the employee or considered final until all scores are reconciled and approved by the Pay Pool Manager. The scores will then be multiplied by the objective-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each objective will then be totaled to determine the employee's overall appraisal score and rounded to a whole number as follows: If the first two digits to the right of the decimal are 0.51 or higher, it will be rounded to the next higher whole number; if the first two digits to the right of the decimal are 0.50 or lower, then the decimal value is truncated. The resulting score determines the rating.

NAVFAC EXWC will use a five-level rating methodology with associated payout point ranges in which level five signifies the highest level of performance. The supervisor will prepare and recommend the rating, number of payout points, and the distribution of the payout between base pay increase and bonus, as applicable, for each employee. These recommendations will then be reviewed by the pay pool panel to ensure equitable rating criteria and methodologies have been applied to all pay pool employees. The final determination of the rating, number of payout points, and payout distribution will be a function of the pay pool panel process and will be approved by the Pay Pool Manager. The criteria used to determine the number and distribution of payout points to assign an employee may include: Assessment of the employee's contribution towards achieving the mission, the employee's type and level of work, the employee's current compensation and the criticality of their contribution to mission success, consideration of specific achievements, or other job-related significant accomplishments or contributions.

The proposed rating and payout point schema is:

Performance Level Description	Rating	Payout Points
Exceptional	5	5, 6
Exceeds Mission Expectations	4	3, 4
Full Mission Success	3	0, 1, 2
Marginal Mission Success	2	0
Unacceptable	1	0

Employees with a rating of two or above for each mission aligned objective will receive the equivalent of the authorized GS general pay increase (GPI). An employee receiving an ''Unacceptable'' rating of one for any mission-aligned objective will not receive the GPI and will require administrative action to address the performance deficiency. A rating of ''1'' on a single objective will also result in a rating of ''Unacceptable.'' Supervisors of employees who are assessed to be at the ''Unacceptable'' level, will take appropriate action as soon as practicable. However, at the end of the performance year, employees who are assessed to be at the ''Unacceptable'' level will have their rating deferred until the end of a performance improvement period. If the employee's performance is found to be unacceptable following a performance improvement period a rating of record will be ''1'' and administrative action will be taken. If the employee's performance is found to be acceptable at the end of the improvement period, rating of record and associated payouts will be applicable to the end of the appraisal period. If an employee's performance deteriorates again in any objective within two years from the beginning of the performance improvement period, actions may be initiated to effect a performance based action with no additional opportunity to improve.

5. Pay Pools

The Technical Director (or designee) of NAVFAC EXWC will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Large pay pools may use sub pay pools subordinate to the pay pool due to the size of the pay pool population, the complexity of the mission, or other similar criteria. The covered organizations' employees will be placed into pay pools. Neither the Pay Pool Manager, supervisors, or pay pool panel members within a pay pool will in any way recommend or participate in setting their own rating or individual payout except for the normal employee self-assessment process.

Each employee is initially scored by their supervisor. Next, the rating officials in an organizational unit (Directorates, Divisions, Branches, Teams, etc.), along with their next level of supervision, will review and compare recommended ratings to ensure consistency and equity of the ratings. In this step, each employee's individual mission objectives, accomplishments, preliminary scores, and pay are compared to benchmark performance standards. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of ratings. The Pay Pool Manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the Pay Pool Manager makes all final decisions. Ratings are finalized after this reconciliation process is complete. Decisions regarding the amount and distribution of the payouts are based on the employee's most recent rating of record for the performance year, the criteria listed above under performance feedback, the type and nature of the funding available to the pay pool, and the number of payout points assigned by the pay pool. In the case of NAVFAC EXWC attorneys, special consideration must be made relative to assigned score. To avoid conflict with state bar rules, the pay pool panel may not alter the mission aligned objective performance ratings or the overall score that NAVFAC HQ counsel assigns to an attorney; however, the pay pool panel may make independent judgments, such as pay adjustments after considering that score. A reconsideration from a NAVFAC EXWC attorney will be handled in accordance with the Office of General Counsel's grievance procedures after NAVFAC HQ counsel and the pay pool panel recommends a resolution.

Funds within a pay pool available for performance payouts are divided into two components, base pay and bonus. The funds within a pay pool used for base pay increases are those that would have been available for within-grade increases, quality step increases and promotions under the GS system (excluding the costs of promotions still provided under the pay banding system). The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. Both amounts will be defined based on historical data and will initially be set at no less than one percent of total base pay annually. As changes in the demographics of the workforce or other exigencies occur, adjustments may be made to these two factors. The sum of these two factors is referred to as the pay pool percentage factor. The ESPB will annually review the pay pool funding and recommend adjustments to the Technical Director (or designee) to ensure cost discipline over the life of the demonstration project. Additional guidance on pay pool design and composition will be included in NAVFAC EXWC IOPs.

6. Performance Payout Determination

The payout an employee will receive is based on the total performance rating from the mission aligned objectives and performance compensation assessment process. An employee will receive a payout as a percentage of base pay. This percentage is based on the number of payout points that equates to their final appraisal score. The value of a payout point cannot be determined until the rating and reconciliation process is completed and all scores are finalized. The payout point value is expressed as a percentage.

The formula that computes the value of each payout point uses base pay rates and is based on:

a. The sum of the base pay of all the employees in the pay pool times the pay pool percentage factor;

b. The employee's base pay;

c. The number of payout points awarded to each employee in the pay pool; and

d. The total number of payout points awarded in the pay pool.

This formula assures that each employee within the pool receives a payout point amount equal to all others in the same pool who are at the same rate of base pay and receiving the same score. The formula is shown in Figure 2.

Figure 2. Performance Payout Formula

$$\text{Payout Point Value} = \frac{(\text{Sum of base pay for employees in pool}) * (\text{Pay Pool percentage factor})}{\text{Sum of (Base Pay} * \text{Payout Points Earned)for each employee}}$$

An individual payout is calculated by first multiplying the payout points earned by the payout point value and multiplying that product by base pay. An adjustment is then made to account for locality pay or staffing supplement. A Pay Pool Manager is accountable for staying within pay pool limits and final decisions on base pay increases and/or bonuses to individuals based on rater recommendations, the final score, the pay pool funds available, and the employee's base pay.

7. Base Pay Increases and Bonuses

The amount of money available for the performance payouts is divided into two components: Base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band, category, or when a control point applies. Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the base pay for any purpose (*e.g.,* lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15, Step 10, except for employees in ND Pay Band V.

8. Pay Band Progression

As a compensation management tool, NAVFAC EXWC will use salary points and categories to manage position and pay progression within each band. Salary points may be set within each band and may be used in the pay pool process to manage performance salary increases. Taking an employee's salary across a point will require review of both the position and performance of the employee. Advancement may not occur without approval of the Pay Pool Manager and the ESPB.

Employees who display exemplary performance for two consecutive years may be candidates for pay band movement to the next higher pay band. The request must be made by a Pay Pool Manager and must demonstrate that an employee's high-level of performance is commensurate with the complexities and responsibilities of a position in the next higher pay band and will continue into the future. Movement to a higher pay band level is not guaranteed. Approval of requests for movement to the next higher level pay band based on employee performance reside with the ESPB. Criteria for crossing salary points, categories, and movement to a higher pay band based on high-level performance will be contained in NAVFAC EXWC IOPs.

9. Requests for Reconsideration

An employee may request reconsideration of the rating-of-record received under the mission aligned objectives and performance compensation system. A rating of record or job objective rating may be reconsidered by request of an employee only through the reconsideration process specified in an NAVFAC EXWC IOP (except for NAVFAC EXWC's attorneys, see section III.E.5.). This process will be the sole and exclusive agency administrative process for employees to request reconsideration of a rating of record and is not subject to the agency administrative grievance system, or any negotiated grievance procedures.

Consistent with this part, a Designated Management Official (DMO) will make the decision on reconsiderations of rating of record. The DMOs' decisions are final. The DMO is a senior EXWC manager who is appointed by the Technical Director to make this final determination. The DMO will not be the pay pool manager who made the decision on the subject rating. The payout point determination, payout distribution determination, or any other payout matter will not be subject to the reconsideration process, any other agency administrative grievance system or any negotiated grievance procedures.

In the event of a reconsideration that results in an adjusted rating of record, the revised rating will be referred to the Pay Pool Manager for recalculation of the employee's performance payout amount and distribution. Any adjustment to base pay will be retroactive to the effective date of the performance payout. Base pay adjustments will be based on the payout point range appropriate for the adjusted rating of record. Payout point values for the adjusted rating of record will reflect the payout point value paid to other members across the pay pool for that rating cycle. Decisions made through the reconsideration process will not result in recalculation of the payout made to other employees in the pay pool.

Appeals that contain allegations that a performance rating was based on prohibited actions that are subject to formal review and adjudication by a third party may not be processed through the reconsideration process, but instead may be processed by the employee through an applicable third party process. Such third parties include, but are not limited to: The Merit Systems Protection Board (MSPB), the Office of Special Counsel (OSC), the OPM, the Federal Labor Relations Authority (FLRA) and the Equal Employment Opportunity Commission (EEOC).

F. Workforce Shaping

1. Modified Voluntary Early Retirement (VERA) and Voluntary Separation Incentive Pay (VSIP)

NAVFAC EXWC will use the modified VERA and VSIP authorities authorized by sections 1109(b)(3) and (4) of the NDAA for FY 2016. The Technical Director may use VERA and VSIP whenever such incentives will help the STRL to achieve one or more of the objectives in section 1109(a). This authority may not be delegated further. DOD has published, at 82 FR 43339, specific direction and authorization for the use of VERA and VSIP authorities by STRLs for workforce shaping. If the laboratory workforce is being downsized, VERA and VSIP incentives may be used to minimize the need for involuntary separations. VERA and VSIP may also be used to restructure the laboratory workforce without reducing the number of assigned personnel. In this restructuring scenario, incentives may be offered for the purpose of creating vacancies that will be reshaped to align with mission objectives. Details on the specific use of this authority are contained in 82 FR 43339.

IV. Conversion

A. Initial Conversion or Movement Into the Demonstration Project

1. Placement Into Career Paths and Pay Bands

Employees will be converted automatically from their current GS series and grade to the appropriate career paths and pay band levels. It is essential to the success of the project that employees, upon entering the project, know that they are not losing a pay entitlement accrued under the GS system. Employees that were covered by local or national special salary rates will no longer be considered a special salary employee under the demonstration project and thus will gain eligibility for full locality pay. To control conversion costs and to avoid a salary increase windfall for these employees, the adjusted salaries will not change. Rather, the employees will receive a new basic pay rate computed by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action provisions will not apply to the conversion process, as there will be no change to total salary. New hires, including employees transferring from other Federal activities, will be converted into the demonstration project in the career path and at the level and pay consistent with the duties and responsibilities of the position and individual qualifications.

2. Within-Grade Increase (WGI) Buy-In

On the date that employees are converted to the project pay plans, they will be given a prorated permanent increase in pay equal to the earned (time spent in step) portion of their next Within Grade Increase (WGI) based on the value of the WGI at the time of conversion. Employees at the 10th step or receiving a retained rate will not be eligible for the increase.

3. Transition Equity

During the first 12 months following conversion, employees may receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-pay band level promotion at the time of conversion will not receive a prorated step increase equivalent. Employees will not be eligible for a basic pay increase if their current rating of record is unacceptable at the time of conversion. The decision to grant a pay equity adjustment is at the sole discretion of management and is not subject to employee appeal procedures.

4. Conversion From Other Personnel Systems

Employees who enter this demonstration project from other personnel systems (*e.g.,* Defense Civilian Intelligence Personnel System, DoD Civilian Acquisition Workforce Demonstration Project, or other STRLs) due to a reorganization, mandatory conversion, Base Closure and Realignment Commission decision, or other directed action will be converted into the NAVFAC EXWC personnel demonstration project via movement of their positions using the appropriate Nature of Action Code. If applicable, a WGI buy-in may also be applied. The employee's position will be classified based upon the position classification criteria under the NAVFAC EXWC IOP and their pay upon conversion, maintained under applicable pay setting rules.

5. Initial Probationary Period

Employees who have completed an initial probationary period prior to conversion to the NAVFAC EXWC personnel demonstration project plan will not be required to serve another probationary period. Employees who are still serving an initial probationary period upon conversion from GS to the demonstration plan will receive credit for probationary service to date, however they must serve any remaining probationary time to complete the full two-year DOD probationary period.

6. Supervisory Probationary Period

NAVFAC EXWC will implement an extended supervisory probationary period. The probationary period for new supervisors will be two years, rather than the normal one-year probationary period specified by 5 CFR part 315. Except for the increased length, supervisory probationary periods will be made consistent with 5 CFR part 315. Employees who have already successfully completed an initial one-year probationary period for supervisory positions will not be required to complete a two-year probationary period for initial appointment to a supervisory position. Employees who are serving an initial supervisory probationary period upon conversion into this demonstration project will serve the time remaining on their one-year supervisory probationary period. If the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance and/or conduct, the employee will be returned to a comparable position of no lower base pay that the position from which promoted or reassigned immediately prior to the supervisory assignment.

B. Movement Out of the Demonstration Project

1. Termination of Coverage Under the Demonstration Project Pay Plans

In the event employees' coverage under the NAVFAC EXWC STRL personnel demonstration project pay plans is terminated, employees move with their position to another system applicable to NAVFAC EXWC STRL employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees may be eligible for pay retention under 5 CFR part 536 when converted to their positions classified under the new system, if applicable.

2. Determining GS Equivalent Grade and Pay When an Employee Exits the Demonstration Project

If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's personnel demonstration project pay band to a GS-equivalent grade and the

employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the personnel demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

3. Equivalent GS-Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS equivalent grade corresponding to one of those grades according to the following rules:

a. The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step four rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

i. The GS base schedule;

ii. The locality rate schedule for the locality pay area in which the position is located; or

iii. The appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

b. If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step four adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

c. If the employee's adjusted base pay under the demonstration project is lower than the applicable step four adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step four adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step four adjusted base pay rate of the second highest grade, the employee is converted to that grade.

d. This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step four adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step four adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

e. Exception: An employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in pay band or a reduction within the same pay band due to unacceptable performance. This provision does not apply to voluntary movement out of the demonstration project.

4. Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's personnel demonstration project rates of pay to GS rates of pay in accordance with the following rules:

a. The pay conversion is done before any geographic movement or other pay related action that coincides with the employee's movement or conversion out of the demonstration project.

b. An employee's adjusted base pay under the demonstration project (*i.e.,* including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

i. The GS base schedule,

ii. An applicable locality rate schedule, or

iii. An applicable special rate schedule.

c. If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position).

d. If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

C. Implementation Training

Training to promote understanding of the broad concepts and finer details is critical to successfully implement and execute this project. A new pay banding schema and performance management system both represent significant cultural change to the organization.

Training is tailored to address employee concerns and encourage comprehensive understanding of the demonstration project. Training is required prior to implementation and at various times during the life of the demonstration project. The training program includes modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

1. An overview of the demonstration project personnel system;
2. How employees are converted into and out of the system;
3. Pay banding;
4. The mission aligned objectives and performance compensation system;
5. Defining mission aligned performance objectives;
6. How weights may be used with the mission aligned performance objectives;
7. Assessing performance—giving feedback;
8. New position descriptions; and
9. Demonstration project administration and formal evaluation.

Various types of training including videos, on-line tutorials, and train-the-trainer concepts will be used.

V. Project Duration

Section 342 of the NDAA for FY 1995 (Pub. L. 103–337) does not require a mandatory expiration date for this demonstration project. The project evaluation plan addresses how each flexibility will be comprehensively evaluated for at least the first five years of the demonstration project. Changes and modifications to the interventions will be made using the provisions of DoDI 1400.37, or applicable superseding instructions.

VI. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration

project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction). That plan, while useful, is dated and does not fully afford the laboratories the ability to evaluate all aspects of the demonstration project in a way that fully facilitates assessment and effective modification based on actionable data. Therefore, the STRL Director will conduct an internal evaluation of the STRL Personnel Demonstration Program and will ensure USD(R&E) evaluation requirements are met in addition to applying knowledge gained from other DoD laboratories and their evaluations to ensure a timely, useful evaluation of the demonstration project.

B. Data Collection To Support Evaluation

The ultimate outcomes sought are improved organizational effectiveness, mission accomplishment, and customer satisfaction. However, the main focus of the evaluation will be on intermediate outcomes, *i.e.,* the results of the authorized personnel system changes, which are expected to contribute to the desired goals and benefits identified Sections II.A and II.C. Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the flexibilities are working. The information gathered from one source will serve to validate information obtained through another source. The confidence of overall findings will be strengthened as the different collection methods substantiate each other. Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

1. Workforce data (advanced degrees, etc.);
2. Personnel office data (hiring actions, time to hire, retention, etc.);
3. Employee attitude surveys;
4. Structured interviews and focus group data;
5. Comparison of desired results from the flexibilities implemented with actual results achieved;
6. Customer satisfaction surveys;
7. Core measures of laboratory effectiveness; and
8. Any additional data requested by Director, Defense Laboratories Office.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which flexibilities were most effective, and whether the results can be generalized to other Federal installations.

VII. Demonstration Project Costs

NAVFAC EXWC will model its demonstration project on existing demonstration projects but must assume some expanded project costs. Current cost estimates associated with implementing the demonstration project are shown in Figure 3. These include possible automation of training and project evaluation systems. The automation and training costs are startup costs. Transition costs are one-time costs. Costs for project evaluation will be ongoing for at least five years.

Figure 3. Projected Implementation Costs

	FY 19	FY 20	FY 21	FY 22	FY 23	
Software Development and Automation	50,000			0		
Software Hosting and Sustainment	15,000	15000	15,000	15,000	15,000	
Program/Training development and deployment	74,400	9,533	9,771	9,922	10,265	
Workforce Training WCF	376,640	263,220	269,801	276,546	283,459	
Workforce Training GF	149,792	152,520	156,333	160,241	164,247	
Supervisor Training WCF	37,664	70,192	71,947	73,745	75,589	
Supervisor Training GF	20,856	51,824	53,120	54,448	55,809	
Project Evaluation	15,500	6,355	6,514	6,615	6,844	
NWCF STRL Transition (WGI Buy In)	485,602	0	0	0	0	
GF STRL Transition (WGI Buy In)	445,703	0	0	0	0	
Totals	1,671,157	568,644	582,485	596,517	611,213	**4,030,015**

VIII. Management and Oversight

A. Project Management With Automation

One of the major goals of the demonstration project is to streamline the personnel processes to increase cost effectiveness. Automation should play an integral role in achieving that goal. Without the necessary automation to support the flexibilities proposed for the demonstration project, optimal cost benefit may not be realized. In addition, adequate information to support decision-making must be available to managers if line management is to assume greater authority and responsibility for human resources management. Automation to support the demonstration project is required at the DON and DoD level (in the form of changes to the Defense Civilian Personnel Data System (DCPDS) or successor DoD personnel system) to facilitate processing and reporting of demonstration project personnel actions and may be ultimately required by the command to assist in processing a variety of personnel-related actions in order to facilitate management processes and decision making.

DCPDS is the DoD's authoritative personnel data system and program of record and as such, DCPDS or its successor system will be the system of choice for the STRL labs. The detailed specifications for required system changes will be provided in the System Change Request (SCR), Form 804, concurrent with submission of this document.

B. Oversight

Oversight will be carried out by the command's Senior Leadership, composed of the Technical Director and Commanding Officer. The Technical Director and Commanding Officer will be assisted initially by the NAVFAC EXWC STRL Demonstration Project Implementation Team, and once established, by the NAVFAC EXWC STRL Policy Board (ESPB).

1. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit system principles will be maintained. Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

2. Modifications

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. Modifications will be made in accordance with the provisions of DoDI 1400.37, or applicable superseding instructions.

IX. Required Waivers to Laws and Regulations

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request. The following waivers and adaptations of certain Title 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from applying, adopting or incorporating any law or OPM, DoD, or DON regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, United States Code

Chapter 5, section 552a: Records. Waived to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3104: Employment of Specially Qualified Scientific and Professional Personnel. Waived to allow SSTM authority as described in this FRN and 79 FR 43722.

Chapter 31, section 3132: The Senior Executive Service: Definitions and Exclusions. Waived to allow SSTMs.

Chapter 33, Subchapter I: Examination, Certification, and Appointment. Waived except for sections 3302 and 3328 to allow for direct hire authority for scientists and engineers with advanced degrees for professional positions, and bachelor degree candidates for scientific and engineering positions. Waived for veteran candidates for scientific, technical, engineering and mathematics positions, including technician positions. Also waived to the extent to allow employees appointed on a Flexible Length or Renewable Term Technical Appointment to apply for federal positions as status candidates.

Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. This section is waived with respect to the scholastic achievement appointment authority.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section is waived only to the extent necessary to replace ''grade'' with ''pay band'' and to allow for probationary periods of two years.

Chapter 33, section 3324: Appointments to Positions Classified Above GS–15; and 5 U.S.C. 3325, Appointments to Scientific and Professional Positions. Waived in its entirety.

Chapter 33, section 3327: Civil service employment information. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Appointment Authority described in this FRN.

Chapter 33, section 3330: Government-wide List of Vacant Positions. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Appointment Authority described in this FRN.

Chapter 33, section 3341: Details. Waived in its entirety, to extend the time limits for details.

Chapter 35, section 3522: Agency VSIP Plans; Approval. Waived to remove the requirement to submit a plan to OPM prior to obligating any resources for voluntary separation incentive payments.

Chapter 35, section 3523 (b)(3): Authority to Provide Voluntary Separation Incentive Payments. As provided for in 82 FR 43339, September 15, 2017, waived to remove the prescribed method of incentive payment calculation and the $25,000 incentive limit. Allows STRL director to determine amount of incentive paid to employees under the workforce shaping pilot program voluntary early retirement and separation incentive payment authorities within the limit prescribed herein.

Chapter 41, section 4107(a)(2): Academic Degree Training. Waived in its entirety.

Chapter 41, section 4108: Employee Agreements; Service After Training. Waived to the extent necessary to: (1) Provide that the employee's service obligation is to NAVFAC EXWC for the period of the required service; (2) permit the Technical Director to waive in whole or in part a right of recovery; and (3) require an employee in the student educational employment program who has received tuition assistance to sign a service agreement up to three times the length of the training.

Chapter 43, section 4301–4305: Related to Performance Appraisal. Waived to the extent necessary to allow

provisions of the performance compensation system as described in this FRN. Replace ''grade'' with ''pay band''; does not apply to employees reduced in pay band without a reduction in pay; allows for removal for unacceptable performance within two years from the beginning of the performance improvement period; OPM responsibilities to the demonstration project are waived.

Chapter 45, section 4502: Limitation of Cash Awards to Ten-Thousand Dollars. Waived to allow Technical Director to award up to $25,000 with the same level of authority as the Secretary of Defense to grant cash awards. The requirement for certification and approval of the cash awards by OPM is not required. All other provisions of section 4502 apply.

Chapter 51, section 5101–5112: Purpose, Definitions, Basis, Classification of Positions, Review, Authority. Waived to the extent that (1) white collar employees will be covered by broad banding, (2) to allow classification provisions described in this FRN and to allow for SSTM positions, and (3) classification appeals will be decided by the Technical Director with final appeal to the DoD Appellate level.

Chapter 53, sections 5301–5307: Related to Pay Comparability System and General Schedule Pay Rates. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as GS employees, and to allow base rates of pay under the demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed EX III.

Chapter 53, section 5331–5336: General Schedule Pay Rates. Waived in entirety.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to: (1) Replace ''grade'' with ''pay band;'' (2) allow demonstration project employees to be treated as GS employees; (3) provide that an employee on pay retention whose rating of record is ''Unacceptable'' is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (4) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; (5) allow no provision of grade/pay band retention under this demonstration project; and (6) allow demonstration project employees receiving a staffing supplement to retain the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver may apply to Scientific and Professional (ST), Senior Level (SL) and SSTM employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, section 5542(a)(1)–(2): Overtime Rates; Computation. These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Related to Hazardous Duty Premium Pay. Waived only to the extent necessary to allow demonstration project employees to be treated as GS employees.

Chapter 55, section 5547(a)–(b): Limitation on Premium Pay. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, sections 5753, 5754, and 5755: Related to Recruitment, Relocation, Retention Payments, and Supervisory Differential. These sections waived to the extent necessary to allow: (1) Employees and positions under the demonstration project to be treated as employees and positions under the GS; and (2) that management may offer a bonus to incentivize geographic mobility to employees in a student educational employment program. Also to the extent necessary, to allow SSTMs to receive pay retention and supervisory differentials as described in this FRN and 79 FR 43722.

Chapter 59, section 5941: Allowances Based on Living Costs and Conditions of Environment; employees stationed outside continental United States or Alaska. Waived to the extent necessary to provide that cost-of-living-adjustment (COLA)'s paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, section 7512(3)–(4): Adverse Actions. Waived to the extent necessary to: (1) Replace ''grade'' with ''pay band;'' (2) exclude reductions in pay band that are not accompanied by a reduction in pay; (3) exclude conversions from GS special rates to demonstration project pay and reallocations of demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions of general or locality pay increases, as long as the employee's total rate of pay is not reduced; (4) exclude reductions in base pay due solely to the operations of the pay setting rules for geographic movement within the demonstration project; and (5) exclude reduction in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory, or non-team leader position.

Chapter 99, section 9902(f): Related to Voluntary Separation Incentive Payments. Waived to the extent necessary to utilize the authorities authorized by Public Law 114–92 and detailed in 82 FR 43339.

B. Waivers to Title 5, Code of Federal Regulations

Part 210, section 210.102(b) (12): Definitions, Reassignment. Waived to the extent necessary to allow assigning an employee, without a position change, to any work falling within their general level descriptor. Waived to the extent necessary to allow tracking of such assignments as a ''realignment.''

Part 300–330: Employment (General). Other than Subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722 and 82 FR 29280.

Part 300.601–300.605: Time-in-Grade Requirements. Waived to eliminate time-in-grade restrictions.

Part 315, section 315.901 and 315.907: Related to Supervisory Probationary Periods. This waiver applies to the extent necessary to: (1) Replace ''grade'' with ''pay band'' or ''broad band;'' (2) allow NAVFAC EXWC to establish the length of supervisory probationary period; and (3) allow time spent in a temporary position to be creditable toward completion of a supervisory probationary period.

Part 316, sections 316.301, 316.303, and 316.304: Subpart D, Term Employment and Temporary Limited Employment. These sections are waived to the extent necessary to allow modified term appointments and Flexible Length and Renewable Term Technical Appointments as described in this FRN.

Part 330.103–330.105: Requirement to Notify OPM. Waived to the extent necessary to allow the STRL to publish competitive announcements outside of USAJobs.

Part 332 and 335: Related to Competitive Examination. Waived to the extent necessary to allow employees appointed on a Flexible Length and Renewable Term Technical

Appointment to apply for federal positions as status candidates.

Part 335, section 335.103: Agency Promotion Programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures or numerous short-term renewals.

Part 338.301: Competitive Service Appointment. Waived to allow for Distinguished Scholastic Achievement Appointment grade point average requirements as described in this FRN.

Part 359.705: Related to SES Pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES placed on an SSTM position.

Part 410, section 410.308(a) and (c): Related to Degree Programs. Waived to allow the command to pay for all courses related to an academic degree program approved by the NAVFAC EXWC Technical Director.

Part 410, section 410.309: Agreements to Continue in Service. Waived to the extent necessary to allow the Technical Director to determine requirements related to continued service agreements, including employees under the Student Educational Employment Program who have received tuition assistance.

Part 430, Subpart B: Performance Appraisal for General Schedule, Prevailing Rate and Certain Other Employees. Waived to the extent necessary to allow the performance appraisal program as described in this FRN. Section 430.208(a)(1) and (2), waived to allow presumptive ratings for new employees hired less than 90 days before the end of the appraisal cycle, or for other situations not providing adequate time for an appraisal.

Part 432: Performance Based Reduction-in-grade and Removal Actions. Replace ''grade'' with ''pay band.'' Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also, modified to delete reference to critical element and to allow removal for unacceptable performance with two years from the beginning of a performance improvement period. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106(a) do not apply.

Part 451, section 451.106(b): Agency Responsibilities. Waived to allow the Technical Director to award up to $25,000 with the same level of authority as the Secretary of Defense to grant a cash award. The requirement for certification and approval of cash awards by OPM is not required. All other provisions of 5 CFR 451.106 apply.

Part 511, Subpart A, B and F: Classification Under the General Schedule. Waived to the extent necessary to allow classification provisions outlined in this FRN to include the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate career paths; and to allow classification appeals to be decided by the Technical Director with final appeal to the DoD Appellate level.

Part 530, Subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, Subparts B, D, and E: Determining the Rate of Basic Pay, Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, Subpart F: Locality-Based Comparability Adjustments. This waiver applies only to the extent necessary to allow: (1) Demonstration project employees covered by broad banding to be treated as GS employees; (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and (3) SSTM employees to be treated as GS employees and basic rates of pay under the SSTM to be treated as scheduled annual rates of pay. This waiver does not apply to FWS employees.

Part 536: Grade and Pay Retention: Waived to the extent necessary to: (1) Replace ''grade'' with ''pay band;'' (2) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to movement from a supervisory position to a non-supervisory position, as long as total pay is not reduced; (3) allow demonstration project employees to be treated as GS employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of ''Unacceptable;'' (5) provide that an employee on pay retention whose rating of record is ''Unacceptable'' is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (6) allow no provision of grade/pay band retention under this demonstration project; (7) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; and (8) allow demonstration project employees receiving a staffing supplement to retain the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver may apply to Scientific and Professional (ST), Senior Level (SL) and SSTM employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, section 550.113(a): Computation of Overtime Pay. This section is adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Part 550, sections 550.703: Severance Pay, Definitions. Definition of ''reasonable offer'' waived by replacing ''two grade or pay levels'' with ''one pay band'' and ''grade or pay level'' with ''pay band.''

Part 550, section 550.902: Definition of ''Employee'' Hazardous Duty Pay Differential. Waived to the extent necessary to treat demonstration project employees covered by broad banding as GS employees.

Part 575, Subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances, and Supervisory Differentials. Waived only to the extent necessary to allow: (1) Employees and positions under the demonstration project covered by broad banding to be treated as employees and positions under the GS; (2) relocation incentives to new employees in the student educational employment program whose worksite is in a different geographic location than that of the college enrolled; and (3) SSTMs to receive supervisory pay differentials as described in this FRN and 79 FR 43726.

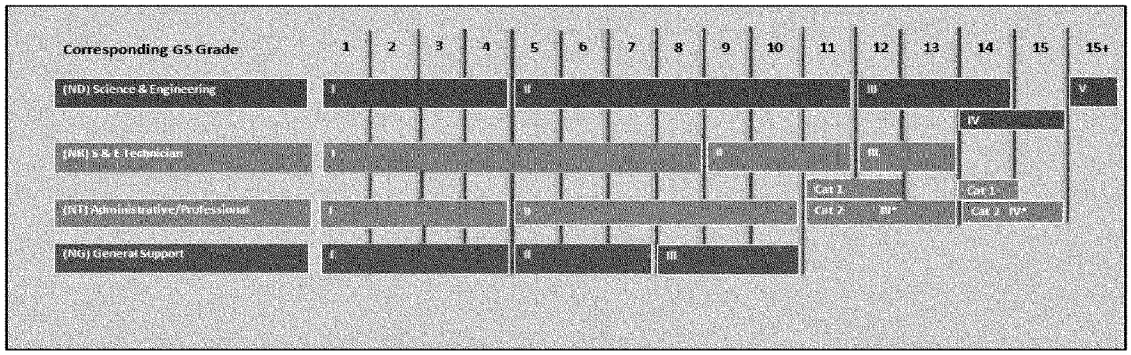
Part 591, Subpart B: Cost-of-Living Allowances and Post Differential-Non Foreign Areas. Waived to the extent necessary to allow demonstration project employees covered by broad banding to be treated as employees under the GS.

Part 752, sections 752.201, 752.301 and 752.401: Principal Statutory Requirements and Coverage. Waived to the extent necessary to: (1) Exclude reductions in pay band not accompanied by a reduction in pay; (2) replace ''grade'' with ''pay band;'' (3) the extent necessary to exclude conversions from a GS special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay; and (4) the extent necessary to provide that adverse action provisions do not apply to: (1)

Conversions from GS special rates to demonstration project pay; (2) reallocations of demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (3) reductions in base pay due solely to the operation of the pay setting rules for geographic movement within the demonstration project.

BILLING CODE 5001–06–P

Appendix A: Career Paths and Occupational Series



SCIENCE & ENGINEERING CAREER PATH (ND)	
SERIES	TITLE
0150	GEOGRAPHER
0401	NATURAL RESOURCES MANAGEMENT AND BIOLOGICAL SCIENCES
0801	GENERAL ENGINEERING
0803	SAFETY ENGINEERING
0804	FIRE PROTECTION ENGINEERING
0806	MATERIALS ENGINEERING
0808	ARCHITECTURE
0810	CIVIL ENGINEERING
0819	ENVIRONMENTAL ENGINEERING
0830	MECHANICAL ENGINEERING
0850	ELECTRICAL ENGINEERING
0854	COMPUTER ENGINEERING
0855	ELECTRONICS ENGINEERING
0893	CHEMICAL ENGINEERING
0896	INDUSTRIAL ENGINEERING
0899	STUDENT TRAINEE (ENGINEER)
1301	PHYSICAL SCIENCE
1313	GEOPHYSICS
1315	HYDROLOGY
1320	CHEMISTRY
1321	METALLURGY
1350	GEOLOGY
1515	OPERATIONS RESEARCH
1550	COMPUTER SCIENTIST
GENERAL SUPPORT CAREER PATH (NG)	
SERIES	TITLE
0086	SECURITY CLERICAL AND ASSISTANCE
0203	HUMAN RESOURCES ASSISTANCE
0303	MISC CLERK AND ASSISTANT
0318	SECRETARY
0335	COMPUTER CLERK AND ASSISTANT
0344	MANAGEMENT & PROGRAM CLERICAL AND ASSISTANCE
0399	(STUDENT TRAINEE) ADMINISTRATION AND OFFICE SUPPORT
0503	FINANCIAL TECHNICIAN
0986	LEGAL ASSISTANCE
1106	PROCUREMENT CLERICAL AND TECHNICIAN
2005	SUPPLY CLERICAL AND TECHNICIAN

S & E TECHNCIAN CAREER PATH (NR)	
SERIES	TITLE
0802	ENGINEERING TECHNICIAN
0856	ELECTRONICS TECHNICIAN
1152	PRODUCTION CONTROL
2121	RAILROAD SAFETY

ADMINISTRATIVE/PROFESSIONAL CAREER PATH (NT)	
SERIES	TITLE
0018	SAFETY AND OCCUPATIONAL HEALTH MANAGEMENT
0020	COMMUNITY PLANNING
0028	ENVIRONMENTAL PROTECTION SPECIALIST
0080	SECURITY ADMINISTRATION
0201	HUMAN RESOURCES MANAGEMENT
0260	EQUAL EMPLOYMENT OPPORTUNITY
0301	MISC ADMINSTRATION AND PROGRAM
0340	PROGRAM MANAGEMENT
0343	MANAGEMENT AND PROGRAM ANALYST
0346	LOGISTICS MANAGEMENT
0399	(STUDENT TRAINEE) ADMINISTRATION AND OFFICE SUPPORT
0501	FINANCIAL ADMINISTRATION AND PROGRAM
0505	FINANCIAL MANAGEMENT
0510	ACCOUNTING
0905	GENERAL ATTORNEY
0950	PARALEGAL SPECIALIST
1035	PUBLIC AFFAIRS
1083	TECHNICAL WRITING AND EDITING
1101	GENERAL BUSINESS AND INDUSTRY
1102	CONTRACTING
1176	BUILDING MANAGEMENT
1670	EQUIPMENT SERVICES
1801	INSPECTOR GENERAL
2010	INVENTORY MANAGEMENT
2030	DISTRIBUTION FACILITIES AND STORAGE MANAGEMENT
2210	INFORMATION TECHNOLOGY MANAGEMENT

Appendix B: Rating Benchmark Examples

Science and Engineering Pay Schedule ND I & II	
Level 3	Level 5 additions
- With guidance, effectively achieved the stated objective. - With guidance, organized and prioritized own tasks to deliver the objective, adjusting work plans and overcoming obstacles as necessary. - Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.	- Contributed results beyond what was expected; results were far superior in quality, quantity, timeliness and/or impact to the stated objective. - Exhibited the highest standards of professionalism.

Science and Engineering Pay Schedule ND III	
Level 3	Level 5 additions
- With guidance, effectively achieved the stated objective, anticipating and overcoming obstacles. - With guidance, organized and prioritized own tasks to deliver the objective in a timely and effective manner, adjusting work plans and overcoming obstacles as necessary. - Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.	- Contributed results beyond what was expected; results were far superior in quality, quantity, timeliness and/or impact to the stated objective. - Exhibited the highest standards of professionalism.

Science and Engineering Pay Schedule ND IV	
Level 3	Level 5 additions
- Effectively achieved the stated objective, anticipating and overcoming significant obstacles. Adapts established methods and procedures when needed. - Results were technically sound, accurate, thorough, documented, and met applicable authorities, standards, policies, procedures and guidelines. - Planned, organized prioritized, and scheduled own work activities to deliver the objective in a timely and effective manner, making adjustments to respond to changing situations and anticipating and overcoming difficult obstacles as necessary. - Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.	- Contributed results beyond what was expected; results were far superior in quality, quantity, and/or impact to the stated objective to what would be expected at this level. - Exhibited the highest standards of professionalism.

Science and Engineering Pay Schedule ND V	
Level 3	Level 5 additions
- Effectively delivered an objective with broad and significant impact that was in alignment with the mission and objectives of the organization as well as applicable authorities, standards, policies, procedures and guidelines; anticipating and overcoming significant obstacles. Adapts established methods and procedures when needed. - Established priorities and coordinated work across projects, programs or people, effectively balancing work demands and anticipating and overcoming difficult obstacles to achieve a timely and positive outcome. - Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.	- Contributed results beyond what was expected in the face of highly difficult obstacles; results were far superior in quality, quantity, and/or impact to the stated objective to what would be expected at this level. - Created new and innovative methods and processes that contributed significantly to the success of the organization. - Exhibited the highest standards of professionalism. - Accomplishments and outcomes were of such magnitude that they contributed to the organization exceeding its mission goals and objectives for the year.

Dated: November 15, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–25200 Filed 11–21–19; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0118]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Agreements Between an Eligible School and the Secretary To Participate in the Direct Loan Program

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 December 23, 2019.

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–2019–ICCD–0118. 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 6W208, D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Agreements between an eligible school and the Secretary to participate in the Direct Loan Program.

OMB Control Number: 1845–0143.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 1,010,519.

Total Estimated Number of Annual Burden Hours: 179,362.

Abstract: The Department of Education (the Department) requests an extension of this information collection tied to the William D. Ford Federal Direct Loan (Direct Loan) Program regulations issued under the Higher Education Act of 1965, as amended (HEA). The 2018 negotiated rulemaking made final in the rule to be published in September 2019 makes changes made to the regulations in § 685.300. These final regulations are a result of negotiated rulemaking and will rescind the requirements of the current regulations in paragraphs (e), (f), (g), and (h) . The final rule and this rescission will not take effect until July 1, 2020. The Department is asking to extend the current burden assessment until the effective date of the change and at that time a discontinuation request will be filed.

Dated: November 19, 2019.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–25380 Filed 11–21–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0112]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Presidential Cybersecurity Education Award

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), 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 December 23, 2019.

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–2019–ICCD–0112. 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 6W208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jean Morrow, 202–453–7233.

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: Presidential Cybersecurity Education Award.

OMB Control Number: 1875–0292.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 120.

Total Estimated Number of Annual Burden Hours: 120.

Abstract: Pursuant to Executive Order 13870 of May 2, 2019, as published in the **Federal Register** at 84 FR 20,523–20,527 (May 9, 2019)(Executive Order 13870), the Department, in consultation with the Deputy Assistant to the President for Homeland Security and Counterterrorism and the National Science Foundation, has developed and implemented, consistent with applicable law, an annual Presidential Cybersecurity Education Award to be presented to one elementary and one secondary school educator per year who best instill skills, knowledge, and passion with respect to cybersecurity and cybersecurity-related subjects. The Department will solicit nominations for the two individual educators who will be awarded this Presidential Cybersecurity Education Award. The Department is extending the currently approved information collection for a 3-year approval.

Dated: November 19, 2019.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2019–25365 Filed 11–21–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Thursday, January 9, 2020, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@pppo.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Approval of November 2019 Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and telephone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signed in Washington, DC, on November 18, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–25359 Filed 11–21–19; 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 electric corporate filings:

Docket Numbers: EC20–16–000.

Applicants: MidAmerican Energy Company.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of MidAmerican Energy Company.

Filed Date: 11/15/19.

Accession Number: 20191115–5205.

Comments Due: 5 p.m. ET 12/6/19.

Docket Numbers: EC20–17–000.

Applicants: Traverse Wind Energy LLC, Maverick Wind Project, LLC, Sundance Wind Project, LLC, Public Service Company of Oklahoma, Southwestern Electric Power Company.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Traverse Wind Energy LLC, *et al.*

Filed Date: 11/15/19.

Accession Number: 20191115–5224.

Comments Due: 5 p.m. ET 12/6/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–34–000.
Applicants: Invenergy Wilkinson Solar Holdings LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Invenergy Wilkinson Solar Holdings LLC.
Filed Date: 11/18/19.
Accession Number: 20191118–5128.
Comments Due: 5 p.m. ET 12/9/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2718–033.
Applicants: Cogen Technologies Linden Venture, L.P.
Description: Notice of Non-Material Change in Status of Cogen Technologies Linden Venture, L.P.
Filed Date: 11/15/19.
Accession Number: 20191115–5200.
Comments Due: 5 p.m. ET 12/6/19.

Docket Numbers: ER11–1858–008.
Applicants: NorthWestern Corporation.
Description: Supplement to June 28, 2019 Triennial Market Power Analysis for the Northwest Region of NorthWestern Corporation.
Filed Date: 11/18/19.
Accession Number: 20191118–5040.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER17–801–007.
Applicants: Constellation Power Source Generation, LLC.
Description: Compliance filing: Reactive Service Rate Schedule Compliance Filings to be effective 3/1/2017.
Filed Date: 11/18/19.
Accession Number: 20191118–5088.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER17–802–007.
Applicants: Exelon Generation Company, LLC.
Description: Compliance filing: Reactive Service Rate Schedule Compliance Filings to be effective 8/27/2017.
Filed Date: 11/18/19.
Accession Number: 20191118–5093.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER17–803–004.
Applicants: Handsome Lake Energy, LLC.
Description: Compliance filing: Reactive Service Rate Schedule Compliance Filings to be effective 4/10/2017.
Filed Date: 11/18/19.
Accession Number: 20191118–5129.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER17–2175–001.
Applicants: Susquehanna Nuclear, LLC.
Description: Compliance filing: Informational Filing to be effective N/A.
Filed Date: 11/18/19.
Accession Number: 20191118–5073.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER18–406–002.
Applicants: Brunner Island, LLC.
Description: Compliance filing: Informational Filing to be effective N/A.
Filed Date: 11/18/19.
Accession Number: 20191118–5061.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER18–2254–002.
Applicants: MC Project Company LLC.
Description: Compliance filing: Informational Filing to be effective N/A.
Filed Date: 11/18/19.
Accession Number: 20191118–5070.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER19–2669–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: Deficiency Response in ER19–2669—Financial Security for System Upgrades to be effective 10/20/2019.
Filed Date: 11/18/19.
Accession Number: 20191118–5082.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER20–28–001.
Applicants: MidAmerican Energy Company.
Description: Tariff Amendment: Amendment of Pending Tariff Filing in ER20–28 to be effective 11/1/2019.
Filed Date: 11/18/19.
Accession Number: 20191118–5043.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER20–217–001.
Applicants: GridLiance West LLC.
Description: Tariff Amendment: GLW TRBAA Amendment Filing 2020 to be effective 1/1/2020.
Filed Date: 11/18/19.
Accession Number: 20191118–5001.
Comments Due: 5 p.m. ET 12/2/19.

Docket Numbers: ER20–394–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: IS0–NE & NEPOOL; Changes to ISO–NE Financial Assurance Policy: Trading FA to be effective 1/15/2020.
Filed Date: 11/15/19.
Accession Number: 20191115–5187.
Comments Due: 5 p.m. ET 12/6/19.

Docket Numbers: ER20–395–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: ISO New England; Changes to ISO–NE Financial Assurance Policy: Net CONE to be effective 1/15/2020.
Filed Date: 11/15/19.
Accession Number: 20191115–5188.
Comments Due: 5 p.m. ET 12/6/19.

Docket Numbers: ER20–396–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Revisions, Full Requirements Electric Svc Agreements & Tariff to be effective 6/28/2018.
Filed Date: 11/18/19.
Accession Number: 20191118–5060.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER20–397–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-Vandolah LGIA/FMPA NITSA (FRCC Revisions) to be effective 11/1/2019.
Filed Date: 11/18/19.
Accession Number: 20191118–5096.
Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: ER20–398–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–11–18 CRR Exchange Agreement with TANC to be effective 2/1/2020.
Filed Date: 11/18/19.
Accession Number: 20191118–5154.
Comments Due: 5 p.m. ET 12/9/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–293–000.
Applicants: UE–00801MD LLC.
Description: Form 556 of UE–00801MD LLC.
Filed Date: 11/15/19.
Accession Number: 20191115–5221.
Comments Due: None-Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25397 Filed 11–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7658–001]

Malandro, Michael E.; Notice of Filing

Take notice that on November 15, 2019, Michael E. Malandro, submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b), Part 45 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 45.8 (2019), and Order No. 664, 112 FERC 61,298 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 6, 2019.

Dated: November 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25399 Filed 11–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings 1

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–227–000.

Applicants: Elba Express Company, L.L.C.

Description: § 4(d) Rate Filing: EEC Housekeeping Filing—2019 to be effective 1/1/2020.

Filed Date: 11/13/19.

Accession Number: 20191113–5017.

Comments Due: 5 p.m. ET 11/25/19.

Docket Numbers: RP20–228–000.

Applicants: Discovery Gas Transmission LLC.

Description: § 4(d) Rate Filing: 2020 HMRE Surcharge Filing to be effective 1/1/2020.

Filed Date: 11/14/19.

Accession Number: 20191114–5019.

Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: RP20–229–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2019 ConocoPhillips Amendment to be effective 11/15/2019.

Filed Date: 11/14/19.

Accession Number: 20191114–5036.

Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: RP20–230–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: TCO Equinor Neg Rate Amendment to be effective 11/14/2019.

Filed Date: 11/14/19.

Accession Number: 20191114–5103.

Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: RP20–231–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Filing to incorporate approved changes and clean-up item to be effective 12/15/2019.

Filed Date: 11/15/19.

Accession Number: 20191115–5031.

Comments Due: 5 p.m. ET 11/27/19.

Docket Numbers: RP20–232–000.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: § 4(d) Rate Filing: DECP—Negotiated Rate and Non-Conforming Service Agreement to be effective 12/15/2019.

Filed Date: 11/15/19.

Accession Number: 20191115–5156.

Comments Due: 5 p.m. ET 11/27/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25398 Filed 11–21–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9048–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 11/11/2019 10 a.m. ET Through 11/18/2019 10 a.m. ET

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190274, Draft, BIA, OK, Osage County Oil and Gas Draft Environmental Impact Statement, *Comment Period Ends:* 01/06/2020, *Contact:* Mosby Halterman 918–781–4660

EIS No. 20190275, Final, USFS, CA, Squaw Valley-Alpine Meadows Base-to-Base Gondola Project, *Review Period Ends:* 12/23/2019, *Contact:* Joe Flannery 530–478–6205

EIS No. 20190276, Final, FERC, OR, Jordan Cove Energy Project, *Review Period Ends:* 12/23/2019, *Contact:* Office of External Affairs 866–208–3372

EIS No. 20190277, Final, BLM, WA, San Juan Islands National Monument Proposed Resource Management Plan and Final Environmental Impact Statement, *Review Period Ends:* 12/23/2019, *Contact:* Lauren Pidot 503–808–6297

EIS No. 20190278, Draft, BLM, AK, National Petroleum Reserve in Alaska Integrated Activity Plan and Environmental Impact Statement, *Comment Period Ends:* 01/21/2020, *Contact:* Stephanie Rice 907–271–3202

EIS No. 20190279, Draft, USACE, CO, Halligan Water Supply Project, *Comment Period Ends:* 01/27/2020, *Contact:* Cody Wheeler 720–922–3846

EIS No. 20190280, Draft, USACE, LA, South Central Coast Louisiana Draft Feasibility Study with Integrated Environmental Impact Statement, *Comment Period Ends:* 01/06/2020, *Contact:* Joe Jordan 309–794–5791

Dated: November 18, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–25377 Filed 11–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0318; FRL—10002–50–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Magnetic Tape Coating Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Magnetic Tape Coating Facilities (EPA ICR Number 1135.13, OMB Control Number 2060–0171), 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 January 31, 2020. Public comments were previously requested, via the **Federal Register**, on May 6, 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 neither conduct nor 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 December 23, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0318, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for NSPS for Magnetic Tape Coating Facilities (40 CFR part 60, subpart SSS) apply to each new and existing coating operation and coating mixing equipment at magnetic tape coating facilities for which construction, modification, or reconstruction began after January 22, 1986. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart SSS.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Magnetic tape coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart SSS).

Estimated number of respondents: 6 (total).

Frequency of response: Initially, quarterly, and semiannually.

Total estimated burden: 2,030 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $321,000 (per year), includes $86,400 in annualized capital and/or operation & maintenance costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–25410 Filed 11–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0334; FRL—10002–47–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NSPS for

Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities (EPA ICR Number 1604.12, OMB Control Number 2060–0110), 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 January 31, 2020. Public comments were previously requested, via the **Federal Register**, on May 6, 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 neither conduct nor 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 December 23, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0334, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The NSPS for Secondary Brass and Bronze Production (40 CFR part 60, subpart M) apply to existing facilities and new facilities that commence construction or modification after June 11, 1973. These standards apply to the following facilities in secondary brass or bronze production plants: Reverberatory and electric furnaces of 1,000 kg or greater production capacity and blast (cupola) furnaces of 250 kg/hr or greater production capacity. Furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces, are not considered to be affected facilities. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. The NSPS for Primary Copper Smelters (40 CFR part 60, subpart P) apply to existing facilities and new facilities that commence construction or modification after October 16, 1974. These standards apply to the following facilities in primary copper smelters: Dryer, roaster, smelting furnace, and copper converter. The NSPS for Primary Zinc Smelters (40 CFR part 60, subpart Q) apply to existing facilities and new facilities that commence construction or modification after October 16, 1974. These standards apply to the following facilities in primary zinc smelters: Roaster and sintering machines. The NSPS for Primary Lead Smelters (40 CFR part 60, subpart R) apply to existing facilities and new facilities that commence construction or modification after October 16, 1974. These standards apply to the following facilities in primary lead smelters: Sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter. The NSPS for Primary Aluminum Reduction Plants (40 CFR part 60, subpart S) apply to existing facilities and new facilities that commence construction or modification after October 23, 1974. The NSPS for Ferroalloy Production Facilities (40 CFR part 60, subpart Z) apply to existing facilities and new facilities that commence construction or modification after October 21, 1974. These standards apply to the following facilities in ferroalloy production plants: Electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Secondary Brass/Bronze Production (40 CFR part 60, subpart M), Primary Copper Smelters (40 CFR part 60, subpart P), Primary Zinc Smelters (40 CFR part 60, subpart Q), Primary Lead Smelters (40 CFR part 60, subpart R), Primary Aluminum Reduction Plants (40 CFR part 60, subpart S), and Ferroalloy Production Facilities (40 CFR part 60, subpart Z).

Respondent's obligation to respond: Mandatory, 40 CFR part 60.

Estimated number of respondents: 18 (total).

Frequency of response: Initially, monthly, semiannually and annually.

Total estimated burden: 3,880 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $576,000 (per year), which includes $127,000 in annualized capital and/or operation & maintenance costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. There is an adjustment increase in the labor burden in this ICR compared to the previous ICR due to the increase in labor costs over the past three years.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–25408 Filed 11–21–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before January 21, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: OMNI BROADCASTING, LLC, WTKP(FM), Fac. ID No. 67579, Channel 229C3, From: YOUNGSTOWN, FL, To: PORT ST. JOE, FL, File No. 0000082907; SUN MEDIA, INC., WJLI(FM), Fac. ID No. 63817, Channel 252C1, From: PADUCAH, KY, To: METROPOLIS, IL, File No. 0000082340; HI-LINE RADIO FELLOWSHIP INC., KZLM(FM), Fac. ID No. 171025, Channel 300A, From: HARLOWTON, MT, To: LEWISTOWN, MT, File No. BPED–20190815ABG; KIZART MEDIA PARTNERSHIP, NEW(FM), Fac. ID No. 198799, FROM: Cleveland, MS, TO: Shaw, MS, File No. BNPH–20151013ADH; and SALEM COMMUNICATIONS HOLDING CORPORATION, WBZW(AM), Fac. ID No. 1185, Channel 1520 kHz, From: Apopka, FL, To: Fairview Shores, FL, File No. BP–20191114AAX.

The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW, Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://licensing.fcc.gov/prod/cdbs/pubacc/prod/app_sear.htm.* and the Licensing and Management System (LMS), *https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2019–25396 Filed 11–21–19; 8:45 am]

BILLING CODE 6712–01–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 December 20, 2019.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky;* to merge with Owenton Bancorp, Inc., and thereby indirectly acquire Peoples Bank & Trust Company, both of Owenton, Kentucky.

Board of Governors of the Federal Reserve System, November 18, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–25344 Filed 11–21–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Management of Primary Headache During Pregnancy

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Management of Primary Headache during Pregnancy,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before 30 days after date of publication.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence Management of Primary Headache during Pregnancy. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies

conducted). We are looking for studies that report on *Management of Primary Headache during Pregnancy,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/headaches-pregnancy/protocol*.

This is to notify the public that the EPC Program would find the following information on Management of Primary Headache during Pregnancy helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number*.
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication. In the list, please provide the ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What are the (comparative) benefits and harms of interventions *to prevent* attacks of primary headache in women who are pregnant (or attempting to become pregnant), postpartum, or breastfeeding?

KQ 1a. Do the (comparative) benefits and harms vary by phase (*i.e.,* preconception, first trimester of pregnancy, second trimester of pregnancy, third trimester of pregnancy, postpartum, breastfeeding)?

KQ 1b. Do the (comparative) benefits and harms vary by type of primary headache (*i.e.,* migraine, tension headache, cluster headache, and other trigeminal autonomic cephalgias)?

KQ 2: What are the (comparative) benefits and harms of interventions *to treat* acute attacks of primary headache in women who are pregnant (or attempting to become pregnant), postpartum, or breastfeeding?

KQ 2a. Do the (comparative) benefits and harms vary by phase (*i.e.,* preconception, first trimester of pregnancy, second trimester of pregnancy, third trimester of pregnancy, postpartum, breastfeeding)?

KQ 2b. Do the (comparative) benefits and harms vary by type of primary headache (*i.e.,* migraine, tension headache, cluster headache, and other trigeminal autonomic cephalgias)?

Contextual Question

What is the available evidence concerning levels in maternal serum/blood, fetal/infant serum/blood, breast milk, amniotic fluid, meconium, cord blood, or child urine of drugs used to prevent or treat attacks of primary headache in women who are pregnant (or attempting to become pregnant), postpartum, or breastfeeding?

Study Eligibility Criteria

We had discussions with a Technical Expert Panel (TEP) during which we reviewed the specific eligibility criteria. As part of the discussions, we asked the TEP to provide guidance on prioritizing outcomes and selecting among harms/adverse events of interest.

KQ 1 (Prevention of Primary Headache)

Population(s):

- Women who are pregnant (or attempting to become pregnant/in the preconception phase), postpartum (defined as up to 12 months post-delivery), or breastfeeding (for any length of time) with history of primary headache
  - Migraine, tension headache, cluster headache or other trigeminal autonomic cephalgia (TACs)
  - Women attempting to become pregnant include those actively planning pregnancy, by any method, who may wish to use only treatments found to be safe and effective during pregnancy.
- *Exclude:* Women with history of secondary headache of any origin

Interventions:

- Pharmacologic interventions
  - Tricyclic antidepressants (*e.g.,* amitriptyline, nortriptyline, imipramine)
  - Beta blockers (*e.g.,* metoprolol, propranolol, nadolol, atenolol, timolol, nebivolol)
  - Calcium channel blockers (*e.g.,* verapamil, nimodipine, nifedipine, nicardipine)
  - Other antihypertensive medications (*e.g.,* lisinopril, candesartan, clonidine)
  - Antiepileptic drugs (*e.g.,* divalproex sodium, sodium valproate, valproic acid, topiramate, gabapentin, carbamazepine, lamotrigine)
  - Serotonin and norepinephrine reuptake inhibitors (SSNRIs) (*e.g.,* venlafaxine, duloxetine)
  - Benzodiazepines (*e.g.,* clonazepam)
  - N-methyl-D-aspartate (NMDA) receptor antagonists (*e.g.,* memantine)
  - Calcitonin gene-related peptide (CGRP) inhibitors (*e.g.,* erenumab, fremanezumab, galcanezumab)
  - Antihistamines (*e.g.,* cyproheptadine)
  - Antimanic agents (*e.g.,* lithium)
  - Tetracyclic antidepressants (*e.g.,* mirtazapine)
  - Corticosteroids (*e.g.,* methylprednisolone, triamcinolone acetonide, combinations of local anesthetics and corticosteroids)
  - Other pharmacologic interventions used to prevent primary headache (whether or not available or approved in the United States)
- Non-pharmacologic interventions
  - Supplements (*e.g.,* riboflavin, magnesium, coenzyme Q10, melatonin, feverfew, butterbur, frankincense)
  - Nerve blocks (*e.g.,* occipital nerve blocks, sphenopalantine ganglion blocks, trigger point injections)
  - Chemodenervation (*e.g.,* onabotulinum toxin A, abobotulinum toxin A)
  - Physical therapy
  - Hydration
  - Noninvasive neuromodulation devices (*e.g.,* transcutaneous

electrical nerve stimulation, transcranial magnetic stimulation, transcutaneous vagal stimulation, remote electrical neurostimulation)
- Behavioral therapy (*e.g.,* cognitive behavioral therapy, diet therapy, sleep therapy, exercise therapy, support group therapy)
- Complementary therapies (*e.g.,* biofeedback, acupuncture, mindfulness-based stress reduction)
- Other non-pharmacologic interventions used to prevent primary headache

Comparators:

- Pharmacologic interventions
  - Other class
  - Other drug within class
  - Same drug(s), different route, treatment duration, initiation time, or other aspect
  - As comparator to nonpharmacologic intervention
- Nonpharmacologic interventions
  - Other nonpharmacologic intervention class
  - Other nonpharmacologic intervention, within class
  - As comparator to pharmacologic intervention
- No pharmacologic or nonpharmacologic interventions
  - Placebo
  - No intervention

Outcomes: (* denotes important outcomes that will be used when developing Strength of Evidence tables)

- Acute headache attacks*
  - Occurrence of acute headache attacks
  - Frequency of acute headache attacks
  - Severity of acute headache attacks
  - Duration of acute headache attacks
- Headache-related symptoms (*e.g.,* nausea/vomiting, photosensitivity, dizziness)*
  - Occurrence of headache-related symptoms
  - Frequency of headache-related symptoms
  - Severity of headache-related symptoms
  - Duration of headache-related symptoms
  - Most bothersome symptom
- Emergency department visits, clinic visits, or hospitalizations*
- Quality of life*
- Functional outcomes
  - Impact on family life
  - Employment/school attendance
  - Time spent managing disease
- Resource use
- Acceptability of intervention by patients
- Patient satisfaction with intervention
- Number of prescribed medications
- Number of days with acute medication use
- Adverse events
  - Maternal
    - Serious maternal adverse events*
    - ''Serious'' adverse events (including those that are composite outcomes), as defined by study authors
    - Cardiovascular outcomes, such as stroke, myocardial infarction
    - Non-serious maternal adverse events
    - Nonobstetrical (*e.g.,* maternal weight gain, tachycardia, hypertension, gastrointestinal)
    - Preterm labor, cesarean section
    - Reduced breast milk production
    - Symptoms related to withdrawal of medication
    - Discontinuation of intervention (or of study participation) due to maternal adverse events*
  - Fetal/infant
    - Serious fetal/infant adverse events*
    - ''Serious'' adverse events (including those that are composite outcomes), as defined by study authors
    - Death—spontaneous abortion, stillbirth, infant death
    - Preterm birth
    - Low birth weight for gestational age
    - Congenital anomalies or other newborn abnormalities
    - Perinatal complications, *e.g.,* low APGAR score, respiratory distress, neonatal intensive care unit time
    - Neurodevelopmental—social, emotional, or cognitive delay or disability
    - Non-serious fetal/infant adverse events
    - Breastfeeding—delayed initiation, cessation, reduced frequency, reduced volume of breast milk
    - Poor infant attachment/bonding
    - Symptoms related to withdrawal of medication
    - Discontinuation of intervention (or of study participation) due to fetal/infant adverse events*

Potential Modifiers:

- Phase
  - Preconception
  - First trimester
  - Second trimester
  - Third trimester
  - Postpartum
  - Breastfeeding
- Type of primary headache
  - Migraine
  - Tension headache
  - Cluster headache
  - Other TACs

Timing:

- Any

Setting:

- Any

Design:

- Randomized controlled trials
- Nonrandomized comparative studies, including pre-post studies
- Single group studies
- N-of-1 studies
- Case-control studies
- Case reports or series of case reports
- Cross-sectional studies/surveys
  - Prospective or retrospective (all applicable study types)
- For harms, we will start by searching for existing systematic reviews of interventions used during pregnancy, postpartum, or breastfeeding, regardless of their indication (*i.e.,* for any disease/condition, not only primary headaches). We will not enforce a date restriction when screening for eligible systematic reviews, but when multiple eligible systematic reviews exist for a certain drug/class of drugs, we will use the most recent or most complete one.
  - We will subsequently search for, and include, large primary studies of interventions not adequately covered by the existing systematic reviews of harms. The specific eligibility criteria (particularly pertaining to study design, minimum sample size, and publication date) will be determined based on available EPC resources, the number of interventions without adequate existing systematic reviews, and the volume of potentially eligible studies.
  - For harms, we will also search the U.S. Food and Drug Administration, other international equivalent agencies, and pharmacopoeia.

KQ 2 (Treatment of Primary Headache)

Population(s):

- Women who are pregnant (or attempting to become pregnant/in the preconception phase), postpartum (defined as up to 12 months post-delivery), or breastfeeding (for any length of time) with acute attacks of primary headache
  - Migraine, tension headache, cluster headache, or other trigeminal autonomic cephalgia (TACs)
  - Women attempting to become pregnant include those actively planning pregnancy, by any method, who may wish to use only treatments found to be safe and effective during pregnancy.
- *Exclude:* Women with attacks of secondary headache of any origin

Interventions:

- Pharmacologic interventions
  - Analgesics/antipyretics (*e.g.,* acetaminophen)

- Nonsteroidal antiinflammatory drugs (NSAIDs) (*e.g.,* ibuprofen, naproxen, aspirin, celecoxib, ketorolac, indomethacin, ketoprofen, diclofenac, mefenamic acid)
- Other over-the-counter analgesics (*e.g.,* combination aspirin, acetaminophen, and caffeine; combination acetaminophen, isometheptene, and dichloralphenazone)
- Antiemetics: dopamine receptor antagonists (*e.g.,* metoclopramide, promethazine, prochlorperazine, droperidol, chlorpromazine)
- Antiemetics: 5HT3 antagonists (*e.g.,* ondansetron)
- Antihistamines (*e.g.,* meclizine, diphenhydramine, dimenhydrinate, promethazine)
- Central nervous system stimulants (*e.g.,* caffeine)
- Muscle relaxants (*e.g.,* baclofen, tizanidine, metaxalone, carisoprodol)
- Corticosteroids (*e.g.,* prednisolone, prednisolone, methylprednisolone, dexamethasone, betamethasone)
- Triptans/Serotonin receptor agonists (*e.g.,* sumatriptan, frovatriptan, naratriptan, rizatriptan, almotriptan, eletriptan, zolmitriptan, combination sumatriptan and naproxen)
- Opioid containing analgesics (*e.g.,* codeine, hydrocodone, oxycodone, morphine, meperidine, tramadol, butorphanol, nalbuphine)
- Butalbital-containing analgesics (*e.g.,* butalbital; combination butalbital and acetaminophen; combination butalbital, aspirin, and caffeine)
- Ergot products (*e.g.,* dihydroergotamine, ergotamine, combination ergotamine and caffeine)
- Sympathomimetic amines (*e.g.,* isometheptene)
- Topical anesthetics (*e.g.,* lidocaine)
- Antipsychotics (*e.g.,* chlorpromazine, olanzapine)
- Somatostatin analogs (*e.g.,* octreotide)
- Intravenous magnesium
- Other pharmacologic interventions used to treat acute attacks of primary headache (whether or not available or approved in the United States)

• Non-pharmacologic interventions
- Hydration
- Physical therapy
- Procedures (*e.g.,* occipital nerve blocks, sphenopalantine ganglion blocks, trigger point injections)
- Noninvasive neuromodulation devices (*e.g.,* transcutaneous electrical nerve stimulation, transcranial magnetic stimulation, transcutaneous vagal stimulation, remote electrical neurostimulation)
- Behavioral therapy (*e.g.,* cognitive behavioral therapy, diet therapy, sleep therapy, exercise therapy, support group therapy)
- Supplements (*e.g.,* magnesium, cannabidiol)
- Complementary therapies (*e.g.,* biofeedback, acupuncture, mindfulness-based stress reduction)
- Other non-pharmacologic interventions used to treat acute attacks of primary headache

Comparators:

• Pharmacologic interventions
- Other class
- Other drug within class
- Same drug(s), different route, treatment duration, initiation time, or other aspect
- As comparator to nonpharmacologic intervention

• Nonpharmacologic interventions
- Other nonpharmacologic intervention class
- Other nonpharmacologic intervention, within class
- As comparator to pharmacologic intervention

• No pharmacologic or nonpharmacologic interventions
- Placebo
- No intervention

Outcomes (* denotes important outcomes that will be used when developing Strength of Evidence tables):

• Acute headache attack*
- Severity of acute headache attack
- Resolution of acute headache attack
- Duration of acute headache attack

• Headache-related symptoms (*e.g.,* nausea/vomiting, photosensitivity)*
- Severity of headache-related symptoms
- Resolution of headache-related symptoms
- Duration of headache-related symptoms
- Most bothersome symptom

• Emergency department visits, clinic visits, or hospitalizations*
• Quality of life*
• Functional outcomes
- Impact on family life
- Employment/school attendance
- Time spent managing disease

• Resource use
• Acceptability of intervention by patients
• Patient satisfaction with intervention
• Number of prescribed medications
• Adverse events
- Maternal

▪ Serious maternal adverse events*
- ''Serious'' adverse events (including those that are composite outcomes), as defined by study authors
- Cardiovascular outcomes, such as stroke, myocardial infarction

▪ Non-serious maternal adverse events
- Nonobstetrical (*e.g.,* maternal weight gain, tachycardia, hypertension, gastrointestinal)
- Preterm labor, cesarean section
- Reduced breast milk production
- Symptoms related to withdrawal of medication

▪ Discontinuation of intervention (or of study participation) due to maternal adverse events*

- Fetal/infant

▪ Serious fetal/infant adverse events*
- ''Serious'' adverse events (including those that are composite outcomes), as defined by study authors
- Death—spontaneous abortion, stillbirth, infant death
- Preterm birth
- Low birth weight for gestational age
- Congenital anomalies or other newborn abnormalities
- Perinatal complications, *e.g.,* low APGAR score, respiratory distress, neonatal intensive care unit time
- Neurodevelopmental—social, emotional, or cognitive delay or disability

▪ Non-serious fetal/infant adverse events
- Breastfeeding—delayed initiation, cessation, reduced frequency, reduced volume of breast milk
- Poor infant attachment/bonding
- Symptoms related to withdrawal of medication

▪ Discontinuation of intervention (or of study participation) due to fetal/infant adverse events *

Potential Modifiers:

• Phase
- Preconception
- First trimester
- Second trimester
- Third trimester
- Postpartum
- Breastfeeding

• Type of primary headache
- Migraine
- Tension headache
- Cluster headache
- Other TACs

Timing:

• Any

Setting:

• Any

Design:

• Randomized controlled trials
• Nonrandomized comparative studies, including pre-post studies
• Single group studies
• N-of-1 studies
• Case-control studies

- Case reports or series of case reports
- Cross-sectional studies/surveys
  - Prospective or retrospective (all applicable study types)
- For harms, we will start by searching for existing systematic reviews of interventions used during pregnancy, postpartum, or breastfeeding, regardless of their indication (*i.e.,* for any disease/condition, not only primary headaches). We will not enforce a date restriction when screening for eligible systematic reviews, but when multiple eligible systematic reviews exist for a certain drug/class of drugs, we will use the most recent or most complete one.
  - We will subsequently search for, and include, large primary studies of interventions not adequately covered by the existing systematic reviews of harms. The specific eligibility criteria (particularly pertaining to study design, minimum sample size, and publication date) will be determined based on available EPC resources, the number of interventions without adequate existing systematic reviews, and the volume of potentially eligible studies.
  - For harms, we will also search the U.S. Food and Drug Administration, other international equivalent agencies, and pharmacopoeia.

Dated: November 19, 2019.

Virginia Mackay-Smith,

Associate Director.

[FR Doc. 2019–25414 Filed 11–21–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through November 5, 2021.

FOR FURTHER INFORMATION CONTACT: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Department of Health and Human Services, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, telephone (770) 488–1430l; email address *GCattledge@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–25352 Filed 11–21–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR); (Formerly Known as the Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR)); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under (specific statutes and regulations citations and) the Federal Advisory Committee Act of October 6, 1972, that the Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR); (formerly known as the Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR)), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through November 5, 2021.

FOR FURTHER INFORMATION CONTACT: Kimberly Lochner, ScD, Designated Federal Officer, BSC, CPR, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, Mailstop H21–6, Atlanta, Georgia 30329–4027, telephone (404) 718–3420; Email address *KDL4@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–25354 Filed 11–21–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Deputy Director for Infectious Diseases (BSC, DDID); (Formerly Known as the Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Board of Scientific Counselors, Deputy Director for Infectious Diseases (BSC, DDID); (formerly known as the Board of Scientific Counselors, Office of Infectious Diseases, (BSC, OID)), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through October 31, 2021.

FOR FURTHER INFORMATION CONTACT: Sarah Wiley, MPH, Designated Federal Officer, BSC, DDID, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, Mailstop H24–12, Atlanta, Georgia 30329–4027, telephone (404) 639–2100; email address *SWiley@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for

both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–25353 Filed 11–21–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463.

Name of Committee: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Date: February 19–20, 2020.

Time: 8:00 a.m.–5:00 p.m., EST.

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, VA 22314.

Agenda: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

For Further Information Contact: Nina Turner, Ph.D., Scientific Review Officer, NIOSH, 1095 Willowdale Road, Morgantown, WV 26506, (304) 285–5976; *nturner@cdc.gov*.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–25351 Filed 11–21–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1147]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 23, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0541. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition

OMB Control Number 0910–0541—Extension

As an integral part of our decision making process, we are obligated under the National Environmental Policy Act of 1969 (NEPA) to consider the environmental impact of our actions, including allowing notifications for food contact substances to become effective; approving food additive petitions, color additive petitions, generally recognized as safe affirmation petitions, and requests for exemption from regulation as a food additive; and approving actions on certain food labeling citizen petitions, nutrient content claims petitions, and health claims petitions. We have provided guidance that contains sample formats to help industry submit a claim of categorical exclusion (CE) or an environmental assessment (EA) to the Center for Food Safety and Applied Nutrition (CFSAN). The document entitled ''Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition'' identifies, interprets, and clarifies existing requirements imposed by statute and regulation, consistent with the Council on Environmental Quality regulations (40 CFR 1507.3). It consists of recommendations that do not themselves create requirements; rather, they are explanatory guidance for our own procedures in order to ensure full compliance with the purposes and provisions of NEPA.

The guidance provides information to assist in the preparation of claims of CE and EAs for submission to CFSAN. The following questions are covered in this guidance: (1) What types of industry-initiated actions are subject to a claim of categorical exclusion? (2) What must a claim of categorical exclusion include by regulation? (3) What is an EA? (4) When is an EA required by regulation and what format should be used? (5) What are extraordinary circumstances? and (6) What suggestions does CFSAN have for preparing an EA? Although CFSAN encourages industry to use the EA formats described in the guidance because standardized documentation submitted by industry increases the efficiency of the review process, alternative approaches may be used if these approaches satisfy the requirements of the applicable statutes and regulations.

Description of Respondents: The likely respondents include businesses engaged in the manufacture or sale of food, food ingredients, and substances used in materials that come into contact with food.

In the **Federal Register** of June 25, 2019 (84 FR 29864), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section/environmental impact considerations	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d) (to cover CEs under 25.32(i))	47	1	47	8	376
25.15(a) and (d) (to cover CEs under 25.32(o))	1	1	1	8	8
25.15(a) and (d) (to cover CEs under 25.32 (q))	3	1	3	8	24
25.40(a) and (c) EAs	57	1	57	180	10,260
Total					10,668

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates for respondents and numbers of responses are based on the annualized numbers of petitions and notifications qualifying for CEs listed under § 25.32(i) and (q) (21 CFR 25.32(i) and (q)) that we have received in the past 3 years. To avoid counting the burden attributed to § 25.32(o) as zero, we have estimated the burden for this categorical exclusion at one respondent making one submission a year for a total of one annual submission. The burden for submitting a categorical exclusion is captured under 21 CFR 25.15(a) and (d).

To calculate the estimate for the hours per response values, we assumed that the information requested in this guidance for each of these three categorical exclusions is readily available to the submitter. For the information requested for the exclusion in § 25.32(i), we expect that the submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for attachment to the claim for categorical exclusion. We believe that this effort should take no longer than 8 hours per submission. For the information requested for the categorical exclusions in § 25.32(o) and (q), the submitters will copy existing documentation and attach it to the claim for categorical exclusion. We believe that collecting this information should take no longer than 8 hours per submission.

For the information requested for the environmental assessments in 21 CFR 25.40(a) and (c), we believe that submitters will submit an average of 57 environmental assessments annually. We estimate that each submitter will prepare an EA within 3 weeks (120 hours) and revise the EA based on Agency comments (between 40 to 60 hours), for a total preparation time of 180 hours.

Based on a current review of the information collection, we have made no adjustments to the currently approved estimate.

Dated: November 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25370 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0129]

Agency Information Collection Activities; Proposed Additional Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications; Formal Meetings Between the Food and Drug Administration and Sponsors or Applicants

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension/revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''General Licensing Provisions; Section 351(k) Biosimilar Applications; Formal Meetings Between the FDA and Sponsors or Applicants.''

DATES: Submit either electronic or written comments on the collection of information by January 21, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 21, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of January 21, 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–2012–N–0129 for ''General Licensing Provisions; Section 351(k) Biosimilar Applications; Formal Meetings Between the FDA and Sponsors or Applicants.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St. North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following additional collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Licensing Provisions; Section 351(k) Biosimilar Applications; Formal Meetings Between the FDA and Sponsors or Applicants

OMB Control Number 0910–0719—Revision

The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) amended the Public Health Service Act (PHS Act) and other statutes to create an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with an FDA-licensed reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, sets forth the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable product. In addition to the submission requirements associated with a 351(k) application for a proposed biosimilar or interchangeable biological product, FDA is committed to meeting certain performance goals in connection with the FDA Reauthorization Act of 2017 (FDARA) and its Biosimilar User Fee (BsUFA) program. These performance goals are found in the commitment letter entitled, ''Biosimilar Biological Product Reauthorization Performance Goals and Procedures Fiscal Years 2018 Through 2022'' available from our website at: *https://www.fda.gov/media/100573/download.* Included in the performance goals is information collection associated with meetings and other communications with FDA, and we are therefore revising the information collection to cover these provisions. Also consistent with the commitment letter, we have developed the associated guidance document entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of BsUFA Products.'' The guidance document discusses the BsUFA meeting management goal provisions set forth in the commitment letter and provides instruction and recommendations to respondents on formal meetings between FDA and sponsors or applicants relating to the development and review of biosimilar biological products regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER). The guidance is intended to assist sponsors or applicants in generating and submitting meeting requests and associated meeting packages to FDA for biosimilar biological products. A formal meeting includes any meeting that is requested by a sponsor or applicant following the procedures provided in the guidance and includes meetings conducted in any format (*i.e.,* face to face, teleconference/videoconference, written response only (WRO)). The guidance, available from our website at *https://www.fda.gov/media/113913/download,* includes the following recommendations pertaining to BsUFA meeting requests and information packages:

A. Request for a Meeting

We recommend that a sponsor or applicant interested in meeting with CDER or CBER submit a meeting request electronically to the sponsor's or applicant's application (*i.e.,* investigational new drug application, biologics license application). If there is no application, a sponsor or applicant should submit the request to either the appropriate CDER division director, with a copy sent to the division's chief

of project management staff, or to the division director of the appropriate product office within CBER, but only after first contacting the appropriate review division or the Biosimilars Program staff, CDER, Office of New Drugs to determine to whom the request should be directed, how it should be submitted, and the appropriate format for the request and to arrange for confirmation of receipt of the request. We recommend the following information be included in the meeting request:

1. Application number (if previously assigned),
2. development-phase code name of the product (if prelicensure),
3. proper name (if post licensure),
4. structure (if applicable),
5. proper and proprietary names of the reference product,
6. proposed indication(s) or context of product development,
7. pediatric study plans, if applicable,
8. human factors engineering plan, if applicable,
9. combination product information (*e.g.,* constituent parts, including details of the device constituent part, intended packaging, planned human factors studies), if applicable,
10. meeting type being requested (the rationale for requesting the meeting type should be included),
11. proposed format of the meeting (face to face, tele-conference/video-conference/WRO),
12. a brief statement of the purpose of the meeting, including a brief background of the issues underlying the agenda. It can also include a brief summary of completed or planned studies and clinical trials or data the sponsor or applicant intends to discuss at the meeting, the general nature of the critical questions to be asked, and where the meeting fits in the overall development plans.
13. a list of specific objectives/outcomes expected from the meeting,
14. a proposed agenda, including times required for each agenda item,
15. a list of questions grouped by discipline and a brief explanation of the context and purpose of each question,
16. a list of all individuals with their titles and affiliations who will attend the requested meeting from the requestor's organization and any consultants and interpreters,
17. a list of FDA staff, if known, or disciplines asked to participate in the requested meeting, and
18. suggested dates and times for the meeting.

We use the information to determine the utility of the meeting, to identify FDA staff necessary to discuss proposed agenda items, and to schedule the meeting.

B. Information Package

We recommend that a sponsor or applicant submit a meeting package to the appropriate review division with the meeting request and that the following information be included in the package:

1. Application number (if previously assigned),
2. development-phase code name of product (if pre-licensure) or proper name (if post-licensure),
3. structure (if applicable),
4. proprietary and proper names of the reference product,
5. proposed indication(s) or context of product development,
6. dosage form, route of administration, dosing regimen (frequency and duration), and presentation(s),
7. pediatric study plans, if applicable,
8. human factors engineering plan, if applicable,
9. combination product information, if applicable,
10. a list of all individuals with their titles and affiliations who will attend the requested meeting from the requestor's organization and any consultants and interpreters,
11. background that includes a brief history of the development program and the status of product development (*e.g.,* chemistry, manufacturing, and controls; nonclinical; and clinical, including any development outside the United States, as applicable),
12. a brief statement summarizing the purpose of the meeting,
13. the proposed agenda, and
14. a list of questions for discussion grouped by discipline and with a brief summary for each question to explain the need or context for the question, and data to support discussion organized by discipline and question.

The purpose of the meeting package is to provide FDA staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

BsUFA information collection	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CDER Meeting Requests	36	2.5	89	15	1,335
CDER Information Packages	29	2.2	64	30	1,920
CBER Meeting Requests	2	1	2	15	30
CBER Information Packages	2	2	4	30	120
Total					3,405

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Since last OMB review of the information collection we have increased our burden estimate by 95 annual responses and 1,965 annual hours. This adjustment corresponds with an increase in submissions received by the Agency over the past 3 years.

Dated: November 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25328 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances 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 additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by January 21, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)). Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT: Wendy Good, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 240–402–1146.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on September 17, 2019. This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Acetaminophen; Benzhydrocodone hydrochloride.
Betamethasone dipropionate; Calcipotriene.
Cefaclor.
Chlorzoxazone (multiple reference listed drugs).
Copper.
Dolutegravir sodium; Rilpivirine hydrochloride.
Doxycycline hyclate.
Encorafenib.
Fluorometholone acetate.
Indocyanine green.
Isoniazid; Pyrazinamide; Rifampin.
Isosorbide dinitrate.
Ketoprofen.
Latanoprost; Netarsudil dimesylate.
Lidocaine.
Lorlatinib.
Lovastatin.
Lutetium dotatate Lu-177.
Medroxyprogesterone acetate.
Meloxicam.
Mifepristone.
Migalastat hydrochloride.
Omadacycline tosylate (multiple reference listed drugs).
Oxymetazoline hydrochloride.
Pimavanserin tartrate.
Sumatriptan succinate.
Tetracaine hydrochloride.
Timolol maleate.

III. Drug Products for Which Revised Draft Product-Specific Guidances are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Adapalene (multiple reference listed drugs).
Adapalene; Benzoyl peroxide (multiple reference listed drugs).
Azacitidine.
Baclofen.
Benzoyl peroxide; Clindamycin phosphate (multiple reference listed drugs).
Benzoyl peroxide; Erythromycin (multiple reference listed drugs).
Capsaicin.
Cariprazine hydrochloride.
Clindamycin phosphate (multiple reference listed drugs).
Clindamycin phosphate; Tretinoin.
Clonidine.
Clonidine hydrochloride.
Dapsone (multiple reference listed drugs).
Diclofenac epolamine.
Didanosine.
Disopyramide phosphate.
Doxepin hydrochloride.
Estradiol (multiple reference listed drugs).
Estradiol; Levonorgestrel.
Estradiol; Norethindrone acetate.
Ethinyl estradiol; Norelgestromin.
Fentanyl.
Flavoxate hydrochloride.
Granisetron.
Indapamide.
Lidocaine.
Lithium carbonate.
Menthol; Methyl salicylate.
Metformin hydrochloride; Repaglinide.
Methylphenidate.
Mifepristone.
Molindone hydrochloride.
Mycophenolate mofetil.
Nicotine.
Nitrofurantoin, Macrocrystalline.
Nitrofurantoin; Nitrofurantoin, Macrocrystalline.
Nitroglycerin (multiple reference listed drugs).
Oxybutynin (multiple reference listed drugs).
Pimecrolimus.
Prednisolone sodium phosphate.
Rivastigmine.
Roflumilast.
Rotigotine.
Scopolamine.
Selegiline.
Sulfacetamide sodium.
Sulfadiazine.
Tazarotene (multiple reference listed drugs).
Terazosin hydrochloride.
Testosterone.
Tinidazole.
Tipiracil hydrochloride; Trifluridine.
Tretinoin (multiple reference listed drugs).

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidances at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: November 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25326 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0736]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tracking Network for PETNet, LivestockNet, and SampleNet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on our use of a tracking network to collect and share safety information about animal food from Federal, State, and Territorial Agencies.

DATES: Submit either electronic or written comments on the collection of information by January 21, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 21, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 21, 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–2016–N–0736 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Tracking Network for PETNet, LivestockNet, and SampleNet.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jonnalynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Tracking Network for PETNet, LivestockNet, and SampleNet

OMB Control Number 0910–0680—Extension

The Center for Veterinary Medicine and the Partnership for Food Protection developed a web-based tracking network (the tracking network) to allow Federal, State, and Territorial regulatory and public health Agencies to share safety information about animal food. Information is submitted to the tracking network by regulatory and public health Agency employees with membership rights. The efficient exchange of safety information is necessary because it improves early identification and evaluation of a risk associated with an animal food product. We use the information to assist regulatory Agencies to quickly identify and evaluate a risk and take whatever action is necessary to mitigate or eliminate exposure to the risk. Earlier identification and communication with respect to emerging safety information may also mitigate the potential adverse economic impact for the impacted parties associated with such safety issues. The tracking network was developed under the requirements set forth under section 1002(b) of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–085). Section 1002(b) of the FDAAA required FDA, in relevant part, to establish a pet food early warning alert system.

The tracking network collects: (1) Reports of pet food-related illness and product defects associated with dog food, cat food, and food for other pets, which are submitted via the Pet Event Tracking Network (PETNet); (2) reports of animal food-related illness and product defects associated with animal food for livestock animals, aquaculture species, and horses (LivestockNet); and (3) reports about animal food laboratory samples considered adulterated by State or FDA regulators (SampleNet).

PETNet and LivestockNet reports share the following common data elements, the majority of which are drop down menu choices: product details (product name, lot code, product form, and the manufacturer or distributor/packer (if known)), the species affected, number of animals exposed to the product, number of animals affected, body systems affected, product problem/defect, date of onset or the date product problem was detected, the State where the incident occurred, the origin of the information, whether there are supporting laboratory results, and contact information for the reporting member (*i.e.,* name, telephone number will be captured automatically when member logs in to the system). For the LivestockNet report, additional data elements specific to livestock animals are captured: Product details (indication of whether the product is a medicated product, product packaging, and intended purpose of the product), class of the animal species affected, and production loss. For PETNet reports, the only additional data field is the animal life stage. The SampleNet reports have the following data elements, many of which are drop down menu choices: Product information (product name, lot code, guarantor information, date and location of sample collection, and product description); laboratory information (sample identification number, the reason for testing, whether the food was reported to the Reportable Food Registry, who performed the analysis); and results information (analyte, test method, analytical results, whether the results contradict a label claim or guarantee, and whether action was taken as a result of the sample analysis).

Description of Respondents: Voluntary respondents to this collection of information are Federal, State, and Territorial regulatory and public health Agency employees with membership access to the Animal Feed Network.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
PETNet	20	5	100	0.25 (15 minutes)	25
LivestockNET	20	5	100	0.25 (15 minutes)	25
SampleNet	20	5	100	0.25 (15 minutes)	25
Total					75

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: November 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25327 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0197]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Shortages Data Collection System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 23, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0491. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Shortages Data Collection System

OMB Control Number 0910–0491—Reinstatement

Under section 1003(d)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)), the Commissioner of Food and Drugs is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA.

After the events of September 11, 2001, and as part of broader counterterrorism and emergency preparedness activities, FDA's Center for Devices and Radiological Health (CDRH) began developing operational plans and interventions that would enable CDRH to anticipate and respond to medical device shortages that might arise in the context of federally declared disasters/emergencies or regulatory actions. In particular, CDRH identified the need to acquire and maintain detailed data on domestic inventory, manufacturing capabilities, distribution plans, and raw material constraints for medical devices that would be in high demand and/or would be vulnerable to shortages in specific disaster/emergency situations or following specific regulatory actions. Such data could support prospective risk assessment, help inform risk mitigation strategies, support real-time decision making by the Department of Health and Human Services during actual emergencies or emergency preparedness exercises, and mitigate or prevent harm to the public health.

The data collection process will consist of an initial telephone call to firms who have been identified as

producing an essential medical device. In this initial call, the intent and goals of the data collection effort will be described, and the specific data request made. Data will be collected, using least burdensome methods, in a structured manner to answer specific questions. After the initial outreach, we will request updates to the information on a quarterly basis to keep the data current and accurate. Additional followup correspondence may occasionally be needed to verify/validate data, confirm receipt of followup correspondence(s), and/or request additional details to further inform FDA's public health response.

In the **Federal Register** of December 28, 2018 (83 FR 67298), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Shortages Data Collection	260	4	1,040	0.5 (30 minutes)	520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based the burden estimates in table 1 on past experience with direct contact with the medical device manufacturers and anticipated changes in the medical device manufacturing patterns for the specific devices being monitored. FDA estimates that approximately 260 manufacturers would be contacted by telephone and/or electronic mail 4 times per year either to obtain primary data or to verify/validate data. Because the requested data represent data elements that are monitored or tracked by manufacturers as part of routine inventory management activities, it is anticipated that for most manufacturers, the estimated time required of manufacturers to complete the data request will not exceed 30 minutes per request cycle.

This information collection is a reinstatement without change. There is an increase (an adjustment) of 332 hours in the total estimated burden compared with that identified in the information collection request previously approved by OMB. This increase reflects changes in market demands, in which manufacturers are increasingly adopting just-in-time production methods.

Dated: November 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25368 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3728]

Agency Information Collection Activities; Proposed Collection; Comment Request; Collection of Information for Participation in the Food and Drug Administration Non-Employee Fellowship and Traineeship Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Collection of Information for Participation in FDA Non-Employee Fellowship and Traineeship Programs.''

DATES: Submit either electronic or written comments on the collection of information by January 21, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 21, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 21, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for

information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–3728 for ''Collection of Information for Participation in FDA Non-Employee Fellowship and Traineeship Programs.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Collection of Information for Participation in FDA Non-Employee Fellowship and Traineeship Programs

OMB Control Number 0910–NEW

In compliance with 44 U.S.C. 3507, FDA will submit to OMB a request to review and approve a new collection of information: Collection of Information for Participation in FDA Non-Employee Fellowship and Traineeship Programs. Section 746(b) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 379*l*(b)) allows FDA to conduct and support intramural training programs through fellowship and traineeship programs. These mandatory collection forms provide FDA with information from the non-employee to: (1) Begin the program, (2) administer the program, (3) coordinate training, and (4) end the program.

(1) To begin the program, the non-employee must submit the following information: (A) New Non-Employee Data Form; (B) Proof of Health Insurance; (C) Emergency Contact Information; (D) Unified Financial Management System (UFMS) Supplier and Site Information for Stipend Payments, Financial Information; and (E) CONCUR GOV New Traveler Profile Form.

(A) New non-employee data form to begin on-boarding process—The New Non-Employee Data form collects information that includes: (1) Name; (2) Gender; (3) Birthplace; (4) Date of Birth; (5) Email; (6) Home Address; (7) FDA Center/Organization/Supervisor; (8) Citizenship; (9) Social Security number (SSN); (10) Start Date; (11) End Date; (12) Contract Information; (13) Location; and (14) Question regarding current or previous Federal work experience.

(B) Proof of health insurance—Participants in FDA fellowship and traineeship programs will be asked for certain information to demonstrate proof of health insurance: (1) Name of Health Insurance Plan Provider; (2) Name/Contact Information of Primary Member; (3) Member Identification Number/Group Number; (4) Begin Date/Policy Expiration Date; and (5) Signature. The purpose of the health insurance information is for FDA to substantiate that participants of the program are covered by health insurance.

(C) Emergency contact information—Participants in FDA fellowship and traineeship programs will be asked for certain information about emergency contact demographics: (1) Name of Fellow/Trainee; (2) Center; (3) Name of Emergency Contact; (4) Telephone Number of Emergency Contact; and (5) Relationship to Contact. The purpose of emergency contact information of Fellows/Trainees is to ensure there is a primary contact should emergencies arise.

(D) UFMS supplier and site information for stipend payments, financial information—Participants in FDA fellowship and traineeship programs will be asked for their financial institution routing number and account information for direct deposit of stipend payments: (1) Name; (2) Taxpayer ID or SSN; (3) Classification/Vendor type; (4) Payment Options (Electronic Payment Only); (5) Mailing Address; (6) Bank/Financial Institution Information (Name, Routing Number, Account Number, Account type); and (7) Signature. The purpose of the financial information is for FDA to process a direct deposit transaction for a monthly stipend payment.

(E) CONCUR GOV new traveler profile form—Participants in FDA's Non-Employee Scientist programs may be asked to travel and will need to complete an online profile for the Concur Government Edition (CGE) System, which requires the following information: (1) Personal Information (Name, Agency, Office/Operating Division, Residence City, Residence State, Signatures); (2) Agency Information (ID #, Title, CAN); (3) Business Contact Information; (4) Email Addresses; Emergency Contact; (5) Travel Preferences (Preferred Airline, Hotel, Airline Seats, Frequent Flyer Number); (6) Credit Card Number; (7) Banking Account for Reimbursement; and (8) Approving Signatures. The CGE Profile provides assistance to travel preparers who are booking travel for FDA program participants.

(2) To administer the program, non-employee scientists must submit information for: (A) Absence Recording Form, (B) Personal Custody Property Record, (C) FDA Health Summary, and (D) Discovery and Invention.

(A) Absence recording form—Participants in FDA fellowship and traineeship programs will be asked for certain information about tracking attendance and absences: (1) Name of Fellow/Trainee; (2) Office/Division of Placement; (3) Mentor/Sponsor Name; (4) Type of Absence; (5) Dates of Absence; (6) Reason for Absence; and (7) Mentor/Sponsor Approval. The purpose of tracking attendance and absences for Fellows/Trainees is to determine the monthly stipend payment and potential modifications to purchase orders for extended absences.

(B) Personal custody property record—Participants in FDA fellowship and traineeship programs will be required to sign the property request, acknowledging personal responsibility for government property. The plan collects the following information: (1) Fellow Name; (2) Operative Division/Division; (3) Location; (4) Telephone; (5) Description of Items; (6) Items to be Returned; (7) Return Date; (8) Fellow Signature; (9) Custodial Officer Signature; and (10) Issuing Office. The purpose of this record is to acknowledge that an individual has received government property and accepts personal responsibility for items issued to perform their roles.

(C) FDA health summary—Participants in FDA fellowship and traineeship programs will be asked for information about health for laboratory activities. The FDA Occupational Health Services Health Summary form collects information that includes: (1) Name; (2) Program; (3) Email; (4) Work Phone; (5) FDA Mentor; (6) Center/Office Division; (7) Location; (8) Date; (9) Primary Care Physician and Contact Information; (10) Immunizations; (11) Social History; (12) Relationship History; (13) Allergies; and (14) Medical History.

(D) Discovery and invention—Participants in FDA fellowship and traineeship programs will be asked for information about discoveries and inventions at FDA. The Discovery and Invention Report collects information that includes: (1) Title of Discovery; (2) Description of Discovery; (3) Identification of collaborators, Cooperative Research and Development Agreement (CRADA), and human materials or subjects; (4) Publications; (5) Technology Stage; (6) Commercial Potential; and (7) Competition, Potential Users, and Manufacturers.

(3) For the coordination of training, non-employee scientists must complete information for the: (A) Training Development Plan; (B) Final Project Report; (C) Training Request; (D) Travel Request; (E) Learning Management System (LMS) Request; (F) Standard Operating Procedures (SOP) Verification; and (G) Program Evaluation.

(A) Training development plan—Participants in FDA fellowship and traineeship programs will be required to develop the individual plan in partnership with their Mentor. The plan collects the following information: (1) Fellow Name; (2) Mentor(s)/Preceptor(s) Name; (3) Sign-On Date; (4) Year 1 Goals, Courses/Training, Regulatory Activities, and Completion Date; (5) Year 2 Goals, Courses/Trainings, Regulatory Activities, and Completion Date; (6) Fellow Signature; and (7) Mentor(s)/Preceptor(s) Signature. The purpose of this individual development/training plan is to have a record of mandatory training and specific goals and tasks for the contributions and/or completion of a project.

(B) Final project report—Participants in FDA fellowship and traineeship programs will be required to complete the final report in partnership with their Mentor. The plan collects the following information: (1) Fellow Name; (2) Mentor/Preceptor Name; (3) Goals; (4) Objectives; (5) Alignment with Center or FDA Goals; (6) Project Summary/Abstract; (7) Accomplishments; and (8) Impact on Public Health. The purpose of this report is to acknowledge the contributions to the overall project and identify performance successes or challenges. The collection of information is mandatory to participate in FDA's fellowship and traineeship programs.

(C) Training request—Participants in FDA fellowship and traineeship programs will be asked to identify the following for external training requests: (1) Name of Fellow/Trainee; (2) Operating Office/Staff Division; (3) Title and Topic of Training; (4) Name of Hosting Agency/Organization; (5) Purpose/Justification for External Training; (6) Dates; (7) Location; and (8) Approving Signatures. The purpose of the External Training Request is to provide justification substantiating the benefits to the Operating Office/Staff Division and/or benefits to the Fellows/Trainee professional development and training. The collection of information is mandatory to participate in FDA's fellowship and traineeship programs.

(D) Travel request—Participants in FDA fellowship and traineeship programs will be asked for certain information about travel requests and authorizations/approvals: (1) Office/Division; (2) Research Project Title; (3) Mentor/Sponsor Name; (4) Mentor/Sponsor Email and Telephone; (5) Fellow's Name; (6) Appointment Period; (7) Funding Source and Fiscal Year; (8) Brief Description of Travel; (9) Anticipated Travel Dates; and (10) Travel Justification and Relation to Project. The purpose of authorization for travel of Fellows/Trainees is to determine if the travel has been approved by the Sponsor/Mentor and if the travel is a mission-related activity to the Fellow/Trainee training plan or appointment/assignment. The collection of information is mandatory to participate in FDA's fellowship and traineeship programs.

(E) Learning Management System (LMS) access—Participants in FDA fellowship and traineeship programs will be asked for information to obtain access to the LMS: (1) Name, (2) Location, (3) Organizational Unit, and (4) Email Address. The purpose of LMS Access Request is to obtain information of Non-Employee Scientists to ensure they have access to receive training and educational opportunities offered in the Health and Human Services LMS System.

(F) SOP verification—Participants in FDA fellowship and traineeship programs will be asked for certain information to verify that they have read and received instructional training on the SOPs for said program. The form collects the following: (1) Name; (2) Signature; (3) Date; and (4) Center.

(G) Program Evaluation—Participants in FDA fellowship and traineeship programs will be asked to complete an evaluation providing program data that will be synthesized into program reports on the overall effectiveness of the

program. The evaluation collects the following information: (1) Demographic Data; (2) Expectations of Fellowship or Training Program; (3) Administration Processes and Support to Fellow or Trainee; (4) FDA Retention and Plans of Fellow or Trainee; (5) Training and Education Completed; and (6) Professional/Research Goals. The purpose of this evaluation is to assess the effectiveness of the program and feedback from participants to improve the quality of the experience.

(4) To end the program, a non-employee must submit the Exit Check List—Participants in FDA fellowship and traineeship programs may be asked to complete the exit check list to manage the exit process and return of FDA property. The Exit Checklist guides the exit process for the following operations components: (1) Access Key/Pass; (2) Accountable Property; (3) System Applications inactive; (4) Library Materials; (5) Government Issued Documents (*i.e.,* passports); (6) Personal Identity Verification Card/Badge; (7) Borrowed Records; (8) Employee Records; and (9) Information Technology Accounts.

All exit information will be entered to terminate access to any FDA information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
New Non-Employee Data Form	1,220	1	1	0.25 (15 minutes)	305
Proof of Health Insurance	600	1	1	0.25 (15 minutes)	150
Emergency Contact Information	1,220	1	1	0.25 (15 minutes)	305
UFMS Supplier and Site Information for Stipend Payments, Financial Information.	600	1	1	0.25 (15 minutes)	150
CONCUR GOV New Traveler Profile	620	1	1	0.25 (15 minutes)	155
Absence Recording Form	1,220	1	1	0.25 (15 minutes)	305
Personal Custody Property Record	1,220	1	1	0.25 (15 minutes)	305
FDA Health Summary	1,220	1	1	1	1,220
Discovery and Invention Form	1,220	1	1	1	1,220
Training Development Plan	1,220	1	1	1	1,220
Final Project Report	1,220	1	1	1	1,220
Training Request	610	1	1	0.5 (30 minutes)	305
Travel Request	610	1	1	0.5 (30 minutes)	305
LMS Access	1,220	1	1	0.25 (15 minutes)	305
SOP Verification	1,220	1	1	0.25 (15 minutes)	305
Program Evaluation	1,220	1	1	0.5 (30 minutes)	610
Exit Checklist	1,220	1	1	1	1,220
Total					9,605

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 15, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25332 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2066]

Agency Information Collection Activities; Proposed Collection; Comment Request; Certification of Identity for Freedom of Information Act and Privacy Act Requests

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with certain Freedom of Information Act and Privacy Act requests.

DATES: Submit either electronic or written comments on the collection of information by January 21, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 21, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 21, 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: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://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 *http://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–2016–N–2066 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Certification of Identity for Freedom of Information Act and Privacy Act Requests.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://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 *http://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Certification of Identity; Form FDA 3975

OMB Control Number 0910–0832—Extension

This information collection supports Form FDA 3975 entitled ''Certification of Identity,'' which is used by FDA to identify an individual requesting a particular record under the Freedom of Information Act (FOIA) and the Privacy Act. The form is available from our website at: *https://www.fda.gov/RegulatoryInformation/FOI/default.htm,* although if an individual requests one, we will send it by mail or email. The form is required only if an individual makes an FOIA request or Privacy Act request for records about himself and has not provided sufficient assurances of identity in the incoming FOIA or Privacy Act request.

The FOIA grants the public a right to access Federal records not normally prepared for public distribution. The Privacy Act grants a right of access to members of the public who seek access to one's own records that are maintained in an Agency's system of records (*i.e.* the records are retrieved by that individual's name or other personal identifier). The statutes overlap, and individuals who request their own records are processed under both statutes. The Agency may need to confirm that the individual making the FOIA or Privacy Act request is indeed the same person named in the Agency records. Respondents to the information collection are asked for certain information including name, citizenship status, social security number, address, date of birth, place of birth, signature, and date of signature.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3975; Certification of Identity	50	1	50	.17 (10 minutes)	8.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on Agency data, we have received no more than 50 submissions since establishing the collection in 2017.

Dated: November 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25364 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4844]

"Ruby Chocolate" Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a temporary permit has been issued to Barry Callebaut U.S.A. LLC (the applicant) to market test a product identified as ''ruby chocolate'' that deviates from the U.S. standards of identity for chocolate products. The temporary permit will allow the applicant to evaluate commercial viability of the product and to collect data on consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the applicant introduces or causes introduction of the test product into interstate commerce, but not later than February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Marjan Morravej, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION: We are giving notice that we have issued a temporary permit to Barry Callebaut U.S.A. LLC. We are issuing the temporary permit in accordance with 21 CFR 130.17, which addresses temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covers the interstate market testing of the product identified as ''ruby chocolate.'' The test product deviates from the U.S. standards of identity for chocolates (21 CFR 163.111, 163.123, 163.124, 163.130, 163.135, 163.140, and 163.145).

For the purpose of this permit, ''ruby chocolate'' is the solid or semiplastic food prepared by mixing and grinding cacao fat with one or more of the cacao ingredients (namely, chocolate liquor, breakfast cocoa, cocoa, and lowfat cocoa), citric acid, one or more of optional dairy ingredients, and one or more optional nutritive carbohydrate sweeteners. ''Ruby chocolate'' contains not less than 1.5 percent nonfat cacao solids, not less than 20 percent by weight of cacao fat, not less than 2.5 percent by weight of milk fat, not less than 12 percent by weight of total milk solids, not more than 1.5 percent of emulsifying agents, and not more than 5 percent of whey or whey products. It may also contain other ingredients such as antioxidants approved for food use, spices, natural and artificial flavorings, and other seasonings. However, these other ingredients cannot imitate the flavor of chocolate, milk or butter, berry or another fruit. Additionally, ''ruby chocolate'' contains no added coloring. The test product ''ruby chocolate'' contains the principal ingredients used in most of the current standards for cacao products under 21 CFR part 163; however, it deviates from the current standards of identity for chocolate products in terms of its final composition, taste, and color.

The purpose of the temporary permit is to allow the applicant to market test the product throughout the United States. The permit will allow the applicant to evaluate commercial viability of the product and to collect data on consumer acceptance of the product.

The permit provides for the temporary marketing of approximately 60 million pounds (27,215,540 kilograms) of the test product. The test product will be manufactured at the Barry Callebaut facilities located at Aalstersestraat 122, 9280 Lebbeke, Belgium; 400 Industrial Park Rd., St. Albans, VT 05478; and 1175 Commerce Blvd., American Canyon, CA 94503.

Barry Callebaut U.S.A. LLC will distribute the test product to various manufacturers throughout the United States for further manufacturing and market testing. Each ingredient used in the food must be declared on the label as required by 21 CFR part 101. The permit is effective for 15 months, beginning on the date the applicant introduces or causes the introduction of the test product into interstate commerce, but not later than February 20, 2020.

Dated: November 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25325 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0319]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Dear Health Care Provider Letters: Improving Communication of Important Safety Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 23, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0754. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Dear Health Care Provider Letters: Improving Communication of Important Safety Information

OMB Control Number 0910–0754—Extension

This information collection supports recommendations found in the Agency guidance document entitled ''Dear Health Care Provider Letters: Improving Communication of Important Safety Information.'' The guidance provides instruction to industry and FDA staff on the content and format of Dear Health Care Provider (DHCP) letters. These letters are sent by manufacturers or distributors to health care providers to communicate an important drug warning, a change in prescribing information, or a correction of misinformation in prescription drug promotional labeling or advertising. The guidance is available from our website at: *https://www.fda.gov/media/79793/download.*

The guidance document gives specific instruction on what should and should not be included in DHCP letters. Some DHCP letters have been too long, have contained promotional material, or otherwise have not met the goals set forth in the applicable regulation (21 CFR 200.5). In some cases, health care providers have not been aware of important new information, and have been unable to communicate it to patients, because the letters' content and length have made it difficult to find the relevant information. In addition, letters have sometimes been sent for the wrong reasons.

In addition to content and format recommendations for each type of DHCP letter, the guidance also includes recommendations on consulting with FDA on how to develop a DHCP letter, when to send a letter, what type of letter to send, and how to assess the letter's impact. Based on a review of FDA's Document Archiving, Reporting, and Regulatory Tracking System for 2016—2018, we identified 38 DHCP letters that were sent by 24 distinct sponsors during the 3-year timeframe. We estimate that we will receive approximately 13 DHCP letters annually from approximately 8 application holders. FDA professionals familiar with DHCP letters, and with the recommendations in the guidance, estimate that it should take an application holder approximately 100 hours to prepare and send DHCP letters in accordance with the guidance.

In the **Federal Register** of August 19, 2019 (84 FR 42929), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received expressing the importance of communicating safety information, for which we are appreciative. No other comments were received.

We estimate the annual reporting burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Dear Health Care Provider Letters	8	1.625	13	100	1,300

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection, we have reduced our burden estimate by 17 respondents with a corresponding decrease in annual hours by 1,200. We attribute the decrease to the effectiveness of the guidance.

Dated: November 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25333 Filed 11–21–19; 8:45 am]

BILLING CODE 4164–01–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; Centers for AIDS Research (P30) and Developmental Centers for AIDS Research (P30).

Date: December 16–17, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chelsea D. Boyd, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852–9834, 240–669–2081, *chelsea.boyd@nih.gov.*

(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: November 15, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25306 Filed 11–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, November 25, 2019, 11:00 a.m. to November 25, 2019, 4:00 p.m., National Institutes of Health Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852, which was published in the **Federal Register** on November 14, 2019, 84 FR 61920.

This notice is to amend the date of the NIMH HIV/AIDS Review meeting from November 25, 2019, from 11:00 a.m.–4:00 p.m. to December 17, 2019, from 1:00 p.m.–5:00 p.m. The meeting is closed to the public.

Dated: November 18, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25312 Filed 11–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Interdisciplinary Molecular Sciences and Training Member Conflicts.

Date: December 17, 2019.

Time: 11:00 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 18, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25301 Filed 11–21–19; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Cures Acceleration Network Review Board.

The meeting will be open to the public, viewing virtually by WebEx. Individuals can register to view and access the meeting by the link below.

https://nih.webex.com/nih/onstage/g.php?MTID=e546cfc8baef0c0b50c44b24d9601d2c4.

1. Click ''Register''. On the registration form, enter your information and then click ''Submit'' to complete the required registration.

2. You will receive a personalized email with the live event link.

Name of Committee: Cures Acceleration Network Review Board.

Date: December 13, 2019.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: The CAN Review Board will meet virtually to discuss updates regarding CAN programs and next steps.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing, Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@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: November 18, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25302 Filed 11–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS-Related Research.

Date: December 12, 2019.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Aging-Associated Brain Changes in Animals and Reanalysis of RDoC Data.

Date: December 16, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroimmunology of Brain Tumor and Neuroimmunology of Brain Tumor and Viral Infection.

Date: December 16, 2019.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Auditory Brainstem Physiology.

Date: December 16, 2019.

Time: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Janita N. Turchi, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *turchij@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropsychological and Neurobiological Disorders.

Date: December 17, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 18, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25298 Filed 11–21–19; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; Development of Vaccines for the Treatment of Opioid Use Disorder.

Date: December 11, 2019.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Julio C. Aliberti, Ph.D., Scientific Review Officer, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 5601 Fishers Lane, RM 3G53A, MSC 9823, Rockville, MD 20892–9823, 301–761–7322, *julio.aliberti@nih.gov*.

(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: November 15, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25305 Filed 11–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Initial Review Group; Neuroscience of Aging Review Committee NIA–N.

Date: January 30–31, 2020.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 18, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25300 Filed 11–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; NEI Genetic Epidemiology and Secondary Data Analysis Applications 2.

Date: December 3, 2019.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Brian Hoshaw, Ph.D., Acting Review Chief, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Ste 3400, Rockville, MD 20892, (301) 451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 18, 2019.

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25299 Filed 11–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel; NIMH: Limited Competition for a Connectome Coordination Facility.

Date: December 10, 2019.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: November 18, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25303 Filed 11–21–19; 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 cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement 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; HIV/AIDS Prevention Clinical Trials Network Leadership and Operations Center (UM1—Clinical Trial Required).

Date: December 11, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kumud K. Singh, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852, 301–761–7830, *kumud.singh@nih.gov*.

(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: November 15, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25304 Filed 11–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6164–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2019

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2019 and ending on September 30, 2019.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Acting Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10282, Washington, DC 20410–0500, telephone 202–708–5300 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2019.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was

requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from July 1, 2019 through September 30, 2019. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2019) before the next report is published (the fourth quarter of calendar year 2019), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: November 15, 2019.

J. Paul Compton Jr.,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2019 Through September 30, 2019

NOTE TO READER: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: Contra Costa County, California, requested a waiver of 24 CFR 92.252(d)(1) to allow use of utility allowance established by local public housing agency (PHA) for a HOME-assisted project—Antioch Scattered Site.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects.

Granted By: David C. Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: July 30, 2019.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner to establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

- *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: Oakland County, California, requested a waiver of 24 CFR 92.252(d)(1) to allow use of utility allowance established by local public housing agency (PHA) for a HOME-assisted project—3628 San Pablo Avenue.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects for which HOME funds were committed.

Granted By: David C. Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: August 27, 2019.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner to establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

- *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: City of San Buenaventura, California, requested a waiver of 24 CFR 92.252(d)(1) to allow use of utility allowance established by local public housing agency (PHA) for a HOME-assisted project—Westview Village Phase 1.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects.

Granted By: David C. Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 10, 2019.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner to establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

- *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: City of Santa Rosa, California, requested a waiver of 24 CFR 92.252(d)(1) to allow use of utility allowance established by local public housing agency (PHA) for a HOME-assisted project—Parkwood Apartments.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects.

Granted By: David C. Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 10, 2019.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner to

establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 75 FR 64328, II.B.3.a.

Project/Activity: The State of West Virginia—Riverview at Clendenin Building.

Nature of Requirement: The Housing and Economic Recovery Act of 2008 (HERA) requires, to the maximum extent practicable and for the longest feasible term, the sale, rental or redevelopment of abandoned and foreclosed Neighborhood Stabilization Program (NSP)-assisted homes and residential properties remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income. Section II.B.3.a of the NSP **Federal Register** Notice implementing HERA requires grantees to adopt, at a minimum, the HOME program standards in 24 CFR part 92 to comply with the continued affordability requirement.

Granted By: David C. Woll, Jr., Principal Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: The Riverview at Clendenin Building was redeveloped using NSP funds, historic tax credits and developer equity to produce 18 housing units for seniors on the first and third floors and a health clinic on the second floor. The project is in the 500-year floodplain and was greatly impacted by a 1,000-year flood event on June 23, 2016. The first-floor units and building mechanicals were destroyed by water and mud that rose up to just below the second floor. The State requested the waiver because the State determined it was not feasible to continue to use the first floor for housing. The waiver allows the State of West Virginia to redevelop the first floor of the building for non-residential uses while returning the second and third floors to their intended uses. The state will explore options for developing replacement housing units at a different site to replace the lost first-floor units.

Contact: Steve Johnson, Director, Entitlement Communities Division, Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• *Regulation:* 24 CFR 570.207(b)(4).

Project/Activity: Extension of waiver for emergency grant payments for Santa Barbara County, CA.

Nature of Requirement: The regulations at 24 CFR 570.207(b)(4) prohibit the use of CDBG funds for income payments except in the case of emergency grant payments made for up to three consecutive months to a service provider, respectively.

Granted By: David C. Woll, Jr., Principal Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2019.

Reason Waived: The Santa Barbara County wildfires and subsequent mudslides caused substantial damage to neighborhoods throughout the county. A Presidentially declared disaster declaration (FEMA–4353–DR) was issued on October 10, 2017. The county requested an extension of its August 20, 2018, waiver of the limitation on emergency grant payments to facilitate recovery and assist individuals and families affected by the disaster. The waiver extends emergency grant payments to individuals for up to six consecutive months. The waiver granted will allow the county to expedite recovery efforts for low and moderate income residents affected by the wildfires and subsequent mudslides; pay for additional support services for affected individuals and families, including, but not limited to, food, health, employment, and case management services to help county residents impacted by the fires and enable the county to pay for the basic daily needs of individuals and families affected by the fires on an interim basis.

Contact: Steve Johnson, Director, Entitlement Communities Division, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• *Regulation:* 24 CFR 91.105(c)(2) and (k).

Project/Activity: San Bernardino County, CA.

Nature of Requirement: 24 CFR 91.105(c)(2) requires the citizen participation plan to provide residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given and require a 30-day public comment period prior to the implementation of a substantial amendment. 24 CFR 91.105(k) requires the grantee to follow its citizen participation plan.

Granted By: David C. Woll, Jr., Principal Assistant Secretary for Community Planning and Development.

Date Granted: September 10, 2019.

Reason Waived: San Bernardino County earthquakes and subsequent aftershocks caused substantial damage to Trona, an unincorporated community located in San Bernardino County. An Emergency Management declaration (FEMA–3415–EM) was issued on July 8, 2019. The waiver reduces the public comment period from thirty to seven days and allows the county of San Bernardino to determine what constitutes reasonable notice to comment on the proposed amendments to its Consolidated Plan. These waived CDBG requirements allow the county to expedite recovery efforts for low- and moderate-income residents affected by the earthquakes and aftershocks.

Contact: Steve Johnson, Director, Entitlement Communities Division, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• *Regulation:* 24 CFR 91.105(c)(2) requires the citizen participation plan to provide residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given and require a 30-day public comment period prior to the implementation of a substantial amendment. 24 CFR 91.105(k) requires the grantee to follow its citizen participation plan.

Project/Activity: City and County of Honolulu.

Nature of Requirement: 24 CFR 91.105(c)(2) and (k) require a 30-day public comment period.

Granted By: David C. Woll, Jr., Principal Assistant Secretary for Community Planning and Development.

Date Granted: September 13, 2019.

Reason Waived: The Honolulu floods caused substantial damage to neighborhoods throughout the island of Oahu. A Presidentially declared disaster declaration (FEMA–4365–DR) was issued on May 8, 2018. The city and county requested a waiver for the CDBG public comment period from thirty to five days to expedite recovery and assist individuals and families affected by the disaster.

Contact: Steve Johnson, Director, Entitlement Communities Division, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–4548.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Gloria Dei Manor/Augustana Lutheran Homes, FHA Project Number 092–SH128, Litchfield, MN. Augustana Lutheran Homes, Incorporated (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 8, 2019.

Reason Waived: The Owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve the affordable housing resource for an additional 30 years through the execution and recordation of a Rental Use Agreement.

Contact: Nathaniel Johnson, Senior Account Executive, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–5156.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Memorial Apartments, FHA Project Number 052–35724, Baltimore, MD. Memorial Development Partners, Limited Partnership (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 3, 2019.

Reason Waived: The Owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve the affordable housing resource for an additional 40 years through the execution and recordation of a Rental Use Agreement.

Contact: Cindy Bridges, Senior Account Executive, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000, telephone (202) 402–2603.

• *Regulation:* 24 CFR 219.220(b)(1995).

Project/Activity: Presbyterian Apartments, FHA Project Number 034–SH006, Harrisburg, PA. The owner request to defer repayment of the Flexible Subsidy loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment operating assistance provided under the Flexible Subsidy Program for Troubled Projects, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted By: Brian Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 8, 2019.

Reason Waived: Pursuant to the authority contained in 24 CFR 5.110, good cause has been shown that it is in the public's best interest to grant this waiver.

Contact: Mirline Labissiere, Transaction Manager, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–6207.

• *Regulation:* 24 CFR 219.220(b)(1995).

Project/Activity: Jefferson Towers Apartments, FHA Number: 047–SH018, Muskegon, Michigan. The owner request to defer repayment of the Flexible Subsidy loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment operating assistance provided under the Flexible Subsidy Program for Troubled Projects, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted By: Brian Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 8, 2019.

Reason Waived: Pursuant to the authority contained in 24 CFR 5.110, good cause has been shown that it is in the public's best interest to grant this waiver.

Contact: Mirline Labissiere, Transaction Manager, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–6207.

• *Regulation:* 24 CFR 232.7.

Project/Activity: Oak Hills Terrace, FHA #113–22278, is an Assisted Living/Memory Care facility. The facility does not meet the requirements of 24 CFR 232.7 ''Bathroom'' of FHA's regulations. The project location is Tyler, TX.

Nature of Requirement: The regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 9, 2019.

Reason Waived: The project currently has a resident to shower ratio of 7:1. The memory care residents require assistance with bathing. These residents are housed in units in a secure, lock-down area, with a half-bathroom each and access to the shower rooms through a hallway. The project meets the State of Texas's licensing requirements for bathing and toileting facilities.

Contact: Nicole M. Johnson, Operations, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 672–5401.

• *Regulation:* 24 CFR 232.7.

Project/Activity: The Retreat and Retreat Gardens, FHA #116–22026, is an Assisted Living/Memory Care facility. The facility does not meet the requirements of 24 CFR 232.7 ''Bathroom'' of FHA's regulations. The project location is Rio Rancho, New Mexico.

Nature of Requirement: The regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 9, 2019.

Reason Waived: The project currently has a resident to shower ratio of 5:1. The memory care residents require assistance with bathing. These residents are housed in units in a secure, lock-down area, with a half-bathroom each and access to the shower rooms through a hallway. The project meets the State of New Mexico's licensing requirements for bathing and toileting facilities.

Contact: Nicole M. Johnson, Operations, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 672–5401.

• *Regulation:* 24 CFR 266.410(e).

Project/Activity: Colorado Housing and Finance Agency (CHFA), Denver, Colorado, no project number. The Agency have requested approval of a one-year extension of the waiver through July 31, 2020.

Nature of Requirement: The 24 CFR 266.410(e), which requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. The waiver would permit CHFA to use balloon loans that would have a minimum term of 17 years and a maximum amortization period of 40 years for the projects identified in the ''Multifamily Pipeline Projects''.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2019.

Reason Waived: The extension would provide the CHFA additional time to process the financial transactions. CHFA would offer Balloon Loans which have become a standard product in the affordable housing industry. Granting this request will reduce Colorado Housing and Finance Agency's cost of capital, which should translate into lower rates for their borrowers, and will support their preservation efforts.

Contact: Patricia M. Burke, Director, Office of Multifamily Production, HTD, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000, telephone (202) 402–5693.

• *Regulation:* 24 CFR 891.805.

Project/Activity: Forest Towers-Metro, FHA Number 075–EH051, and Meadows Apartments, FHA Number 075–EH354, Milwaukee, Wisconsin. The Steele Lakeshore, Limited Partnership (Proposed Owner) seeks approval of the single-asset entity requirement that will allow the projects to participate in Low-Income Housing Tax Credits (LIHTC) granted by the Wisconsin Housing and Economic Development Authority. The projects will be substantially rehabilitated and combined for financing purposes as a single property.

Nature of Requirement: The regulation at 24 CFR 891.805, Subpart F ''For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities.'' Specifically, that provision, 24 CFR 891.805 ''Definitions,'' which defines the term ''Mixed-finance owner'' as ''. . . a single-asset, for-profit limited partnership of which a private nonprofit organization is the sole general partner.''

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 27, 2019.

Reason Waived: The Owner requested and was granted waiver of the single-asset entity

requirement at 24 CFR 891.805 to allow the projects to be owned by a single for-profit Limited Partnership to facilitate tax credit financing. Granting this waiver allows the projects to participate in LIHTC financing and meet the Department's criteria with respect to the refinancing and rehabilitation.

Contact: Crystal Martinez, Senior Account Executive, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000, telephone (202) 402–3718.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(c) and 24 CFR 5.801(d)(1).

Project/Activity: Municipality of San Lorenzo (RQ037).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: R. Hunter Kurtz, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2019.

Reason Waived: The HA requested relief from compliance for additional time to submit its financial reporting requirements for the fiscal year end (FYE) of June 30, 2018. The HA is still recovering from damages resulting from Hurricane Maria that were compounded by Hurricane Dorian, which began September 5, 2019. The circumstances preventing the HA from submitting its FYE 2018 audited financial data by the due date was acceptable. Accordingly, the HA has until August 31, 2019, to submit its audited financial information to the Department. The approval of the Financial Assessment Subsystem (FASS) audited financial submission only permits the extension for filing. The HA is required to contact the HUDOIG Single Audit Coordinator at *HUDOIGSingleAuditCoordinator@hudoig.gov* for Single Audit extensions applicable to the Federal Audit Clearinghouse.

Contact: Dee Ann R. Walker, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410, telephone (202) 475–7908.

• *Regulation:* 24 CFR 5.801(c) and 24 CFR 5.801(d)(1).

Project/Activity: Puerto Rico Department of Housing (RQ901).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: R. Hunter Kurtz, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2019.

Reason Waived: The HA requested relief from compliance for additional time to submit its financial reporting requirements for the fiscal year end (FYE) of June 30, 2018. The HA is still recovering from damages resulting from Hurricane Maria that were compounded by Hurricane Dorian, which began September 5, 2019. The circumstances preventing the HA from submitting its FYE 2018 audited financial data by the due date was acceptable. Accordingly, the HA has until September 30, 2019, to submit its audited financial information to the Department. The approval of the Financial Assessment Subsystem (FASS) audited financial submission only permits the extension for filing. The HA is required to contact the HUDOIG Single Audit Coordinator at *HUDOIGSingleAuditCoordinator@hudoig.gov* for Single Audit extensions applicable to the Federal Audit Clearinghouse.

Contact: Dee Ann R. Walker, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410, telephone (202) 475–7908.

• *Regulation:* 24 CFR 983.503(a)(3).

Project/Activity: Housing Catalyst in Fort Collins, CO, requested a waiver of 24 CFR 983.503(a)(3) to set payment standards specific to its HUD–VASH program for one-bedroom and two-bedroom units.

Nature of Requirement: The regulation 24 CFR 983.503(a)(3) states that the PHA must establish one payment standard for each unit size in its program.

Granted By: R. Hunter Kurtz, Assistant Secretary for Public and Indian Housing.

Date Granted: July 19, 2019.

Reason Waived: Housing Catalyst has demonstrated that a high percentage of HUD–VASH voucher recipients were unsuccessful in finding a unit due to extremely low vacancy rates, increasing rents, and scarcity of one-bedroom units. The higher payment standards for HUD–VASH participants will help participants find housing in a reasonable timeframe.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Cozad Housing Authority in Dawson, Nebraska, requested a waiver of 24 CFR 985.101(a) for HUD to approve their SEMAP certification submission after the end of the fiscal year.

Nature of Requirement: The regulation at 24 CFR 985.101(a) states that the PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of the fiscal year.

Granted By: R. Hunter Kurtz, Assistant Secretary for Public and Indian Housing.

Date Granted: July 23, 2019.

Reason Waived: Due to unexpected staffing and system related issues, CHA was not able to submit their SEMAP before the deadline. Approval of this waiver prevents the waste of staff resources and funding needed to complete corrective action plans and conduct site visits at an agency that does not have compliance related issues.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.301(f)(2)(ii).

Project/Activity: The Housing Authority of the City of Buenaventura (HACSB) in Ventura, California, requested a waiver of 24 CFR 983.301(f)(2)(ii) to establish a site-specific utility allowance for all project-based voucher units at Westview Village 1.

Nature of Requirement: The regulation 24 CFR 983.301(f)(2)(ii) states that the PHA may not establish or apply different utility allowance amounts for the project-based voucher (PBV) program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

Granted By: R. Hunter Kurtz, Assistant Secretary for Public and Indian Housing.

Date Granted: July 31, 2019.

Reason Waived: HACSB has demonstrated that the utility allowance provided under the HCV Program would discourage conservation and ultimately lead to inefficient use of HAP funds at Westview Village I.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2019–25390 Filed 11–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6187–N–01]

White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information

AGENCY: Office of the Assistant Secretary for Policy Development and Research (PD&R), Department of Housing and Urban Development (HUD).

ACTION: Request for Information.

SUMMARY: Consistent with President Trump's Executive Order 13878, ''Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing,'' dated June 25, 2019, this document informs the public that HUD requests public comment on Federal, State, local, and Tribal laws, regulations, land use requirements, and administrative practices that artificially

raise the costs of affordable housing development and contribute to shortages in housing supply.

DATES: *Comment Due Date:* January 21, 2020.

ADDRESSES: Interested persons are invited to submit comments responsive to this request for information (RFI) to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit their feedback and recommendations electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a response, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, responses must be submitted through one of the two methods specified above. It is not acceptable to submit comments by facsimile (fax) or electronic mail. Again, all submissions must refer to the docket number and title of the notice.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Pamela Blumenthal, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8138, Washington, DC 20410–0500; telephone number 202–402–7012 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Context: Why the White House Council on Eliminating Regulatory Barriers to Affordable Housing (Council) was Established

President Donald J. Trump established a White House Council on Eliminating Regulatory Barriers to Affordable Housing [1] because for many American citizens, the supply of available housing has not kept pace with the demand for housing by prospective renters and homebuyers. Rising housing costs are forcing families to dedicate larger shares of their monthly incomes to housing. In 2017, approximately 37 million renter and owner households spent more than 30 percent of their incomes on housing, with more than 18 million spending more than half of their incomes on housing. Between 2001 and 2017, the number of renter households allocating more than half of their incomes toward rent increased by nearly 45 percent.[2]

Driving the rise in housing costs is a lack of housing supply to meet rising demand. Research has provided evidence that a major driver of high-cost housing is compliance with overly prescriptive construction and development requirements or regulations.[3] Regulations are often necessary to protect the health and safety of American citizens, such as clean air, water or disaster mitigation practices. However, outdated and overly burdensome, time-consuming, and costly regulatory requirements and restrictions prolong the completion of new housing supply and those costs are shifted to the consumer, particularly in tight markets.

As the Executive Order states, ''Increasing the supply of housing by removing overly burdensome regulatory barriers will reduce housing costs, boost economic growth, and provide more Americans with opportunities for economic mobility. In addition, it will strengthen American communities and the quality of services offered in them by allowing hardworking Americans to live in or near the communities they serve.''

As referenced in the Executive Order, common examples of regulatory barriers include: overly restrictive zoning and growth management controls; rent controls; cumbersome building and rehabilitation codes; excessive energy and water efficiency mandates; unreasonable maximum-density allowances; historic preservation requirements; overly burdensome wetland or environmental regulations; outdated manufactured-housing regulations and restrictions; undue parking requirements; cumbersome and time-consuming permitting and review procedures; tax policies that discourage investment or reinvestment; overly complex labor requirements; and inordinate impact or developer fees. These regulatory barriers increase the costs associated with development, and, as a result, restrict the supply of housing, particularly unsubsidized middle market housing affordable to working families.

Many of the markets with the most severe shortages in affordable housing contend with the most restrictive regulatory barriers to housing development.

II. Overview of the White House Council on Eliminating Regulatory Barriers to Affordable Housing

The Executive Order directs the Secretary of HUD, or his designee, to chair the Council, in tandem with the Assistant to the President for Domestic Policy and the Assistant to the President for Economic Policy, or their designees, as Vice Chairs. In addition to the Chair and Vice Chairs, the Council consists of the following officials, or their designees: The Secretaries of the Treasury, Interior, Agriculture, Labor, Transportation, Energy; the Administrator of the Environmental Protection Agency; the Director of the Office of Management and Budget; the Chairman of the Council of Economic Advisors; the Deputy Assistant to the President and Director of Intergovernmental Affairs; and the heads of such other executive departments and agencies (agencies) and offices as the President, Chair, or Vice Chairs may, from time to time, designate or invite, as appropriate.

The Executive Order directs the Council to:

(a) Solicit feedback from State, local, and Tribal government officials, as well as relevant private-sector stakeholders, developers, homebuilders, creditors, real estate professionals, manufacturers, academic researchers, renters, advocates, and homeowners, to:

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[1] Executive Order 13878 of June 25, 2019. ''Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing,'' 84 FR 30853. June 28, 2019. *www.federalregister.gov/d/2019-14016.*

[2] Joint Center for Housing Studies (2019). *State of the Nation's Housing 2019. https://www.jchs.harvard.edu/state-nations-housing-2019.*

[3] Joseph Gyourko and Raven Molloy, ''Regulation and Housing Supply,'' (working paper No. 20536, National Bureau of Economic Research, Cambridge, MA, October 2014), 1.

i. Identify Federal, State, local, and Tribal laws, regulations, and administrative practices that artificially raise the costs of housing development and contribute to shortages in housing supply, and

ii. Identify practices and strategies that most successfully reduce and remove burdensome Federal, State, local, and Tribal laws, regulations, and administrative practices that artificially raise the costs of housing development, while highlighting actors that successfully implement such practices and strategies;

(b) Evaluate and quantify the effect that various Federal, State, local, and Tribal regulatory barriers have on affordable-housing development, and the economy in general, and identify ways to improve the data available to the public and private researchers who evaluate such effects, without violating privacy laws or creating unnecessary burdens;

(c) Identify and assess the actions each agency can take under existing authorities to minimize Federal regulatory barriers that unnecessarily raise the costs of housing development;

(d) Assess the actions each agency can take under existing authorities to align, support, and encourage State, local, and Tribal efforts to reduce regulatory barriers that unnecessarily raise the costs of housing development; and

(e) Recommend Federal, State, local, and Tribal actions and policies that would:

i. Reduce and streamline statutory, regulatory, and administrative burdens at all levels of government that inhibit the development of affordable housing; and

ii. Encourage state and local governments to reduce regulatory barriers to the development of affordable housing.

III. Purpose of This Request for Information

The purpose of this Request for Information (RFI) is to solicit feedback that will assist the Council in identifying Federal, State, local, and Tribal laws, regulations, and administrative practices that artificially raise the costs of affordable-housing development and contribute to shortages in housing supply. It also seeks data, other information, analyses, and recommendations on methods for reducing these regulatory barriers.

The Council encourages participation from Federal, State, local, and Tribal government officials, as well as relevant stakeholders, including developers, homebuilders, real estate professionals, affordable housing advocates, manufacturers, architects, engineers, fair housing professionals, urban planners, economists, academic researchers, renters, homeowners, creditors, multifamily-housing owners, and public-housing agencies.

IV. Specific Information Requested

While HUD welcomes comments on all aspects of developing a plan for reducing barriers to affordable housing development, HUD is particularly interested in receiving information, data, analyses, and recommendations on the following:

(1) Federal Barriers to Affordable Housing Development. HUD requests comments that identify *specific* HUD regulations, statutes, programs and practices that directly or indirectly restrict the supply of housing or increase the cost of housing. In thinking about the impact that the laws, regulations, statutes, programs and policies of HUD programs may have on the housing construction and development industry, please consider:

a. Federal laws, regulations, and administrative practices of HUD programs that directly or indirectly artificially raise the costs of housing development and contribute to shortages in housing supply, in HUD's program implementation itself, or because of their impact on State, local, and Tribal government policymaking. Do these laws, regulations, or administrative practices produce any benefits to the resident, homeowner, state, or locality that would be eliminated if the requirement were reduced or eliminated?

b. Recommendations, strategies, solutions or best practice models that have been established to streamline, reduce or eliminate overly restrictive construction and development regulations, requirements or administrative practices identified above.

c. What are the policy interventions, solutions or strategies available to federal decision makers for incentivizing state and local governments to review their regulatory environment? To aid them in streamlining, reducing or eliminating the negative impact of state and local laws, regulations, and administrative practices identified in the questions below?

d. What is the potential impact, positive or negative, of streamlining, reducing, or eliminating the identified regulations, requirements or administrative practices?

(2) State Barriers to Affordable Housing Development. Since the 1920s States have given ultimate zoning authority to their local government units. Additionally, States have left it to the local jurisdictions to create their own governing structure and to delegate further authority across local government silos, often leading to fragmented, overlapping or duplicative review processes of construction projects. Finally, States almost always impose a bifurcated review process for larger scale infrastructure projects that require environmental review. However, States, by their regional nature, are more attuned with how local policies have larger economic consequences to regional economies. In thinking about the role of the state in the building construction industry, consider the following questions:

a. In what ways do State-level laws, practices, and programs contribute to delays in the construction industry? Are there particular laws, practices and programs that could be reviewed for potential barriers?

b. What are the policy interventions, solutions or strategies available to State decision makers for incentivizing local governments to review their regulatory environment? To aid them in streamlining, reducing or eliminating the negative impact of local and State laws, regulations, and administrative practices identified in the question above?

(3) Local Barriers to Affordable Housing Development. While a traditional characterization for the adoption and maintenance of some barriers to affordable housing development is that they reflect a ''Not in My Back Yard'' (''NIMBY'') disposition, their widespread and long-term prevalence suggests some substantive bases for their existence. For the purposes of this RFI, we define ''local'' to include all local government units that have constitutional authority given by the State to make decisions on land use planning and growth management, including cities, towns, parishes, designated places, counties, and rural communities, as well as regional entities that have decision-making authority on these land-use issues under State statutes. When identifying regulatory barriers and understanding the impacts on housing costs, there are several issues to consider:

a. What are the common motivations or factors that underlie the adoption of laws, regulations, and practices that demonstrably raise the cost of housing development? Do these considerations vary geographically?

b. How do local decision makers determine whether laws, regulations, or practices artificially or unnecessarily

contribute to this problem? Do decision makers undertake cost-benefit analyses, and if so, how do they use them?

c. What are the policy interventions, solutions or strategies available to local decision makers for streamlining, reducing or eliminating the negative impact of these laws, regulations, and administrative practices identified in the question above?

(4) Basis for Reducing Barriers to Affordable Housing Development. In thinking about streamlining, reducing or eliminating barriers to affordable housing development, please consider the following:

a. What are the economic and social benefits to American families and individuals, the local community, the State or Tribe, and the nation that would be realized by reducing regulatory barriers to affordable housing development?

i. To what extent is there agreement that specific regulations and administrative practices result in higher cost or reduced availability of affordable market rate housing for potential homeowners and renters?

ii. Assuming agreement that specific regulations and administrative practices create impediments to affordable housing development by increasing the costs of either construction of housing or preservation of housing supply, are these costs of such regulation and practices quantifiable? What evidence is there to support this finding?

b. Are there regulations that may delay the process of building affordable housing but are necessary to ensure a certain level of quality is achieved in the construction?

c. How should one evaluate the cost of burdensome regulations on the local housing market? How should one determine the benefits of reducing those costs?

i. If you have knowledge of jurisdictions that have successfully implemented creative solutions to reduce regulatory barriers, please describe specific land use requirements that were demonstrated to have raised the cost of housing.

ii. In responding to item (i) above, please discuss how these jurisdictions offered incentives, sanctions or implemented policies that effectively reduced or eliminated overly restrictive, outdated, or otherwise burdensome land use regulations.

iii. For jurisdictions that considered reducing the barriers but ultimately did not take action to do so, what was the basis for that inaction?

(5) Plan Development and Implementation. In general, HUD is interested in what actions it should recommend or implement to assist States, Tribes, and local governments in reducing or eliminating barriers to affordable housing development.

a. Regarding HUD's rules, regulations, and statutes, what actions can the Department take to significantly reduce (or eliminate) barriers to affordable housing development while remaining committed to its mission to expand affordable housing options and support decent, safe and sanitary housing for all Americans? Please provide detailed examples, if possible.

b. Regarding the recommendations provided to HUD above, what actions could the Department implement to create incentives for States, Tribes, or local jurisdictions to encourage regulatory review and reform? For communities that have achieved regulatory reform, how might the Department learn from successful policies that were adopted at the State, Tribal, or local level? How might the Department create guidance for other jurisdictions looking to achieve reform?

(6) Research Questions.

a. What peer-reviewed research and/or representative surveys provide quantitative analyses on the impact of regulations on cost of affordable housing development? Do these analyses demonstrate evidence on the degree or severity of impact? How strongly supported are the conclusions of the research? Provide citations for research referenced.

b. What performance measures, quantitative and/or qualitative, should the Council consider in assessing the reduction of barriers nationally or regionally? What are the advantages and disadvantages of each measure? Among the measures recommended above, how should they be prioritized? Such measures could include, but would not be limited to, the following:

i. The rate of housing production, considering a range of cofactors, including domestic and international migration patterns and rates of family formation;

ii. The number of housing construction permits, construction starts, and completions;

iii. The number of burden-reducing legislative or regulatory actions, considering suitable baselines;

iv. A list of best practice models based on recommendations from stakeholders and the public and reviewed by subject matter experts;

v. Housing development processing times and costs, considering a range of cofactors;

vi. Whether jurisdictions' barrier reduction was temporary (*e.g.,* a project- or grant/program-specific waiver) or permanent;

vii. Whether there are fair housing barriers to the development of affordable housing; and

viii. Whether the permitting process poses a greater, comparable, or smaller barrier to building housing than do the regulations, such as regarding timeliness and consistency of permitting decisions.

c. HUD's Regulatory Barriers Clearinghouse (RBC) [4] was created to document the prevalence of regulatory barriers that influence the cost of affordable housing and offer best practice solutions for their removal. The clearinghouse is an easily searchable electronic database that contains more than 4,800 barriers and solutions and catalogs information that spans all 50 states and more than 460 cities and counties. Best practices have been previously highlighted in a HUD publication called *Breakthroughs,* which was a bi-monthly e-newsletter accessible where community actors could share their stories about reform strategies that work. Representatives from the housing industry, the National League of Cities, the National Association of Counties, the National Association of Mayors and many other private, public and advocacy groups have contributed to these efforts. HUD's Office of Policy Development & Research continues to manage the RBC database and staff are developing ideas for how the research community could use the information to conduct regulatory barriers research. For the purpose of this RFI, we ask for recommendations on how best to utilize this important source of information for States, local governments, researchers and policy analysts who are tracking reform activity across the country.

IV. Request for Information Response Guidelines

If you submit comments by mail, your response should be no longer than 50 pages. Please provide the following information at the start of your response to this RFI: Company/institution name (if applicable); contact information, including address, phone number, and email address. Do not submit Confidential Business Information (CBI) in your response to this RFI. Responses identified as containing CBI will not be reviewed and will be discarded.

Please identify each answer by responding to a specific question or topic if applicable. You may answer as many or as few questions as you wish. HUD will not respond to individual

[4] *https://www.huduser.gov/portal/rbc/home.html.*

submissions or publish publicly a compendium of responses.

To help you prepare your comments, please see the How Do I Prepare Effective Comments segment of the Commenting on HUD Rules web page, *https://www.hud.gov/program_offices/general_counsel/Commenting-On-HUD-Rules#1.* While that web page is written for commenting on regulatory proposals, these tips are generally applicable to this RFI.

Dated: *November 14, 2019.*

Seth Appleton,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2019–25388 Filed 11–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6183–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2020

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes operating cost adjustment factors (OCAFs) for project-based assistance contracts issued under Section 8 of the United States Housing Act of 1937 and renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) for eligible multifamily housing projects having an anniversary date on or after February 11, 2020. OCAFs are annual factors used to adjust Section 8 rents renewed under section 515 or section 524 of MAHRA.

DATES: *Applicability Date:* February 11, 2020.

FOR FURTHER INFORMATION CONTACT: Carissa Janis, Program Analyst, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202–402–2487 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. OCAFs

Section 514(e)(2) and section 524(c)(1) of MAHRA (42 U.S.C. 1437f note) require HUD to establish guidelines for the development of OCAFs for rent adjustments. Sections 524(a)(4)(C)(i), 524(b)(1)(A), and 524(b)(3)(A) of MAHRA, all of which prescribe the use of the OCAF in the calculation of renewal rents, contain similar language. HUD has therefore used a single methodology for establishing OCAFs, which vary among states and territories.

MAHRA gives HUD broad discretion in setting OCAFs, referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to ''an operating cost adjustment factor established by the Secretary.'' The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF ''shall not result in a negative adjustment.'' Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses exclusive of debt service.

The OCAFs provided in this notice are applicable to eligible projects having a contract anniversary date of February 11, 2020 or after and were calculated using the same method as those published in HUD's 2019 OCAF notice published on November 23, 2018 (83 FR 59404). Specifically, OCAFs are calculated as the sum of weighted component cost changes for wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water/sewer/trash using publicly available indices. The weights used in the OCAF calculations for each of the nine cost component groupings are set using current percentages attributable to each of the nine expense categories. These weights are calculated in the same manner as in the November 23, 2018 notice. Average expense proportions were calculated using three years of audited Annual Financial Statements from projects covered by OCAFs. The expenditure percentages for these nine categories have been found to be very stable over time but using three years of data increases their stability. The nine cost component weights were calculated at the state level, which is the lowest level of geographical aggregation with enough projects to permit statistical analysis. These data were not available for the Western Pacific Islands, so data for Hawaii were used as the best available indicator of OCAFs for these areas.

The best current price data sources for the nine cost categories were used in calculating annual change factors. State-level data for fuel oil, electricity, and natural gas from Department of Energy surveys are relatively current and continue to be used. Data on changes in employee benefits, insurance, property taxes, and water/sewer/trash costs are only available at the national level. The data sources for the nine cost indicators selected used were as follows:

- *Labor Costs:* First quarter, 2019 Bureau of Labor Statistics (BLS) ECI, Private Industry Wages and Salaries, All Workers (Series ID CIU2020000000000I) at the national level and Private Industry Benefits, All Workers (Series ID CIU2030000000000I) at the national level.
- *Property Taxes:* Census Quarterly Summary of State and Local Government Tax Revenue—Table 1 *https://www.census.gov/econ/currentdata/dbsearch?program=QTAX&startYear=2017&endYear=2019&categories=QTAXCAT1&dataType=T01&geoLevel=US&notAdjusted=1&submit=GET+DATA&releaseScheduleId=12-month* property taxes are computed as the total of four quarters of tax receipts for the period from April through March. Total 12-month taxes are then divided by the number of occupied housing units to arrive at average 12-month tax per housing unit. The number of occupied housing units is taken from the estimates program at the Bureau of the Census. *http://www.census.gov/housing/hvs/data/histtab8.xlsx.*
- *Goods, Supplies, Equipment:* May 2018 to May 2019 Bureau of Labor Statistics (BLS) Consumer Price Index, All Items Less Food, Energy and Shelter (Series ID CUUR0000SA0L12E) at the national level.
- *Insurance:* May 2018 to May 2019 Bureau of Labor Statistic (BLS) Consumer Price Index, Tenants and Household Insurance Index (Series ID CUUR0000SEHD) at the national level.
- *Fuel Oil:* October 2018–March 2019 U.S. Weekly Heating Oil and Propane Prices report. Average weekly residential heating oil prices in cents per gallon excluding taxes for the period from October 1, 2018 through the week of March 25, 2019 are compared to the average from October 2, 2017 through the week of March 26, 2018. For the States with insufficient fuel oil consumption to have separate estimates, the relevant regional Petroleum Administration for Defense Districts (PADD) change between these two periods is used; if there is no regional PADD estimate, the U.S. change between these two periods is used. *http://www.eia.gov/dnav/pet/pet_pri_wfr_a_EPD2F_prs_dpgal_w.htm.*
- *Electricity:* Energy Information Agency, February 2019 ''Electric Power Monthly'' report, Table 5.6.B. *http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_06_b.*
- *Natural Gas:* Energy Information Agency, Natural Gas, Residential Energy

Price, 2017–2018 annual prices in dollars per 1,000 cubic feet at the state level. Due to EIA data quality standards several states were missing data for one or two months in 2018; in these cases, data for these missing months were estimated using data from the surrounding months in 2018 and the relationship between that same month and the surrounding months in 2017. *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_a.htm.*

• *Water and Sewer:* May 2018 to May 2019 Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services (Series ID CUUR0000SEHG) at the national level.

The sum of the nine cost component percentage weights equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, state-level cost component weights developed from AFS data are multiplied by the selected inflation factors. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and increased by 4 percent from 2018 to 2019 the wage increase component of the Virginia OCAF for 2020 would be 2.0 percent (50% * 4%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2020 OCAF for Virginia. For states where the calculated OCAF is less than zero, the OCAF is floored at zero. The OCAFs for 2020 are included as an Appendix to this Notice.

II. MAHRA OCAF Procedures

Sections 514 and 515 of MAHRA, as amended, created the Mark-to-Market program to reduce the cost of federal housing assistance, to enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

III. Findings and Certifications

Environmental Impact

This notice sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Paperwork Reduction Act

This notice does not impact the information collection requirements already submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.195.

Dated: November 18, 2019.

John Garvin,

General Deputy Assistant Secretary for Housing.

APPENDIX

OPERATING COST ADJUSTMENT FACTORS FOR 2020

State	OCAF (%)
Alabama	2.1
Alaska	2.8
Arizona	2.4
Arkansas	2.0
California	2.5
Colorado	2.2
Connecticut	2.5
Delaware	1.9
District of Columbia	2.2
Florida	2.3
Georgia	2.0
Hawaii	3.4
Idaho	2.4
Illinois	2.0
Indiana	2.2
Iowa	2.4
Kansas	2.1
Kentucky	2.0
Louisiana	2.0
Maine	2.7
Maryland	2.0
Massachusetts	3.3
Michigan	2.3
Minnesota	2.5
Mississippi	2.2
Missouri	1.8
Montana	2.1
Nebraska	2.1
Nevada	2.5
New Hampshire	2.6
New Jersey	2.2
New Mexico	2.1
New York	2.5
North Carolina	2.4
North Dakota	2.2
Ohio	2.0
Oklahoma	1.8
Oregon	2.4
Pacific Islands	3.4
Pennsylvania	2.1
Puerto Rico	2.4
Rhode Island	3.3
South Carolina	2.1
South Dakota	2.0
Tennessee	2.2
Texas	2.3
Utah	2.2
Vermont	2.2
Virgin Islands	2.2
Virginia	2.3
Washington	2.3
West Virginia	2.0
Wisconsin	2.3
Wyoming	2.2
US	2.2

[FR Doc. 2019–25389 Filed 11–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2019–N154; FF09M13200, FXMB12330900000 (201); OMB Control Number 1018–0135]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Electronic Federal Duck Stamp Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before December 23, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and

Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0135 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On March 15, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on May 14, 2019 (84 FR 9547). We did not receive any substantive or relevant comments in response to that **Federal Register** notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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 publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: On March 16, 1934, Congress passed, and President Franklin D. Roosevelt signed, the Migratory Bird Hunting Stamp Act (16 U.S.C. 718a *et seq.*). Popularly known as the Duck Stamp Act, it requires all migratory waterfowl hunters 16 years of age or older to buy a Federal migratory bird hunting and conservation stamp (Federal Duck Stamp) annually. The stamps are a vital tool for wetland conservation. Ninety-eight cents out of every dollar generated by the sale of Federal Duck Stamps goes directly to purchase or lease wetland habitat for protection in the National Wildlife Refuge System. The Federal Duck Stamp program is one of the most successful conservation programs ever initiated and is a highly effective way to conserve America's natural resources. Besides serving as a hunting license and a conservation tool, a current year's Federal Duck Stamp also serves as an entrance pass for national wildlife refuges where admission is charged. Duck Stamps and products that bear stamp images are also popular collector's items.

The Electronic Duck Stamp Act of 2005 (Pub. L. 109–266) required the Secretary of the Interior to conduct a 3-year pilot program, under which States could issue electronic Federal Duck Stamps. This pilot program is now permanent with the passage of the Permanent Electronic Duck Stamp Act of 2013 (Pub. L. 113–239). Anyone, regardless of State residence, is able to purchase an electronic Duck Stamp through any State that participates in the program. The electronic stamp is valid from the date of purchase through up to 45 days after the date of purchase, and thus is available for immediate use by the purchaser while he or she waits to receive the actual physical stamp in the mail. After 45 days, the purchaser must carry the signed physical Federal Duck Stamp while hunting or to gain fee-free access to national wildlife refuges.

Eight States participated in the pilot. At the end of the pilot, we provided a report to Congress outlining the successes of the program. The program improved public participation by increasing the ability of the public to obtain required Federal Duck Stamps.

Under our authorities in 16 U.S.C. 718 *et seq.,* we continued the Electronic Duck Stamp Program in the eight States that participated in the pilot. Currently, the expanded program includes 25 States. Several additional States have indicated interest in participating, and we have had requests to continue to expand the program by inviting the remaining eligible State fish and wildlife agencies to apply to participate. Interested States must submit an application (FWS Form 3–2341). We will use the information provided in the application to determine a State's eligibility to participate in the program. Information includes, but is not limited to:

- Information verifying the current systems the State uses to sell hunting, fishing, and other associated licenses and products.
- Applicable State laws, regulations, or policies that authorize the use of electronic systems to issue licenses.
- Examples and explanations of the codes the State proposes to use to create and endorse the unique identifier for the individual to whom each stamp is issued.
- Mockup copy of the printed version of the State's proposed electronic stamp, including a description of the format and identifying features of the licensee to be specified on the stamp.
- Description of any fee the State will charge for issuance of an electronic stamp.
- Description of the process the State will use to account for and transfer the amounts collected by the State that are required to be transferred under the program.
- Manner in which the State will transmit electronic stamp customer data.

Each State approved to participate in the program must provide the following information, on a weekly basis, to the Service-approved stamp distribution company, to enable that company to issue the actual stamp within the required 45-day period:

- Full name (first, middle, last, and any prefixes/suffixes), and complete mailing address of each individual who purchases an electronic stamp from the State.
- Date of e-stamp purchase.

Title of Collection: Electronic Federal Duck Stamp Program.

OMB Control Number: 1018–0135.

Form Number: FWS Form 3–2341.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State fish and wildlife agencies.

Total Estimated Number of Annual Respondents: 6 respondents for applications and 33 respondents for fulfillment reports.

Total Estimated Number of Annual Responses: 6 responses for applications

and 33 respondents for fulfillment reports.

Estimated Completion Time per Response: 40 hours for applications and 1 hour for fulfillment reports.

Total Estimated Number of Annual Burden Hours: 240 hours for applications and 1,353 hours for fulfillment reports, totaling 1,593 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time for applications, and an average of once every 9 days per respondent for fulfillment reports.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: November 19, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–25366 Filed 11–21–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK6006201 210A2100DD AOR3030.999900]

Draft Environmental Impact Statement for Osage County Oil and Gas, Osage County, Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as the lead Federal agency, and the Osage Nation, Osage Minerals Council, U.S. Geological Survey (USGS), and Environmental Protection Agency (EPA), as cooperating agencies, have prepared a Draft Environmental Impact Statement. The Osage County Oil and Gas Draft Environmental Impact Statement (DEIS) analyzes the potential impacts that future oil and gas development will have on the surface estate and subsurface mineral estate in Osage County, Oklahoma. This notice announces that the DEIS is available for public review and that the BIA will hold a public meeting to receive comments.

DATES: A public meeting will be held at location and time to be announced. Notice of the public meeting will be made in local news media at least 15 days prior to the meeting. In order for written comments on the DEIS to be considered, the BIA must receive them within 45 days following the date the EPA publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Information regarding the public comment period and public meeting will be posted on the project website: *https://www.bia.gov/regional-offices/eastern-oklahoma/osage-agency/osage-oil-and-gas-eis.* Comments on the DEIS may be submitted by any of the following methods:

- *Email: osagecountyoilandgaseis@bia.gov*
- *Fax:* (918) 287–5700
- *Mail or hand delivery:* Osage County Oil and Gas EIS, BIA Osage Agency, Attn: Superintendent, P.O. Box 1539, Pawhuska, OK 74056

The DEIS may be examined at the BIA Osage Agency, 813 Grandview Avenue, Pawhuska, Oklahoma. The DEIS is also available for review online at the project website listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Mosby Halterman, Supervisory Environmental Specialist, telephone: 918–781–4660; email: *mosby.halterman@bia.gov;* address: BIA Eastern Oklahoma Regional Office, PO Box 8002, Muskogee, OK 74402.

SUPPLEMENTARY INFORMATION: The Osage Allotment Act of 1906 (1906 Act), as amended, reserved all rights to the subsurface mineral estate underlying Osage County, Oklahoma (Osage Mineral Estate) to the Osage Nation. In accordance with the 1906 Act, the Osage Mineral Estate is held in trust by the United States for the benefit of the Osage Nation. All leases, applications for permits to drill, and other site-specific permit applications in Osage County are approved under the authority of the 1906 Act, as amended, and 25 Code of Federal Regulations (CFR), part 226, Leasing of Osage Reservation Lands for Oil and Gas Mining.

The purpose of the BIA's action is to administer leasing and development of the Osage Mineral Estate in the best interest of the Osage Nation, in accordance with the 1906 Act, as amended, balancing resource conservation and maximization of oil and gas production in the long term. The BIA is required, under more generally applicable statutes, to include in the best interest calculation the protection of the environment in Osage County to enhance conservation of resources and protection of the health and safety of the Osage people. Based on these considerations, the BIA's action promotes the maximization of oil and gas production from the Osage Mineral Estate in a manner that is economic, efficient, and safe; prevents pollution; and is consistent with the mandates of Federal law.

The DEIS analyzes the following four alternatives for managing oil and gas development in Osage County:

- Alternative 1, No Action Alternative.
- Alternative 2, Emphasize Oil and Gas Development. Minimize the number of permit Conditions of Approval (COAs) to allow producers wider latitude in determining the methods by which they will comply with applicable laws and regulations, such as the Endangered Species Act of 1973 and Clean Water Act of 1972.
- Alternative 3, Hybrid Development. A hybrid approach, by applying additional protective COAs in sections with low levels of historical oil and gas development minimizing the number of COAs in sections with high levels of historical oil and gas development. The BIA would not approve permits for new ground-disturbing oil and gas development activities in certain sensitive areas.
- Alternative 4, Enhanced Resource Protection. Apply additional protective COAs in all areas and implement well-spacing requirements. The BIA would not approve permits for new ground-disturbing oil and gas development activities in certain sensitive areas.

The alternatives represent the range of reasonable actions that could be taken to satisfy the purpose of and need for the BIA's action. All alternatives incorporate measures necessary to address impacts on air quality, water resources, cultural resources, public health and safety, threatened and endangered species, and socioeconomics among other things. Additional alternatives were considered but eliminated from detailed analysis.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on July 26, 2013 (78 FR 45266). At that time, analysis of oil and gas development in Osage County was to be included in the Bureau of Land Management (BLM)-BIA Oklahoma, Kansas, and Texas (OKT) Joint EIS/BLM Resource Management Plan (RMP)/BIA Integrated Resource Management Plan (IRMP). In response to issues raised during scoping for the OKT Joint EIS/BLM RMP/BIA IRMP, and at the request of the Osage Minerals Council, the BIA decided that the Osage County Oil and Gas EIS would be prepared as a separate document. In November 2015, the BIA published the Osage County Oil and Gas DEIS (2015 DEIS). Following the

comment period on the 2015 DEIS, the BIA determined that a new draft EIS needed to be prepared to address comments received and take additional information into consideration.

The Supplemental Notice of Intent to Revise the Osage County Oil and Gas EIS was published in the **Federal Register** on April 11, 2016 (81 FR 21376). On April 28, 2016, the BIA hosted a public scoping meeting in Pawhuska, Oklahoma. Key issues identified during scoping included potential impacts on visual and aesthetic resources, vegetation, soils, rangeland, livestock, fish and wildlife, special status species, human health and property, air quality and climate change; promotion of economic development; impacts on groundwater and surface water quality and quantity; impacts from roads and noise; seismicity; promotion of the Osage Mineral Estate; protection of cultural resources; and measures that can be taken to minimize adverse impacts from oil and gas development.

Directions for Submitting Comments: The public is encouraged to comment on any and all portions of the DEIS. The BIA asks that those submitting comments make them as specific as possible with reference to chapters, sections, page numbers, and paragraphs in the DEIS. The most useful comments are those that include new technical or scientific information, identification of data gaps in the impact analysis, and technical or scientific rationale for stated opinions or preferences. Please include your name, return address, and the caption ''Draft EIS Comments, Osage County Oil and Gas EIS'' on the first page of your written comments. The BIA will respond to comments in the Final EIS. Comments that contain only opinions or preferences will not receive a formal response but will be considered as part of the BIA's decision-making process.

Public Comment Availability: Written comments, including names and addresses of respondents, will be available for public review at the BIA Osage Agency, 813 Grandview Avenue, Pawhuska, Oklahoma, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published in accordance with Section 1503.1 of the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of NEPA (42 U.S.C. 4321 *et seq.*), and in accordance with the authority delegated to the Assistant Secretary—Indian Affairs, in Part 209 of the Departmental Manual.

Dated: November 18, 2019.

Tara Sweeney,

Assistant Secretary, Indian Affairs.

[FR Doc. 2019–25413 Filed 11–21–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR932000.L16100000.DP0000. LXSSH0930000.19X.HAG 19–0118]

Notice of Availability of the San Juan Islands National Monument Proposed Resource Management Plan/Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared the San Juan Islands National Monument Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) and by this notice is announcing its availability and the opening of a 30-day protest period concerning the Proposed RMP. In accordance with the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, this notice also announces the opening of a 60-day public comment period regarding the proposed closure of the Monument (which encompasses scattered parcels totaling approximately 1,000 acres) to recreational target shooting (referred to as ''discharge of firearms'' in the RMP).

DATES: The BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP and Final EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

To ensure that comments on the proposed target shooting closure will be considered, the BLM must receive written comments by January 21, 2020.

ADDRESSES: The Proposed RMP and Final EIS is available on the BLM ePlanning project website at *https://go.usa.gov/xRphc.* Hard copies of the Proposed RMP/Final EIS are also available for public inspection at the BLM Lopez Island Office, 37 Washburn Place, Lopez Island, Washington 98261; BLM Spokane District Office, 1103 North Fancher Road, Spokane Valley, WA 99212; and BLM Oregon/Washington State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP may be found online at *www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest* and at 43 CFR 1610.5–2.

You may submit comments on the proposed target shooting closure using either of the following methods:

Email: blm_or_sanjuanislandsnm@blm.gov.

Mail: Target Shooting Closure Comments, Lopez Island BLM Office, P.O. Box 3, Lopez, WA 98261.

FOR FURTHER INFORMATION CONTACT: Lauren Pidot, Planner, 503–808–6297; Lopez Island BLM Office, P.O. Box 3, Lopez, Washington 98261; *lpidot@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or a question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has prepared the San Juan Islands National Monument Proposed RMP/Final EIS to evaluate and revise potential management strategies for the San Juan Islands National Monument. Presidential Proclamation 8947 designated the monument on March 25, 2013. The lands included in the monument are not now, and have never been, covered by an RMP. The BLM currently administers these lands using a custodial management approach focused on meeting legal mandates.

The decision area for this planning process comprises the approximately 1,021 acres of lands administered by the BLM. The decision area does not include private lands, State lands, or Federal lands not administered by the BLM, with the exception of approximately 189 acres of land currently withdrawn to the U.S. Coast

Guard. The U.S. Coast Guard is in the process of relinquishing these acres. The BLM anticipates that acres relinquished by the U.S. Coast Guard will come under BLM administration prior to the publication of the Record of Decision for this planning process. In the event that the relinquishment process is not complete prior to the publication of the Record of Decision, the approved RMP would only go into effect for those 189 acres once they are under BLM administration.

The monument includes headlands, islands, and rocks scattered across the San Juan Islands. As a whole, the San Juan Islands are comprised of private lands and an array of Federal, State, and local public lands. Non-BLM public lands include the San Juan Island National Historical Park, the San Juan Islands National Wildlife Refuge (a portion of which is designated as the San Juan Wilderness), and a variety of State and county parks.

Major issues considered in the Proposed RMP/Final EIS include the protection and restoration of the ecological and cultural resources identified in Presidential Proclamation 8947, as well as the management of recreation, transportation, visual resources, and wilderness characteristics.

The San Juan Islands National Monument Draft RMP and EIS 90-day public comment period began on October 5, 2018. The BLM held five public meetings across the San Juan Islands and on the mainland during the public comment period. The BLM considered and incorporated in the Proposed RMP/Final EIS, as appropriate, comments received from the public, consulting Tribes, cooperating agencies, and internal BLM review. Public comments resulted in the addition of clarifying text, minor changes to the existing alternatives, and a Proposed RMP that is within the range of alternatives and effects analyzed in the Draft RMP and EIS. In addition to the Proposed RMP, the Final EIS analyzes the four action alternatives (Alternatives A, B, C, and D), one sub-alternative (Sub-Alternative C), and the No Action Alternative analyzed in the Draft EIS.

Under the Proposed RMP, the BLM would focus on promoting ecological resistance and resilience to threats including fire, drought, and other potential disturbances by restoring existing plant communities and enhancing the extent of grasslands and shrublands, which are relatively scarce within the San Juan Islands. The BLM would allow mechanical, manual, biological control, chemical, and fire treatments to achieve objectives. Recreational opportunities would include hiking, hunting, designated site camping, dispersed camping with a permit, trail-based equestrian use, and road-based equestrian and bicycling use. Current hunting opportunities (firearm and non-firearm based) will continue; discharge of firearms and use of bows would be allowed during state-established hunting seasons, but otherwise prohibited within the Monument (see below for more information). Within maritime heritage areas, the BLM would restore historic structures and allow the rebuilding of previously existing structures and the building of new structures to support education and interpretation.

Under the No Action Alternative, the BLM would continue to manage the monument using a custodial approach with no RMP. There would continue to be no plan-level objectives, direction, or allocations, except for the limited decisions made in the 1990 decision record creating the Iceberg Point and Point Colville Areas of Critical Environmental Concern (ACEC) (described below). Custodial management of the monument would continue to focus on meeting legal and policy mandates and preventing unnecessary and undue degradation. The BLM would make decisions about taking management actions on a case-by-case basis after completing the appropriate level of NEPA analysis and ensuring that actions are consistent with Presidential Proclamation 8947 and FLPMA.

Alternative A would undertake a generally passive approach to vegetation management and would prohibit recreation while facilitating scientific, educational, cultural, and spiritual uses of the monument. Under both alternatives B and C, the BLM would pursue ambitious vegetation restoration objectives. Under Alternative B, which was the preferred alternative in the Draft RMP and EIS, recreational opportunities would include hiking, hunting, designated site and dispersed camping, and opportunities for pursuing solitude and quiet, which would be provided by expanding the existing trail network, requiring permits to access 167 acres of the monument, and providing dispersed camping by permit. Under Alternative C, recreational opportunities would include hiking, equestrian use, and designated site camping; portions of the monument would be closed to the discharge of firearms except for half of the firearm-based hunting season. Sub-Alternative C is identical to Alternative C, except the BLM would not allow the use of chemical treatments and would close the monument to the discharge of firearms. Under Alternative D, the BLM would maintain the current extent and condition of plant communities; recreational opportunities would include hunting and increased camping and hiking, biking, and equestrian use on an expanded trail network. The BLM is undertaking concurrent implementation-level travel and transportation planning.

There has been no recent history of uses such as grazing, logging, or mining within the monument. The proclamation designating the monument withdrew it from entry, location, selection, sale, leasing, or other disposition under public land and mining laws other than by exchange that furthers the protective purposes of the proclamation. Except for emergencies, federal law enforcement use, or authorized administrative purposes, the proclamation also restricts motorized vehicle use to designated roads and mechanized vehicle use (*e.g.,* bicycle use) to designated roads and trails.

The 1990 Iceberg Point and Point Colville ACEC Decision Record designated the lands administered by the BLM at Iceberg Point and Point Colville as ACECs. These ACECs were later extended to Watmough Bay and Chadwick Hill after the BLM acquired those areas; they now apply to approximately 500 acres of land included in the monument. The 1990 decision record and the 1988 draft planning analysis of the ACECs generally discuss protecting the areas' ''natural values'' but do not identify specific relevant and important values.

The BLM technical specialists on the planning team considered whether the monument encompasses values that meet the relevance and importance criteria described in the BLM Manual 1613. They determined that the whole of the monument contains historic and cultural, fish and wildlife, and scenic values that meet the relevance and importance criteria for an ACEC. The planning team also determined that the Proposed RMP and the action alternatives, which meet the purpose and need of protecting the objects for which the monument was designated, would protect these relevant and important values. Since the values do not require special management to protect them from the potential effects of actions permitted by the alternatives, the action alternatives do not include ACECs.

In the Proposed RMP, the BLM proposes that recreational target shooting (referred to as ''discharge of firearms'' in the RMP) shall not be allowed within the approximately 1,000

acres of scattered parcels that encompass the Monument. As proposed, target shooting would be prohibited within these areas—which vary from less than 0.1 acres to approximately 400 acres—and include developed campgrounds, small day use areas, small rocks and islands, structural cultural sites (including lighthouses), and sensitive archaeological sites. The proposed closure would help protect the cultural objects and values for which the Monument was designated, and provide for public safety at small, recreational sites. The proposed closure would ensure that irreplaceable archaeological resources and structural cultural sites would not inadvertently, or purposefully, be damaged by target shooting activities in the Monument. In addition, the proposed closure would enhance the safety of the public visiting sites in the Monument, which would improve their experience. In accordance with John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Dingell Act, Pub. L. 116–9, Section 4103), the BLM is announcing the opening of a 60-day public comment period on the proposed target shooting closure. During this time-period, the BLM is only accepting comments on the proposed target shooting closure. All comments must be received by January 21, 2020 and must be submitted using one of the methods listed in the **ADDRESSES** section, above.

All protests must be in writing and submitted as set forth in the **DATES** and **ADDRESSES** sections, above. The BLM Director will render a written decision on each protest. The decision will be mailed to the protesting party. The decision of the BLM Director shall be the final decision of the Department of the Interior on each protest. Responses to protest issues will be compiled and formalized in a Director's Protest Resolution Report made available following issuance of the decisions. Upon resolution of all protests, the BLM will issue a Record of Decision and Approved RMP.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

Theresa M. Hanley,

Acting State Director, Oregon/Washington.

[FR Doc. 2019–25177 Filed 11–21–19; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NER–NPS0028084; PPNEHATUC0, PPMRSCR1Y.CU0000 (200); OMB Control Number 1024–0232]

Agency Information Collection Activities; National Underground Railroad Network to Freedom Program

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 23, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0232 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR contact Diane Miller, National Program Manager, National Underground Railroad Network to Freedom Program, National Park Service, Harriet Tubman Underground Railroad Visitor Center, 4068 Golden Hill Road, Church Creek, Maryland 21622; or by email at *diane_miller@nps.gov.* Please reference OMB Control Number 1024–0232 in the subject line of your comments. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On May 28, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on July 29, 2019 (84 FR 24541). We did not receive any public comments on this notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Underground Railroad Network to Freedom Act of 1998 (54 U.S.C. 308301, *et seq.*) authorizes the NPS to collect information from applicants requesting to join the Network to Freedom Program (the Network). The NPS uses this information to evaluate potential participants and to coordinate the preservation and education efforts nationwide that integrate local historical places, museums, and interpretive programs associated with the Underground Railroad into a mosaic of community, regional, and national stories.

All entities that apply to join the Network must have a verifiable association with the historic Underground Railroad movement and complete NPS Form 10–946, ''National

Underground Railroad Network to Freedom Application,'' available on our website at *http://www.nps.gov/subjects/ugrr/index.htm.* Respondents must (1) verify associations and characteristics through descriptive texts that are the result of historical research and (2) submit supporting documentation; *e.g.,* copies of rare documents, photographs, and maps. The majority of the information is submitted in electronic format and used to determine eligibility to become part of the Network.

Network to Freedom Program Partners work with the NPS to help validate the efforts of local and regional organizations, making it easier for them to share their expertise and communicate with us and each other. Prospective partners must submit a letter with the following information:

- Name and address of the agency, company or organization;
- Name, address, and phone, fax, and email information of principal contact;
- Abstract not to exceed 200 words describing the partner's activity or mission statement; and
- Brief description of the entity's association to the Underground Railroad.

With this submission, we are requesting one change on page 2 of form 10–946. The change is to clarify the contact information to distinguish between the owner/manager and the person completing the application (if they are different).

Title of Collection: National Underground Railroad Network to Freedom Program.

OMB Control Number: 1024–0232.

Form Number: NPS Form 10–946, ''National Underground Railroad Network to Freedom Application.''

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals; businesses; nonprofit organizations; and Federal, State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours
Network Application (Form 10–946)	25	160	1,000
Partner Request	2	.5	1
Totals	27	.....	1,001

We are reporting 400 fewer burden hours, due to a decrease in responses. The burden hour per response remains the same. Due to staffing shortages and decreased activity in the program, the resulting annualized cost for administering the program are lower than the last reporting period. When vacant positions are filled, the number of responses and costs are expected to rise to previous levels.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting, Information Collection Clearance Officer, National Park Service.

[FR Doc. 2019–25381 Filed 11–21–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0106; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil Spill Financial Responsibility

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an information collection request with revisions.

DATES: Interested persons are invited to submit comments on or before December 23, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to 202–395–5806. Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference Office of Management and Budget (OMB) Control Number 1010–0106 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anna Atkinson by email, or by telephone at 703–787–1025. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of the information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this proposed information collection request was published on August 23, 2019 (84 FR 44328). No comments were received.

BOEM is again soliciting comments on the proposed ICR that is described below. BOEM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure

this information will be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. BOEM will include or summarize each comment in its request to the Office of Management and Budget (OMB) for approval of this ICR. You should be aware that your entire comment—including your address, phone number, email address, or other personal identifying information—may be made publicly available at any time. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in the submittal of your comments that, if released, would clearly constitute an unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of your information, such as embarrassment, injury, or other harm. While you can ask BOEM in your comment to withhold your personally identifiable information from public review, BOEM cannot guarantee that it will be able to do so.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Department of the Interior's implementing regulations (43 CFR part 2), and under regulations at 30 CFR parts 550 and 552 promulgated pursuant to the Outer Continental Shelf Lands Act (OCSLA) at 43 U.S.C. 1352(c).

Abstract: This information collection request concerns the paperwork requirements in the regulations in 30 CFR part 553, Oil Spill Financial Responsibility for Offshore Facilities, including any supplementary notices to lessees and operators that provide clarification, description, or explanation of these regulations; and forms BOEM–1016 through 1023, and BOEM–1025.

BOEM uses forms to collect information to ensure proper and efficient administration of Oil Spill Financial Responsibility. BOEM collects information to:

- Provide a standard method for establishing eligibility for oil spill financial responsibility for offshore facilities;
- Identify and maintain a record of those offshore facilities that have a potential oil spill liability;
- Establish and maintain a continuous record of financial evidence accepted to assure payment of claims for oil spill cleanup and damages resulting from operations conducted on covered offshore facilities and the transportation of oil from covered offshore facilities;
- Establish and maintain a continuous record of responsible parties, as defined in Title I of the Oil Pollution Act of 1990, and their agents or Authorized Representatives for oil spill financial responsibility for covered offshore facilities; and
- Establish and maintain a continuous record of persons to contact and U.S. Agents for Service of Process for claims associated with oil spills from covered offshore facilities.

Title of Collection: 30 CFR 553, Oil Spill Financial Responsibility for Offshore Facilities.

OMB Control Number: 1010–0106.

Form Number:

- BOEM–1016, Designated Applicant Information Collection;
- BOEM–1017, Appointment of Designated Applicant;
- BOEM–1018, Self-Insurance Information;
- BOEM–1019, Insurance Certificate,
- BOEM–1020, Surety Bond;
- BOEM–1021, Covered Offshore Facilities;
- BOEM–1022, Covered Offshore Facility Changes;
- BOEM–1023, Financial Guarantee; and
- BOEM–1025, Independent Designated Applicant Information Certification.

Type of Review: Renewal with revisions of a currently approved information collection.

Respondents/Affected Public: Holders of leases, permits, right-of-way grants, and right-of-use and easement grants in the OCS and in State coastal waters who are responsible parties and/or who will appoint designated applicants. Other respondents may be the designated applicants' insurance agents and brokers, bonding companies, and guarantors. Some respondents may also be claimants.

Total Estimated Number of Annual Responses: 1,823 responses.

Total Estimated Number of Annual Burden Hours: 22,133 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion or annual.

Total Estimated Annual Non-hour Burden Cost: None.

Estimated Reporting and Recordkeeping Hour Burden: The current annual burden hours for this collection are 22,132 hours. BOEM proposes to increase the annual burden hours to 22,133 hours to account for a requirement under 30 CFR 553.62 not previously counted. BOEM, under 30 CFR 553.62, requires the designated applicant to notify their guarantors and responsible parties within 15 calendar days of receiving a claim for removal costs and damages. BOEMs plans to add one annual burden hour under 30 CFR 553.62 to account for the burden. The burden was not previously counted in this OMB control number, because it was thought to overlap with the U.S. Coast Guard's requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2019–25409 Filed 11–21–19; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–044]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 6, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–631 and 731–TA–1463–1464 (Preliminary) (Forged Steel Fittings from India and Korea). The Commission is currently scheduled to complete and file its determinations on December 9, 2019; views of the Commission are currently scheduled to be completed and filed on December 16, 2019.
5. *Outstanding action jackets:* None.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 20, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–25500 Filed 11–20–19; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–550]

Importer of Controlled Substances Application: Janssen Pharmaceuticals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 23, 2019. Such persons may also file a written request for a hearing on the application on or before December 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 9, 2019, Janssen Pharmaceuticals, Inc., 1440 Olympic Drive, Athens, Georgia 30601–1645 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Thebaine	9333	II
Concentrate of Poppy Straw	9670	II
Tapentadol	9780	II

The company plans to import intermediate forms of tapentadol (9780) and thebaine (9333) for further manufacturing prior to distribution to its customers. The company plans to import concentrate of poppy straw (9670) to bulk manufacture other controlled substances. No other activity for these drug codes is authorized for this registration.

Dated: November 8, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25407 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–551]

Importer of Controlled Substances Application: Epic Pharma, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 23, 2019. Such persons may also file a written request for a hearing on the application on or before December 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on September 13, 2019, Epic Pharma, LLC, 227–15 North Conduit Avenue, Laurelton, New York 11413, applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Methadone	9250	II

The company plans to import the listed controlled substance for research and analytical purposes.

Dated: November 8, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25406 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–528]

Importer of Controlled Substances Application: Fresenius Kabi USA, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 23, 2019. Such persons may also file a written request for a hearing on the application on or before December 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 7, 2019 Fresenius Kabi USA, LLC, 3159 Staley Road, Grand Island, New York 14072–

2028 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import the listed controlled substance for bulk manufacture.

Dated: October 23, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25403 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–538]

Importer of Controlled Substances Application: GE Healthcare

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 23, 2019. Such persons may also file a written request for a hearing on the application on or before December 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 15, 2019, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Cocaine	9041	II

The company plans to import small quantities of Ioflupane, in the form of three separate analogues of cocaine, to validate production and quality control systems, for a reference standard, and for producing material for a future investigational new drug (IND) submission. Supplies of this particular controlled substance are not available in the form needed within the current domestic supply of the United States.

Dated: November 7, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25404 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–529]

Bulk Manufacturer of Controlled Substances Application: Patheon API Manufacturing, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 21, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 15, 2019, Patheon API Manufacturing, Inc., 309 Delaware Street, Greenville, South Carolina 29605 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Thebaine	9333	II
Noroxymorphone	9668	II
Gamma Hydroxybutyric Acid	2010	I
Alpha-methyltryptamine	7432	I

The company plans to bulk manufacture the listed controlled substances as an Active Pharmaceutical Ingredient for supply to its customers.

Dated: November 5, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25401 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–545]

Bulk Manufacturer of Controlled Substances Application: S&B Pharma, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed on or before January 21, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this

is notice that on October 4, 2019, S & B Pharma, Inc., DBA Norac Pharma, 405 South Motor Avenue, Azusa, California 91702–3232 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	7360	I
Telrahydrocannabinois	7370	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Pentobarbital	2270	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to manufacture the listed controlled substances in bulk for use in product development and for commercial sales to its customers. In reference to drug code 7360 (marihuana) and 7370 (tetrahydrocannabinois), the company plans to bulk manufacture both as synthetic substances. No other activity for these dug codes is authorized for this registration.

Dated: November 5, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25402 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–549]

Importer of Controlled Substances Application: Mylan Technologies Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 23, 2019. Such persons may also file a written request for a hearing on the application on or before December 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 16, 2019, Mylan Technologies Inc., 110 Lake Street, Saint Albans, Vermont 054780 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Fentanyl	9801	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically manufactured FDF to foreign markets.

Dated: November 8, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25405 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–540]

Bulk Manufacturer of Controlled Substances Application: Chattem Chemicals

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 21, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 17, 2019, Chattem Chemicals, 3801 Saint Elmo Avenue, Chattanooga, Tennessee 37409 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

Controlled substance	Drug code	Schedule
4-Methoxyamphetamine	7411	I
Dihydromorphine	9145	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to manufacturer the listed controlled substances in bulk for distribution and sale to its customers.

In reference to drug codes 7360 (marihuana) and 7370 (tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: November 5, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–25400 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0053]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection: Leadership Engagement Survey

AGENCY: Department of Justice, Drug Enforcement Administration.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until December 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chiwoniso S. Gurira (Choni), Senior Personnel Psychologist, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152. Written comments and/or suggestions may also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or send to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. 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:* Extension of a previously approved collection for which approval has expired.

2. *The Title of the Form/Collection:* Leadership Engagement Survey.

3. *The agency form number, if any and the applicable component of the Department sponsoring the collection:* Online survey.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Drug Enforcement Administration contractors and Task Force Officers.

Other: None.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5000 respondents will complete the survey in approximately 20 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1667 hours. It is estimated that applicants

will take 20 minutes to complete the online survey. The burden hours for collecting respondent data sum to 1,667 hours (5000 respondents × 20 minutes = 100,000 hours. 100,000/60 seconds = 1,667).

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: November 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–25310 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision; Correction

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice; correction.

SUMMARY: The Department of Justice, Drug Enforcement Administration, submitted a 60-day notice for publishing in the **Federal Register** on October 29, 2019 soliciting comments to an 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 document contained incorrect information listed in the ''OMB Number'' section, showing 1117–0051.

FOR FURTHER INFORMATION CONTACT: Chiwoniso S. Gurira, Senior Personnel Psychologist, Research and Analysis Staff, Drug Enforcement Administration, 8701 Morrissette Dr., Springfield, VA 22152.

SUPPLEMENTARY INFORMATION:

Correction: In the **Federal Register** of October 29, 2019 in FR Doc. 2019–23576, on page 57885, the ''OMB Number'' is reflected to show 1117–0053.

Dated: November 18, 2019.

Melody Braswell,

Department Clearance Officer.

[FR Doc. 2019–25311 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0100]

Agency Information Collection Activities; Proposed Collection Comments Requested; Extension Without Change, of a Previously Approved Collection Claims of U.S. Nationals Referred to the Commission by the Department of State Pursuant to Section 4(A)(1)(C) of the International Claims Settlement Act of 1949

AGENCY: Foreign Claims Settlement Commission, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Foreign Claims Settlement Commission (Commission), Department of Justice (DOJ), 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.

DATES: Comments are encouraged and will be accepted for 30 days until December 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeremy LaFrancois, Foreign Claims Settlement Commission, (202) 616–6975, 441 G St. NW, Room 6232, Washington, DC 20579.

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:* Extension of a currently approved collection.

2. *The title of the form/collection:* Statement of Claim for filing of Claims Referred to the Commission under Section 4(a)(1)(C) of the International Claims Settlement Act of 1949.

3. *The agency form number:* FCSC–1. Foreign Claims Settlement Commission, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Other: Corporations.

Abstract: Information will be used as a basis for the Commission to receive, examine, adjudicate and render final decisions with respect to claims for compensation of U.S. nationals, referred to the Commission by the Department of State pursuant to section 4(a)(1)(C) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1623(A)(1)(C).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 individual respondents will complete the application, and that the amount of time estimated for an average respondent to reply is approximately two hours each.

6. *An estimate of the total public burden (in hours) associated with the collection:* 1,000 annual burden hours.

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: November 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–25313 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1769]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention announces its next meeting.

DATES: Tuesday December 10th, 2019 at 1 p.m. EST.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Coordinating Council at *www.juvenilecouncil.gov* or or contact Elizabeth Wolfe, Designated Federal Official (DFO), OJJDP, by telephone at (202) 598–9310, email at *elizabeth.wolfe@ojp.usdoj.gov;* or Maegen Barnes, Senior Program Manager/Federal Contractor, by telephone (732) 948–8862, email at *maegen.barnes@bixal.com,* or fax at (866) 854–6619. Please note that the above phone/fax numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention (''Council''), established by statute in the Juvenile and Delinquency Prevention Act of 1974 section 206 (a) (42 U.S.C. 5616(a)), will meet to carry out its advisory functions. Information regarding this meeting will be available on the Council's web page at *www.juvenilecouncil.gov.* The meeting is open to the public, and available via online video conference, but prior registration is required (see below). In addition, meeting documents will be viewable via this website including meeting announcements, agendas, minutes and reports.

Although designated agency representatives may attend in lieu of members, the Council's formal membership consists of the following secretaries and/or agency officials; Attorney General (Chair), Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), Secretary of Health and Human Services (HHS), Secretary of Labor (DOL), Secretary of Education (DOE), Secretary of Housing and Urban Development (HUD), Director of the Office of National Drug Control Policy, Chief Executive Officer of the Corporation for National and Community Service and the Assistant Secretary of Homeland Security for the U.S. Immigration and Customs Enforcement. Nine additional members are appointed by the Speaker of the U.S. House of Representatives, the U.S. Senate Majority Leader and the President of the United States. Further agencies that take part in Council activities include, the Departments of Agriculture, Defense, Interior and the Substance and Mental Health Services Administration of HHS.

Council meeting agendas are available on *www.juvenilecouncil.gov.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion of agency work; and (c) Council member announcements.

For security purposes and because space is limited, members of the public who wish to attend must register in advance of the meeting online at the meeting registration site, no later than Friday December 6th, 2019. Should issues arise with online registration, or to register by fax or email, the public should contact Maegen Barnes, Senior Program Manager/Federal Contractor (see above for contact information). If submitting registrations via fax or email, attendees should include all of the following: Name, Title, Organization/Affiliation, Full Address, Phone Number, Fax and Email. The meeting will also be available to join online via Webex, a video conferencing platform. Registration for this is also found online at *www.juvenilecouncil.gov.*

Note: Photo identification will be required to attend the meeting at the OJP 810 7th Street Building.

Interested parties may submit written comments and questions in advance to Elizabeth Wolfe (DFO) for the Council, at the contact information above. If faxing, please follow up with Maegen Barnes, Senior Program Manager/Federal Contractor (contact information above) in order to assure receipt of submissions. All comments and questions should be submitted no later than 5 p.m. EST on Friday December 6th, 2019.

The Council will limit public statements if they are found to be duplicative. Written questions submitted by the public while in attendance will also be considered by the Council.

Elizabeth Wolfe,

Training and Outreach Coordinator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2019–25371 Filed 11–21–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Certification by School Official (CM–981). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 21, 2020.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Ms. Anjanette C. Suggs, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; by fax (202) 354–9660; or by Email to *suggs.anjanette@dol.gov.* Please use only one method of transmission for comments (mail/delivery, fax, or Email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION:

I. Background: The Certification by School Official information collection mandates that in order to qualify as an

eligible dependent for black lung benefits, a child aged 18- to 23-years must be a full-time student as described in the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, and regulations 20 CFR 725.209. A school official completes a Certification by School Official (Form CM–981) to verify whether a Black Lung beneficiary's dependent between the ages of 18 to 23 years qualifies as a full-time student. Black Lung Benefits Act section 426 authorizes this information collection. See 30 U.S.C. 936.

This information collection is being classified as an extension of an existing collection. 30 U.S.C. 902(g); 20 CFR 725.209, 725.218 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. By signing the CM–981 form, the claimant authorizes physicians, hospitals, medical facilities or organizations, and the National Institute for Occupational Safety and Health to release medical information about the miner to the Department of Labor's Office of Workers' Compensation Programs. The form contains information required by medical institutions and private physicians to enable them to release pertinent medical information. This information collection is currently approved for use through September 30, 2019.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* 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.

III. Current Actions: The Department of Labor seeks approval for the extension of this currently-approved information collection in order to obtain claimant consent for the release of medical information for consideration by the Office of Workers' Compensation Programs in their claim for benefits. Failure to gather this information would inhibit the adjudication of black lung claims because pertinent medical data would not be available for consideration during the processing of the claim.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Certification by School Official.

OMB Number: 1240–0031.

Agency Number: CM–981.

Affected Public: State, Local and Tribal Governments.

Total Respondents: 100.

Total Annual Responses: 100.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 17 hours.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Anjanette C. Suggs,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2019–25362 Filed 11–21–19; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of a Matter To Be Removed From the Agenda for Consideration at an Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: November 18, 2019 (84 FR 63680).

TIME AND DATE: 11:30 a.m., Thursday, November 21, 2019.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed

Pursuant to the provisions of the ''Government in Sunshine Act'' notice is hereby given that the NCUA Board gave notice on November 18, 2019 (84 FR 63680) of the closed meeting of the NCUA Board scheduled for November 21, 2019. Prior to the meeting, on November 19, 2019, the NCUA Board unanimously determined that agency business required removal of an item on the agenda with less than seven days' notice to the public, and that no earlier notice of the addition was possible.

MATTER TO BE REMOVED:

1. Personnel Action. Closed pursuant to Exemptions (2), and (6).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2019–25589 Filed 11–20–19; 4:15 pm]

BILLING CODE 7535–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Cancellation Notice—OPIC December 4, 2019 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with its Board meeting was published in the **Federal Register** (Volume 84, Number 215, Page 59849) on Wednesday, November 6, 2019. The related Board meeting has been cancelled, therefore, OPIC's Public Hearing scheduled for 1 p.m., December 4, 2019, has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Catherine F.I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov.*

Dated: November 19, 2019.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2019–25451 Filed 11–20–19; 11:15 am]

BILLING CODE 3210–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from July 1, 2019 to July 31, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not

codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during July 2019.

Schedule B

No Schedule B Authorities to report during July 2019.

Schedule C

The following Schedule C appointing authorities were approved during July 2019.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Rural Housing Service	State Director—North Carolina	DA190160	07/02/2019
		Confidential Assistant	DA190171	07/23/2019
		State Director—Wyoming	DA190168	07/09/2019
	Office of Agricultural Marketing Service.	Chief of Staff	DA190173	07/22/2019
	Office of the Secretary	Confidential Assistant	DA190180	07/29/2019
	Office of Under Secretary for Natural Resources and Environment.	Staff Assistant	DA190167	07/12/2019
DEPARTMENT OF COMMERCE	Office of Advance, Scheduling and Protocol.	Advance Representative	DC190119	07/11/2019
	Office of Public Affairs	Press Assistant	DC190122	07/24/2019
	Office of the Assistant Secretary for Economic Development.	Special Advisor	DC190127	07/23/2019
	Office of the Deputy Secretary	Senior Advisor	DC190128	07/24/2019
	Office of the General Counsel	Counsel	DC190129	07/24/2019
		Senior Counsel	DC190130	07/24/2019
	Office of the Under Secretary	Special Advisor	DC190136	07/25/2019
	Office of the Under Secretary for Economic Affairs.	Confidential Assistant	DC190121	07/18/2019
COMMODITY FUTURES TRADING COMMISSION.	Office of Division of Clearing and Risk.	Director	CT190005	07/15/2019
	Office of External Affairs	Director	CT190008	07/15/2019
	Office of the Chairperson	Executive Assistant	CT190004	07/15/2019
		Senior Advisor	CT190006	07/15/2019
		Director of Legislative and Intergovernmental Affairs.	CT190009	07/29/2019
DEPARTMENT OF DEFENSE	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant	DD190158	07/09/2019
	Office of the Under Secretary of Defense (Policy).	Special Assistant	DD190166	07/29/2019
DEPARTMENT OF THE ARMY	Office Assistant Secretary Army (Manpower and Reserve Affairs).	Special Assistant (Manpower and Reserve Affairs).	DW190046	07/08/2019
DEPARTMENT OF EDUCATION	Office of Postsecondary Education	Confidential Assistant (2)	DB190108	07/02/2019
			DB190109	07/03/2019
	Office of the Under Secretary	Confidential Assistant	DB190111	07/03/2019
	Office of Communications and Outreach.	Special Assistant	DB190104	07/12/2019
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for International Affairs.	Senior Advisor	DE190146	07/11/2019
		Special Advisor (2)	DE190147	07/11/2019
			DE190148	07/11/2019
	Office of Public Affairs	Press Assistant	DE190150	07/23/2019
	Office of Science	Senior Advisor	DE190155	07/30/2019
	Office of the Deputy Secretary	Special Advisor	DE190139	07/11/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for International and Tribal Affairs.	Senior Advisor for Policy and Management.	EP190106	07/12/2019
	Office of the Administrator	Senior Deputy White House Liaison.	EP190110	07/29/2019
	Office of Public Affairs	Senior Advisor for Strategic and Regional Communications.	EP190111	07/29/2019
	Office of the Assistant Administrator for Research and Development.	Special Advisor	EP190107	07/30/2019
EXPORT-IMPORT BANK	Office of the Chief of Staff	Senior Advisor, National Security	EB190012	07/16/2019
	Office of Congressional and Intergovernmental Affairs (2).	Special Advisor	EB190013	07/17/2019
		Senior Advisor	EB190004	07/19/2019
		Senior Vice President, Congressional and Intergovernmental Affairs.	EB190014	07/31/2019
GENERAL SERVICES ADMINISTRATION.	Office of Public Buildings Service	Executive Assistant	GS190035	07/29/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Centers for Medicare and Medicaid Services.	Director of Strategic Communications.	DH190171	07/11/2019
	Office of the Assistant Secretary for Public Affairs.	Content Strategy and Marketing Associate.	DH190168	07/02/2019
		Deputy Press Secretary	DH190226	07/29/2019
	Office of the General Counsel	Law Clerk	DH190201	07/17/2019
		Associate Deputy General Counsel	DH190229	07/29/2019
	Office of the Secretary	Special Assistant (2)	DH190170	07/11/2019
			DH190225	07/29/2019
DEPARTMENT OF HOMELAND SECURITY.	Office of the United States Citizenship and Immigration Services.	Special Assistant	DM190235	07/03/2019
	Office of Cybersecurity and Infrastructure Security Agency.	Legislative Advisor	DM190246	07/11/2019
	Office of Transportation Security Administration.	Senior Counselor	DM190255	07/16/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Senior Advisor	DU190091	07/09/2019
	Office of Field Policy and Management.	Special Assistant	DU190103	07/29/2019
	Office of the Administration	Advance Coordinator	DU190090	07/09/2019
		Special Assistant	DU190100	07/31/2019
	Office of the Chief Financial Officer	Program Analyst	DU190099	07/24/2019
	Office of the Chief Information Officer.	Management Analyst	DU190101	07/24/2019
DEPARTMENT OF THE INTERIOR	Office of Congressional and Legislative Affairs.	Advisor	DI190080	07/12/2019
	Secretary's Immediate Office	Special Assistant (2)	DI190081	07/12/2019
			DI190082	07/23/2019
	Bureau of Reclamation	Advisor	DI190076	07/29/2019
DEPARTMENT OF JUSTICE	Executive Office for United States Attorneys.	Secretary	DJ190164	07/24/2019
	Office of Public Affairs	Attorney General, Advance and National Coordinator for the United States of America, Public Information Office.	DJ190184	07/29/2019
	Office of Justice Programs	Counsel	DJ190157	07/30/2019
DEPARTMENT OF LABOR	Office of Employment and Training Administration.	Senior Policy Advisor	DL190124	07/03/2019
	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer (3)	DL190103	07/01/2019
			DL190106	07/02/2019
			DL190107	07/02/2019
	Office of Public Affairs	Senior Advisor for Digital Strategy and Creative Services.	DL190109	07/02/2019
		Communications Advisor	DL190115	07/02/2019
		Deputy Press Secretary	DL190108	07/09/2019
	Office of the Assistant Secretary for Policy.	Senior Policy Advisor	DL190125	07/03/2019
		Senior Policy Advisor for Workforce Health Initiatives.	DL190131	07/17/2019
	Office of the Secretary	Advance Representative	DL190105	07/02/2019
		Deputy Chief of Staff	DL190137	07/24/2019
	Office of Veterans Employment and Training Service.	Chief of Staff and Policy Advisor	DL190111	07/09/2019
	Office of Wage and Hour Division	Senior Policy Advisor (2)	DL190123	07/03/2019
			DL190126	07/17/2019
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Director Congressional and Public Affairs Officer.	NL190011	07/01/2019
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Office of Commissioners	Confidential Assistant	SH190001	07/02/2019
OFFICE OF MANAGEMENT AND BUDGET.	Office of Education, Income Maintenance and Labor Programs.	Confidential Assistant	BO190035	07/03/2019
	Office of the Director	Confidential Assistant	BO190040	07/25/2019
OFFICE OF PERSONNEL MANAGEMENT.	Office of Communications	Confidential Assistant	PM190047	07/08/2019
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Attorney Advisor	SE190009	07/22/2019
SMALL BUSINESS ADMINISTRATION.	Office of Administration	Special Assistant	SB190028	07/22/2019
DEPARTMENT OF STATE	Bureau of Democracy, Human Rights and Labor.	Special Assistant	DS190112	07/03/2019
	Bureau of International Organizational Affairs.	Special Assistant	DS190120	07/16/2019
	Office of the Chief of Protocol	Senior Protocol Officer	DS190113	07/03/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Protocol Officer (Visits)	DS190119	07/23/2019
	Office of the Deputy Secretary	Special Advisor	DS190125	07/30/2019
	Office of the Secretary	Special Advisor	DS190042	07/08/2019
		Special Assistant	DS190127	07/31/2019
	Office of the Under Secretary for Management.	Senior Advisor	DS190123	07/24/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Research and Technology.	Special Assistant	DT190096	07/17/2019
	Immediate Office of the Administrator.	Special Assistant for Strategic Communications.	DT190112	07/31/2019
DEPARTMENT OF THE TREASURY.	Secretary of the Treasury	Associate Director of Scheduling and Advance.	DY190086	07/11/2019
	Office of the Assistant Secretary (Public Affairs).	Director of Public Affairs (Digital Strategies).	DY190090	07/29/2019
	Office of the Assistant Secretary (Legislative Affairs).	Special Assistant	DY190091	07/29/2019
DEPARTMENT OF VETERANS AFFAIRS.	Office of Public Affairs	Press Secretary	DV190078	07/23/2019

The following Schedule C appointing authorities were revoked during July 2019.

Agency name	Organization name	Position title	Request No.	Date vacated
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson	Director of Legislative and Intergovernmental Affairs.	CT170004	07/15/2019
		Executive Assistant	CT170002	07/15/2019
	Office of External Affairs	Director of External Affairs	CT180002	07/15/2019
DEPARTMENT OF AGRICULTURE	Office of the Under Secretary for Farm Production and Conservation.	Staff Assistant	DA180181	07/06/2019
	Office of Rural Business Service	Confidential Assistant	DA180251	07/06/2019
	Office of Rural Housing Service	State Director—Wyoming	DA180016	07/06/2019
	Office of Rural Utilities Service	Policy Coordinator	DA190001	07/07/2019
	Office of the Assistant Secretary for Administration.	Senior Advisor	DA190087	07/23/2019
DEPARTMENT OF COMMERCE	Office of Public Affairs	Director of Speechwriting	DC180160	07/06/2019
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Chief Management Officer.	Special Assistant	DD180139	07/20/2019
	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant to the Director Force Resiliency.	DD180083	07/20/2019
DEPARTMENT OF EDUCATION	Office for Civil Rights	Deputy Assistant Secretary for Policy and Development.	DB180021	07/06/2019
	Office of Elementary and Secondary Education.	Confidential Assistant for Policy	DB190015	07/06/2019
	Office of the Secretary	Special Assistant	DB170111	07/06/2019
	Office of the Under Secretary	Confidential Assistant	DB190017	07/26/2019
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Electricity Delivery and Energy Reliability.	Special Assistant	DE180137	07/06/2019
	Office of the Assistant Secretary for Environmental Management.	Chief of Staff	DE190074	07/06/2019
	Office of the Assistant Secretary for Fossil Energy.	Senior Advisor	DE190141	07/19/2019
	Office of Public Affairs	Special Assistant to the Digital Director.	DE180077	07/06/2019
		Writer-Editor (Chief Speechwriter)	DE170203	07/06/2019
	Office of Science	Special Assistant	DE190046	07/06/2019
	Office of the Chief Financial Officer	Special Assistant	DE180067	07/07/2019
	Office of the Chief Information Officer.	Special Advisor	DE180128	07/06/2019
	Office of the Deputy Secretary	Special Advisor to the Deputy Secretary.	DE190052	07/20/2019
	Office of the Secretary	Special Assistant	DE180071	07/06/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Centers for Medicare and Medicaid Services.	Advisor to the Principal Deputy Administrator for Medicare.	DH180178	07/01/2019
		Deputy Director of Communications.	DH190021	07/20/2019

Agency name	Organization name	Position title	Request No.	Date vacated
	Office of the Assistant Secretary for Public Affairs.	Communications Assistant	DH180235	07/06/2019
	Office of the Secretary	Senior Advisor	DH180228	07/06/2019
		Advisor to the Chief Technology Officer.	DH190026	07/20/2019
DEPARTMENT OF HOMELAND SECURITY.	Office of the United States Customs and Border Protection.	Special Assistant	DM180102	07/06/2019
	Office of the Assistant Secretary for Public Affairs.	Director of Strategic Outreach and Engagement.	DM190051	07/21/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Administration	Director of Executive Scheduling and Operations.	DU180098	07/20/2019
DEPARTMENT OF JUSTICE	Office of Public Affairs	Media Affairs Coordinator	DJ180135	07/01/2019
	Office of Justice Programs	Senior Advisor	DJ180042	07/28/2019
	Office of Civil Rights Division	Senior Counsel	DJ190204	07/30/2019
DEPARTMENT OF LABOR	Office of Employment and Training Administration.	Counsel	DL180097	07/06/2019
DEPARTMENT OF STATE	Bureau of African Affairs	Special Assistant	DS190003	07/06/2019
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Legislative Affairs).	Special Assistant to the Assistant Secretary for Legislative Affairs.	DY180105	07/17/2019
	Secretary of the Treasury	Assistant Director of Scheduling and Advance.	DY180117	07/27/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Special Assistant to the Senior Advisor.	EP170076	07/06/2019
	Office of the Assistant Administrator for International and Tribal Affairs.	Senior Advisor for the Office of International and Tribal Affairs.	EP180091	07/20/2019
FEDERAL ENERGY REGULATORY COMMISSION.	Office of the Chairman	Confidential Assistant (2)	DR150015	07/12/2019
			DR160002	07/12/2019
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Social Media Specialist	NN180033	07/19/2019
NATIONAL CREDIT UNION ADMINISTRATION.	Office of the Board	Senior Policy Advisor	CU140001	07/19/2019
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Deputy Associate Administrator	SB180033	07/18/2019
	Office of Administration	Special Assistant	SB180026	07/23/2019

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–25357 Filed 11–21–19; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–29 and CP2020–27; MC2020–30 and CP2020–28; MC2020–31 and CP2020–29]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 26, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable

[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).

statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–29 and CP2020–27; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 128 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 18, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 26, 2019.

2. *Docket No(s).:* MC2020–30 and CP2020–28; *Filing Title:* USPS Request to Add Parcel Select Contract 35 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 18, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 26, 2019.

3. *Docket No(s).:* MC2020–31 and CP2020–29; *Filing Title:* USPS Request to Add Priority Mail Contract 562 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 18, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 26, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–25382 Filed 11–21–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2020–27; Order No. 5312]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent Postal Service filing concerning product description changes to the Mail Classification Schedule related to International Mail. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 3, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On November 15, 2019, the Postal Service filed a notice of changes to product descriptions pursuant to Commission rule 39 CFR 3020.90.[1] The Postal Service seeks to make changes to the country price list for international mail that appears in Part D of the Mail Classification Schedule (MCS). Notice at 1. The changes are intended to take effect on January 26, 2020. *Id.*

II. Summary of Changes

The Postal Service states that the purpose of the minor modifications to the country price list is ''to conform to official sources and improve the accuracy of the product descriptions in the MCS.'' *Id.* The Postal Service maintains that the proposed changes satisfy the requirements of 39 CFR 3020.90 because the changes should result in a more accurate representation of the Postal Service's offerings by allowing mailers to more precisely locate pertinent information, the Notice is filed no later than 15 days prior to the intended effective date, and the changes merely revise the MCS without otherwise changing product offerings or the prices or price groups. *Id.* at 1–2. The Postal Service also asserts that the proposed changes do not significantly change the user experience for any product and that there is no evidence that the changes will significantly impact competitors. *Id.* at 2. The proposed change adds an individual country listing for the Republic of South Sudan to reflect its independence from Sudan and revises the MCS to reflect products that are offered to the Republic of South Sudan, without changing the products or prices or price groups applicable to such products. *Id.*

[1] Notice of United States Postal Service of Minor Classification Changes, November 15, 2019 (Notice).

III. Notice of Commission Action

Pursuant to 39 CFR 3020.91, the Commission has posted the Notice on its website and invites comments on whether the Postal Service's filings are consistent with 39 CFR part 3020, subpart E. Comments are due no later than December 3, 2019. The filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Stephanie A. Quick to represent the interests of the general public (Public Representative) in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2020–27 to consider matters raised by the Notice.

2. Comments by interested persons are due by December 3, 2019.

3. Pursuant to 39 U.S.C. 505, Stephanie A. Quick is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–25314 Filed 11–21–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–28 and CP2020–26]

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:* November 25, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–28 and CP2020–26; *Filing Title:* USPS Request to Add Priority Mail Contract 561 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 15, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 25, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–25294 Filed 11–21–19; 8:45 am]

BILLING CODE 7710–FW–P

[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).

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 18, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 35 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–30, CP2020–28.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–25383 Filed 11–21–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 18, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 562 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–31, CP2020–29.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–25323 Filed 11–21–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 18, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 128 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–29, CP2020–27.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–25321 Filed 11–21–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87559; File No. SR–NASDAQ–2019–090]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of a Proposed Rule Change To Adopt Nasdaq Rule 5704 and Other Related Amendments

November 18, 2019.

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 November 8, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit 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 adopt new Nasdaq Rule 5704 to list and trade shares of securities issued by an exchange-traded fund as defined herein, as well as amendments to Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), and to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b).

The Exchange requests that the Commission approve the proposed rule change on an accelerated basis so that it may become operative as soon as practicable, particularly given that Rule 6c–11 under the Investment Company Act of 1940, as amended, becomes effective on December 23, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes Nasdaq Rule 5704 to establish generic listing standards that permit the listing and trading of shares (''Exchange Traded Fund Shares'') of exchange-traded funds (''ETFs'' as defined below) that meet the criteria established by the Commissions in its adoption of Rule 6c–11[3] (''Rule 6c–11'') under the Investment Company Act of 1940, as amended (''1940 Act''), to operate without obtaining an exemptive order from the SEC under the 1940 Act.[4] This will help to accomplish the SEC's goal in adopting Rule 6c–11 to allow such ETFs to come directly to market without the cost and delay of obtaining exemptive relief while still protecting the interests of investors and other market participants. Rule 6c–11 will provide exemptions applicable to both index-based and transparent actively managed ETFs. Rule 6c–11 will enhance the regulatory framework through streamlining existing procedures and reducing the costs and time frames associated with bringing ETFs to market. This, in turn, will also serve to enhance competition among ETF issuers and ultimately reduce investor costs.[5]

Nasdaq believes that the proposed generic listing rules for Exchange Traded Fund Shares, described below, will facilitate efficient procedures for ETFs that are permitted to operate in reliance on Rule 6c–11. The Exchange also believes that proposed Nasdaq Rule 5704 is consistent with, and will further, the Commission's goals in adopting Rule 6c–11. Exchange Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 will be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act. This will significantly reduce the time frame and costs associated with bringing Exchange Traded Fund Shares to market, which, in turn, will promote competition among issuers of Exchange Traded Fund Shares, to the benefit of investors.

The Exchange also proposes to amend Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), and to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b).

Proposed Nasdaq Rule 5704 will enable ETFs, whether index-based or actively managed, to qualify for listing and trading on the Exchange both on an initial and continued basis by meeting and maintaining compliance with the criteria set forth in Rule 6c–11.[6] The specific provisions of proposed Nasdaq Rule 5704 are presented below, as well as amendments to Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), which would be necessitated by adoption of the proposed rule. Additionally, the proposed rule change to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b) is also discussed below.

Proposed Nasdaq Rule 5704

Proposed Definitions. Proposed Nasdaq Rule 5704(a)(1)(A), which defines the term ''Derivative Securities Product'' to mean a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Act. Proposed Nasdaq Rule 5704(a)(1)(B) defines the term ''Exchange Traded Fund'' (''ETF'') as having the same meaning as the term ''exchange-traded fund'' is defined in

[3] Specifically, Rule 6c–11 applies to open-end funds that (i) issue and redeem creation units to and from authorized participants in exchange for a basket of securities and other assets (and any cash balancing amount), and (ii) whose shares are listed on a national securities exchange and trade at market-determined prices. Rule 6c–11 does not apply to leveraged, inverse, non-transparent, share classes, or exchange-traded funds structured as unit investment trusts.

[4] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (''Adopting Release'').

[5] The SEC said in the Adopting Release that Rule 6c–11 ''will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' *See* Adopting Release at 57163. The SEC also said that in reference to the impact of Rule 6c–11 that: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' *See* Adopting Release at 57204.

[6] Rule 6c–11 becomes effective on December 23, 2019. Subject to approval of this proposed rule change, Exchange Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 will be eligible for listing and trading on Nasdaq under proposed Nasdaq Rule 5704 after that date.

Rule 6c–11.[7] In the case of an Exchange Traded Fund that is not currently listed on a national securities exchange, the portion of the definition found in Rule 6c–11 requiring such listing will become applicable if the Exchange Traded Fund is listed on a national securities exchange.

Proposed Nasdaq Rule 5704(a)(1)(C) defines the term ''Exchange Traded Fund Share'' as having the same meaning as the term is defined as having in Rule 6c–11.[8]

Proposed Nasdaq Rule 5704(a)(1)(D) defines the term ''Reporting Authority'' in respect of a particular series of Exchange Traded Fund Share means Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange Traded Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Exchange Traded Fund Shares. The definition also notes that it does not imply that an institution or reporting service that is the source for calculating and reporting information relating to Exchange Traded Fund Shares must be designated by Nasdaq; the term ''Reporting Authority'' does not refer to an institution or reporting service not so designated.

Initial and Continued Listing. Proposed Nasdaq Rule 5704(b) states that Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b–4(e) under the Act, provided it is eligible to operate in reliance on Rule 6c–11 and is in compliance with the requirements of Rule 6c–11(c) on an initial and continued listing basis.[9] The requirements of Nasdaq Rule 5704 must also be satisfied on an initial and continued listing basis.

Proposed Nasdaq Rule 5704(b)(1) says that for a Derivative Securities Product listed under this rule, it does not need to separately meet either the initial or continued listing requirements of any other Exchange rules. For example, an ETF that satisfies the requirements of Rule 6c–11 and therefore is listed pursuant to proposed Nasdaq Rule 5704 and is also, for example, an Index Fund Share, would not need to separately meet the initial or continued listing requirements of Nasdaq Rule 5705(b).

Proposed Nasdaq Rule 5704(b)(2), [sic] except for paragraph (A) below which only applies on an initial listing basis, such securities must also satisfy the follow criteria on an initial and continued listing basis:

Proposed Nasdaq Rule 5704(b)(2)(A) states that for each series of Exchange Traded Fund Shares, Nasdaq will establish a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

Proposed Nasdaq Rule 5704(b)(2)(B) sets for the requirements regarding index calculation and dissemination that must be satisfied on both an initial and continued listing basis. Proposed Nasdaq Rule 5704(b)(2)(i) [sic] states that if the underlying index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor will erect and maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund advisor. Proposed Nasdaq Rule 5704(b)(2)(ii) [sic] states that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

Proposed Nasdaq Rule 5704(b)(2)(C) states that regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Exchange Traded Fund Shares, as specified by Nasdaq. In addition, Nasdaq may designate a series of Exchange Traded Fund Shares for trading during a pre-market session beginning at 4:00 a.m. and/or a post-market session ending at 8:00 p.m.

Proposed Nasdaq Rule 5704(b)(2)(D) states that Nasdaq may list and trade a series of Exchange Traded Fund Shares based on one or more foreign or domestic indexes or portfolios. Each series of Exchange Traded Fund Shares based on each particular index or portfolio, or combination thereof, will be designated as a separate series and will be identified by a unique symbol. The components that are included in an index or portfolio on which a series of Exchange Traded Fund Shares is based will be selected by such person, which may be Nasdaq or an agent or wholly-owned subsidiary thereof, as will have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

Proposed Nasdaq Rule 5704(b)(2)(E) states that Nasdaq will obtain a representation from the ETF that the net asset value per share for each series of Exchange Traded Fund Shares will be calculated daily and will be made available to all market participants at the same time.

Proposed Nasdaq Rule 5704(b)(3) sets forth the circumstances under which Nasdaq will consider the suspension of trading and removal in, and will initiate delisting proceedings under the Rule

[7] Rule 6c–11(a)(1) defines ''exchange-traded fund'' as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms ''authorized participant,'' ''basket'' and ''creation unit'' are defined in Rule 6c–11(a).

[8] Rule 6c–11(a)(1) defines ''exchange-traded fund share'' as a share of stock issued by an exchange-traded fund.

[9] Rule 6c–11(c) sets forth certain conditions applicable to exchange-traded funds, and specifies the information required to be disclosed prominently on the fund's website free of charge, including the following: (i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the estimated cash balancing amount (if any) and the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share: (A) Ticker symbol; (B) CUSIP or other identifier; (C) Description of holding; (D) Quantity of each security or other asset held; and (E) Percentage weight of the holding in the portfolio; (ii) The exchange-traded fund's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day; (iii) A table showing the number of days the exchange-traded fund's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter); (iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter); (v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth (and computed in a manner described in Rule 6c–11(c)(v)(A) through (D)); and (vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter. Rule 6c–11(c)(4) provides that the exchange-traded fund may not seek, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time.

5800 Series of, a series of Exchange Traded Fund Shares. These circumstances will include the following: (i) Proposed Nasdaq Rule 5704(b)(3)(A) states that if the series of Exchange Traded Fund Shares is no longer eligible to operate in reliance on Rule 6c–11 or if any of the other requirements set forth in this rule are not continuously maintained; (ii) Proposed Nasdaq Rule 5704(b)(3)(B) states that if, following the initial twelve month period after commencement of trading on Nasdaq of the series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange Traded Fund Shares; (iii) Proposed Nasdaq Rule 5704(b)(3)(C) states that if the value of the index or portfolio of securities on which the series of Exchange Traded Fund Shares is based is no longer calculated or available or an interruption to the dissemination persists past the trading day in which it occurred or the index or portfolio on which the series of Exchange Traded Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 5705(b) for listing either pursuant to Rule 19b–4(e) under the Act (including the filing of a Form 19b–4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b) of the Act; (iv) Proposed Nasdaq Rule 5704(c)(3)(D) [sic] states that if Nasdaq files separate proposals under Section 19(b) of the Act, any of the statements or representations regarding (a) the index composition; (b) the description of the portfolio; (c) limitations on portfolio holdings or reference assets; (d) dissemination and availability of the index or intraday indicative values; or (e) the applicability of Nasdaq listing rules specified in such proposals are not continuously maintained as referenced in subsection (h) of this rule; and (v) Proposed Nasdaq Rule 5704(c)(3)(E) [sic] state that if such other event will occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Proposed Nasdaq Rule 5704(c) states that Nasdaq will maintain written surveillance procedures for Exchange Traded Fund Shares.

Proposed Nasdaq Rule 5704(d) states that upon termination of an ETF, Nasdaq requires that each series of Exchange Traded Fund Shares issued in connection with such entity be removed from listing.

Proposed Nasdaq Rule 5704(e) states that Nasdaq requires that members provide to all purchasers of a series of Exchange Traded Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members will include such a written description with any sales material relating to an ETF that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to an Exchange Traded Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [a series of Exchange Traded Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or Nasdaq. It is recommended that you obtain and review such circular before purchasing [a series of Exchange Traded Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [a series of Exchange Traded Fund Shares].''

Additionally, a member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Exchange Traded Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule. Upon request of a customer, a Member shall also provide a prospectus for the particular series of Exchange Traded Fund Shares.

Proposed Nasdaq Rule 5704(f) states that neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq will have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of a series of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of a series of Exchange Traded Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of a series of Exchange Traded Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

Proposed Nasdaq Rule 5704(g) states that Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b–4(e) under the Act that is not eligible to operate in reliance on Rule 6c–11 provided the series of Exchange Traded Fund Shares satisfies the requirements of Rule 5705(b) or Rule 5735, as applicable, and the ETF has received an exemptive relief order under the 1940 Act.

Proposed Nasdaq Rule 5704(h) states that Nasdaq may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Exchange Traded Fund Shares that is not eligible to operate in reliance on Rule 6c–11 and does not satisfy the requirements of Rule 5705(b) or Rule 5735, as applicable. Any of the statements or representations regarding (a) the index composition; (b) the description of the portfolio; (c) limitations on portfolio holdings or reference assets; (d) dissemination and availability of the index or intraday indicative values; or (e) the applicability of Nasdaq listing rules specified in such proposals constitute continued listing standards.

Proposed Nasdaq Rule 5704(i) states that a Derivative Securities Product that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5705(b) or Rule 5735(b)(1), or pursuant to a proposed rule change filed and approved or subject to a notice of effectiveness by the Commission, will be deemed to be considered approved for listing under this Rule if such Derivative Securities Product is both (1) permitted to operate in reliance on Rule 6c–11 under the 1940 Act, and (2) the prior exemptive relief under the 1940 Act for such Derivative Securities Product has been rescinded. At such time, the continued listing requirements applicable to such previously-listed Derivative Securities Products will be those specified in paragraph (b) of this Rule. Any requirements for listing as specified in Rule 5705(b) or 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of this Rule will no longer be applicable to such Derivative Securities Products.

Amendments to Nasdaq Rule 4120. Limit Up-Limit Down Plan and Trading Halts

The Exchange proposes to amend Nasdaq Rule 4120 to include Exchange Traded Fund Shares within the definition of ''Derivative Securities Product'' as defined in Nasdaq Rule 4120(b)(4)(A). This will ensure the applicability of trading halts to the trading of Exchange Traded Fund Shares on Nasdaq pursuant to unlisted trading privileges.

Amendments to Nasdaq Rule 5615. Exemptions From Certain Corporate Governance Requirements

The Exchange also proposes to amend the definition of ''Derivative Securities'' in Nasdaq Rule 5615 to incorporate to incorporate Exchange Traded Fund Shares so Rule 5615 and its exemptions from certain corporate governance requirements are applicable to Exchange Traded Fund Shares.

Proposed Discontinuance of Quarterly Reporting Obligation for Managed Fund Shares

On September 23, 2016, the SEC approved Nasdaq Rule 5735(b)(1), adopting generic listing standards for Managed Fund Shares.[10] In proposing that rule, Nasdaq represented that it would provide the Commission staff with a report each calendar quarter about issues of Managed Fund Shares listed under that rule.[11]

Nasdaq believes such quarterly reports are no longer necessary in light of the requirements set forth in Rule 6c–11(d). As a result, the Exchange proposes to discontinue such reporting going forward. Rule 6c–11(d) includes specific ongoing reporting requirements for ETFs, such as written agreements between an authorized participant and a fund allowing purchase or redemption of creation units, information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund.[12] This information will be sufficient for the SEC's examination staff to determine compliance with Rule 6c–11 and the applicable federal securities laws.[13]

Nasdaq believes that the quarterly reports as currently are duplicative of the new Rule 6c–11(d) requirements. To avoid unnecessary overlap and potential inconsistency, as well as to avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity, the Exchange proposes to discontinue the filing of quarterly reports with respect to Managed Fund Shares under Nasdaq Rule 5735(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

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 because it would facilitate the listing and trading of additional Exchange Traded Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace.

The generic listing rules in proposed Nasdaq Rule 5704, as described above, will facilitate efficient procedures for listing ETFs that are permitted to operate in reliance on Rule 6c–11 and are consistent with and will further the SEC's goals in adopting Rule 6c–11. Additionally, by allowing Exchange Traded Fund Shares to be listed and traded on the Exchange without a prior SEC approval order or notice of effectiveness pursuant to Section 19(b) of the Act, proposed Nasdaq Rule 5704 will significantly reduce the time frame and costs associated with bringing Exchange Traded Fund Shares to market, thereby promoting market competition among issuers of these securities, to the benefit of the investors. Also, the proposed change would fulfill the intended objective of Rule 19b–4(e) under the Act by permitting Exchange Traded Fund Shares that satisfy the proposed listing standards to be listed and traded without separate SEC approval.

With respect to proposed Nasdaq Rule 5704(a)(1)(A), which defines the term ''Derivative Securities Product'' to mean a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Act will increase the clarity of the Nasdaq rules to the benefit of investors and the marketplace.

With respect to both proposed Nasdaq Rule 5704(a)(1)(B), which defines the term ''Exchange Traded Fund'', and proposed Nasdaq Rule 5704(a)(1)(C), which defines the term ''Exchange Traded Fund Share'', the Exchange believes these definitions will increase the clarity to the benefit of investors and the marketplace. Additionally, these terms mirror the definitions as set forth in Rule 6c–11.[16]

With respect to proposed Nasdaq Rule 5704(a)(1)(D), which defines the term ''Reporting Authority'', the Exchange believes that defining the term generally consistent with how it is defined in Nasdaq Rule 5705[17] and Nasdaq Rule

[10] *See* Exchange Act Release No. 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016) (SR–NASDAQ–2016–104).

[11] *See* Exchange Act Release No. 78616 (August 18, 2016), 81 FR 57968 at 57973 (August 24, 2016) (''the Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Rule 5735(b)(1): (1) Trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with Nasdaq Rule 5735'').

[12] Rule 6c–11(d), which sets forth recordkeeping requirements applicable to exchange-traded funds, provides that that the exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units; (2) For each basket exchanged with an authorized participant, records setting forth: (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units; (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of Rule 6c–11; (iii) Cash balancing amount (if any); and (iv) Identity of authorized participant transacting with the exchange traded fund.

[13] In the Adopting Release, the SEC stated, ''requiring ETFs to maintain records regarding each basket exchanged with authorized participants will provide our examination staff with a basis to understand how baskets are being used by ETFs, particularly with respect to custom baskets. In order to provide our examination staff with detailed information regarding basket composition, however, we have modified rule 6c–11 to require the ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units as part of the basket records, instead of the name and quantities of each position as proposed. We believe that this additional information will better enable our examination staff to evaluate compliance with the rule and other applicable provisions of the federal securities laws.'' *See* Adopting Release at 57195.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Adopting Release at 57178 and at 57234, respectively.

[17] *See* Nasdaq Rule 5705(b)(1)(C).

5735 [18] will increase the clarity to the benefit of investors and the marketplace.

With respect to proposed Nasdaq Rule 5704(b), Exchange Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 [19] and must satisfy the requirements of this Rule on an initial and continued listing basis. This requirement will ensure that Exchange-listed Exchange Traded Fund Shares continue to operate in a manner that fully complies with the portfolio transparency requirements of Rule 6c–11(c). This will also ensure that Exchange Traded Fund Shares listed and traded on the Exchange in accordance with Nasdaq Rule 5704 on an initial and continued listing basis will serve to perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

With respect to proposed Nasdaq Rule 5704(b) and subparagraphs (1)–(6) [sic] thereunder (with the exception that subparagraph (1) [sic] only applies on an initial listing basis),[20] the Exchange believes it is to the benefit of investors and the marketplace that Nasdaq may approve an ETF for listing and trading pursuant to Rule 19b–4(e) under the Act. The approval is also contingent on the ETF being eligible to operate in reliance on Rule 6c–11 and satisfies the requirements of the rule on an initial and continued listing basis. Nasdaq will monitor for compliance with the continued listing requirements. If the ETF is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under proposed Nasdaq Rule 5704(b)(3). The Exchange believes that this will help to prevent fraudulent and manipulative acts and practices.

The Exchange believes this also fulfills the intended objective of Rule 19b–4(e) under the Act by allowing Exchange Traded Fund Shares to be listed and traded without requiring separate Commission approval and this will provide investors with additional investment choices that they may choose to invest in.

With respect to proposed Nasdaq Rule 5704(c), the Exchange will implement written surveillance procedures for Exchange Traded Fund Shares and represents that its surveillance procedures are adequate to properly monitor such trading in all trading sessions and to deter and detect violations of Nasdaq rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Exchange Traded Fund Shares, to monitor trading in the Exchange Traded Fund Shares (additional surveillance processes and procedures are described infra). These surveillance procedures promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

With respect to proposed Nasdaq Rule 5704(d), which states that upon termination of an ETF that Nasdaq will remove from listing the Exchange Traded Fund Shares issued in connection with such entity. The Exchange believes that adopting language similar to language already included in Nasdaq Rule 5705(b)(9)(B)f. [sic] and in Nasdaq Rule 5735(d)(2)(E) makes for consistency among Nasdaq's rules and benefits investors and the marketplace by making clear rules that lessen potential confusion.

With respect to proposed Nasdaq Rule 5704(e), which states that Nasdaq requires that members provide to all purchasers of Exchange Traded Fund Shares a written description of the terms and characteristics of such securities and a written description with any sales material relating to an ETF that is provided to customers or the public, the Exchange believes that requiring similar written disclosure to that already required under Nasdaq Rule 5705(b)(2) and Nasdaq Rule 5735(f) makes for consistency among Nasdaq's rules and benefits investors and the marketplace by making clear rules that lessen potential confusion.

With respect to proposed Nasdaq Rule 5704(f), which sets forth the limitation of liability applicable to Nasdaq, the Reporting Authority, or any agent of Nasdaq, the Exchange believes that requiring similar written disclosure to that already required under Nasdaq Rule 5707(b)(11) and Nasdaq Rule 5735(e) makes for consistency among Nasdaq's rules and benefits investors and the marketplace by reducing potential confusion.

With respect to proposed Nasdaq Rule 5704(g), which states that Nasdaq may approve an ETF for listing and trading pursuant to Rule 19b–4(e) under the Act that is not eligible to operate in reliance on Rule 6c–11 provided the ETF satisfies the requirements of Rule 5705(b) or Rule 5735, as applicable, the Exchange believes will benefit of investors and the marketplace by providing them with additional investment products that qualify as Index Fund Shares or Managed Fund Shares that they may choose to invest in.

With respect to proposed Nasdaq Rule 5704(h), which allows Nasdaq to submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of an ETF that is not eligible to operate in reliance on Rule 6c–11 and does not satisfy the requirements of Rule 5705(b) or Rule 5735, as applicable, the Exchange believes will benefit of investors and the marketplace by providing them with innovative additional investment products that do not qualify as Exchange Traded Fund Shares, Index Fund Shares or Managed Fund Shares but that investors and the marketplace may choose to invest in.

With respect to proposed Nasdaq Rule 5704(i), which states that a Derivative Securities Product that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5705(b) or Rule 5735(b)(1), or pursuant to a proposed rule change filed and approved or subject to a notice of effectiveness by the Commission, will be deemed to be considered approved for listing under this Rule if such Derivative Securities Product is both (1) permitted to operate in reliance on Rule 6c–11 under the 1940 Act, and (2) the prior exemptive relief under the 1940 Act for such Derivative Securities Product has been rescinded, the Exchange believes makes for consistency among Nasdaq's rules and benefits investors and the marketplace by making clear rules that lessen potential confusion. The Exchange believes the rest of proposed Nasdaq Rule 5704(i), which states any requirements for listing as specified in Rule 5705(b) or 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of this Rule will no longer be applicable to such Derivative Securities Products will streamline the listing process for such securities, consistent with the regulatory

[18] *See* Nasdaq Rule 5735(c)(4).

[19] Rule 6c–11(c) sets forth certain conditions applicable to ETFs, including information required to be disclosed on the ETF's website.

[20] Proposed Nasdaq Rule 5704(b)(1)–(6) [sic] covers: (i) Establishing a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq (only applicable on an initial listing basis); (ii) written surveillance procedures for ETFs; (iii) index calculation and dissemination and ''fire walls'' around the personnel who have access to information concerning changes and adjustments to the index; (iv) regular market session trading; (v) the listing and trading of ETFs based on one or more foreign or domestic indexes or portfolios; and (vi) Nasdaq will obtain a representation from the ETF that the net asset value per share for the ETF will be calculated daily and will be made available to all market participants at the same time.

framework adopted in Rule 6c–11 under the 1940 Act.

The Exchange believes that proposed Nasdaq Rule 5704, as well as amendments to Nasdaq Rules 4120 and 5615 will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

Proposed Nasdaq Rule 5704 and related amendments to other Nasdaq rules are also designed to protect investors and the public interest because Exchange Traded Fund Shares listed and traded pursuant to Rule 5704 and that rely on the conditions and requirements of Rule 6c–11 will continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.[21]

Nasdaq believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The Exchange has in place written surveillance procedures that are adequate to properly monitor trading in the Exchange Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The surveillance procedures for monitoring compliance with Rule 6c–11 will be consistent with the manner in which the Exchange conducts its trading surveillance for ETFs. The Exchange will also require that issuers of Exchange Traded Fund Shares listed under the Nasdaq Rule 5704 must notify the Exchange regarding instances of non-compliance. Additionally, the Exchange will require periodic certifications from the issuer that it has maintained compliance with Rule 6c–11. Nasdaq will also check the ETF's website on a periodic basis for the inclusion of proper disclosure in compliance with Rule 6c–11.

The Exchange believes that the proposed rule changes enumerated above that seek to incorporate Rule 6c–11 into Nasdaq's rules will promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest. As the SEC noted in its Adopting Release, Rule 6c–11 may to allow ETFs to operate are in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act,[22] as well as lead to increased capital formation particularly in the form of an increased demand for ETFs.[23]

The Exchange believes that the discontinuance of quarterly reports currently required for Managed Fund Shares under Nasdaq Rule 5735(b) are no longer necessary in light of the requirements of Rule 6c–11(d).[24] promotes just and equitable principles of trade, removes impediments to, and perfects the mechanisms of, a free and open market and a national market system by eliminating a requirement no longer necessary or of benefit to the Commission

As discussed above, Rule 6c–11(d) includes specific ongoing reporting requirements for exchange-traded funds, including written agreements between an authorized participant and a fund allowing purchase or redemption of creation units, information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund. The SEC has stated that the information required by Rule 6c–11(d) will provide the SEC's examination staff with information to determine compliance with Rule 6c–11 and applicable federal securities laws.

As a result, Nasdaq believes it should discontinue the filing of quarterly reports with respect to Managed Fund Shares under Nasdaq Rule 5735(b). This will avoid unnecessary overlap and potential inconsistency between the quarterly reports and the reporting requirements of Rule 6c–11(d). It will also avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity.

For the above reasons, the Exchange believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. Rather, the Exchange believes that the proposed rule change would facilitate the listing and trading of Exchange Traded Fund Shares and result in a significantly more efficient process surrounding the listing and trading of ETFs, which will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that this would reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Exchange Traded Fund Shares more competitive by applying uniform listing standards with respect to Exchange Traded Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–090 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–NASDAQ–2019–090. 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

[21] *See* note 4 above, Adopting Release at 57171.

[22] *Id.* at 57166.

[23] *Id.* at 57220.

[24] *See* note 12 *supra.*

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–NASDAQ–2019–090, and should be submitted on or before December 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25316 Filed 11–21–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87557; File No. SR–FINRA–2019–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 12000 Series To Expand Options Available to Customers if a Firm or Associated Person Is or Becomes Inactive

November 18, 2019.

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 November 5, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 is proposing to amend FINRA Rules 12100, 12202, 12214, 12309, 12400, 12601, 12702, 12801, and 12900 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'' or ''Code'') to expand a customer's options to withdraw an arbitration claim if a member or an associated person becomes inactive before a claim is filed or during a pending arbitration. In addition, the proposed amendments would allow customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees in these situations.

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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Most unpaid customer arbitration awards are rendered against firms or individuals whose FINRA registration has been terminated, suspended, cancelled, or revoked, or who have been expelled from FINRA. These firms and individuals are generally referred to as ''inactive,'' and are no longer FINRA members or associated with a FINRA member, although they may continue to operate in another area of the financial services industry where FINRA registration is not required. Firms and individuals can become inactive prior to an arbitration claim being filed, during an arbitration proceeding, or subsequent to an arbitration award, and this status can be caused by FINRA's action, such as when a firm or individual is suspended for failing to pay an award, or by the firm's or individual's own voluntary action.

FINRA has implemented a number of changes to its arbitration program that expand the options available to a customer when dealing with those members or associated persons that are inactive either at the time the claim is filed or at the time of the award. For example, when a customer claimant first files an arbitration claim, FINRA alerts, by letter, the customer claimant if the respondent, whether a member or an associated person, is inactive. FINRA also informs the claimant that awards against such members or associated persons have a much higher incidence of non-payment and that FINRA has limited disciplinary leverage over inactive members or associated persons that fail to pay arbitration awards. Thus, the customer knows before pursuing the claim in arbitration that collection of an award may be more difficult. In addition, upon learning that the member or associated person is inactive, a customer may determine to amend his or her claim to add other respondents from whom the customer may be able to collect should the claim go to award.

Proposed Rule Change

FINRA is proposing to amend the Customer Code[3] to expand further the options available to customers in situations where a firm becomes inactive during a pending arbitration, or where an associated person becomes inactive either before a claim is filed or during a pending arbitration. FINRA is also proposing to amend the Code to allow customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees if the customer withdraws the claim under these situations.[4]

A. Arbitrating Claims Against Inactive Members and Associated Persons

Currently, under FINRA Rule 12202 (Claims Against Inactive Members), a customer's claim against a firm whose membership is terminated, suspended, cancelled or revoked, or that has been expelled from FINRA, or that is

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] While unpaid awards occur in intra-industry cases (*i.e.,* disputes between or among members and associated persons), the proposed amendments would apply to customer cases only.

[4] FINRA is also proposing to amend the Code to update cross-references and make other non-substantive, technical changes to rules impacted by the proposed rule change.

otherwise defunct, is ineligible for arbitration unless the customer agrees in writing to arbitrate after the claim arises. In these situations, the customer is able to evaluate the likelihood of collecting on an award and make an informed decision whether to proceed in arbitration, to file the claim in court or to take no action, regardless of whether the customer signed a predispute arbitration agreement.[5] Accordingly, claims against inactive firms proceed in arbitration only at the customer's option.

The Code does not address situations, however, where a member firm becomes inactive during a pending arbitration. In addition, the Code does not provide specific procedures for a customer to withdraw, and file in court, a claim against an associated person who becomes inactive before the customer files a claim or during a pending arbitration.

Accordingly, FINRA is proposing to amend FINRA Rule 12202 to expand a customer's option to withdraw a claim to situations where a member becomes inactive during a pending arbitration, or where an associated person becomes inactive either before a claim is filed or during a pending arbitration. Under the proposal, FINRA Rule 12202 would specify that a customer's claim against an associated person who is inactive at the time the claim is filed is ineligible for arbitration unless the customer agrees in writing to arbitrate after the claim arises. In addition, FINRA Rule 12202 would specify that if a member or an associated person becomes inactive during a pending arbitration, FINRA would notify the customer of the status change, and provide the customer with 60 days to withdraw the claim(s) with or without prejudice.[6]

Similar to the current rules and procedures relating to claims filed against inactive members, the proposed amendments would allow the customer to evaluate the likelihood of collecting on an award and make an informed decision whether to proceed in arbitration, to file the claim in court or to take no action, regardless of whether the customer signed a predispute arbitration agreement.

In addition, FINRA is proposing to amend FINRA Rule 12100 (Definitions) to add definitions of ''inactive member'' and ''inactive associated person.'' Consistent with current Rule 12202, FINRA is proposing to define an ''inactive member'' as a member whose membership is terminated, suspended, cancelled or revoked; that has been expelled or barred[7] from FINRA, or that is otherwise defunct.[8]

An ''inactive associated person'' would be defined as a person associated with a member whose registration is revoked, cancelled, or suspended, who has been expelled or barred from FINRA,[9] or whose registration has been terminated for a minimum of 365 days. Thus, if an associated person's registration is not revoked, cancelled, or suspended, the person has not been expelled or barred from FINRA, and the individual's registration has been terminated for less than one year, the individual would not be classified as terminated and, therefore, would not be deemed inactive.

FINRA believes the 365-day minimum termination[10] requirement for associated persons would help ensure that enough time has elapsed to assume reasonably that the associated person has permanently left the securities industry. The requirement would allow enough time for those associated persons who may have temporarily left the industry to return before the arbitration closes.[11]

B. Amending Pleadings

FINRA Rule 12309 (Amending Pleadings) limits a party's ability to amend a statement of claim, among other pleadings, after FINRA has appointed a panel to the case. Specifically, once FINRA appoints a panel to a case, a party can amend a pleading only if the arbitrators grant a party's motion to do so. FINRA Rule 12309 also provides that a party cannot add a new party to the case after arbitrator ranking lists are due to the Director of Arbitration until FINRA appoints the panel and the arbitrators grant a party's motion to add the new party.

FINRA believes that a customer should be able to change his or her litigation strategy during a pending case once the customer learns that a firm or an associated person has become inactive. Accordingly, FINRA is proposing to amend FINRA Rule 12309 to provide that if FINRA notifies a customer that a firm or an associated person has become inactive during a pending arbitration, the customer may amend a pleading, including adding a new party, within 60 days of receiving such notice.[12]

C. Postponing Hearings

FINRA Rule 12601 (Postponement of Hearings) addresses when a scheduled hearing date can be postponed. The parties can agree to postpone a hearing. Absent an agreed upon postponement, a hearing can be postponed by FINRA in extraordinary circumstances, by the arbitrators at their discretion, or by the arbitrators upon a party's motion. FINRA is proposing to amend FINRA Rule 12601 to provide that if FINRA notifies a customer that a firm or an associated person has become inactive and the scheduled hearing date is within 60 days of the date the customer receives the notice from FINRA, the customer may postpone the hearing date. Since the proposed amendment would provide a customer with 60 days to determine how to proceed after FINRA notifies the customer of the status change to inactive, it would be appropriate to allow the customer to postpone a scheduled hearing that falls within that time period.

In addition, FINRA assesses postponement fees against the parties for each postponement agreed to by the parties, or granted upon the request of

[5] If the customer notifies FINRA in writing that he or she does not want to proceed against the inactive member in FINRA's forum, FINRA deems the customer's agreement to submit to arbitration rescinded and sends the customer a full refund of any filing fee remitted.

[6] FINRA Rule 12702 (Withdrawal of Claims) provides that before a party answers a statement of claim, the claimant can withdraw the claim with or without prejudice. However, after a party submits an answer, the claimant can only withdraw the claim with prejudice unless the panel or the parties agree otherwise. FINRA is proposing to make a conforming change to FINRA Rule 12702 to provide that a customer can withdraw a claim without prejudice if the party that submitted an answer is an inactive member or inactive associated person. Withdrawal without prejudice would allow the customer to re-file the arbitration at a later date.

[7] FINRA is adding ''or barred'' to the definition of an ''inactive member'' to capture that a member may be inactive due to a bar.

[8] The proposed rule change would amend the definition of ''member'' under the Customer Code, the Code of Arbitration Procedure for Industry Disputes (''Industry Code''), and in Article I of the By-Laws of FINRA Regulation, Inc. to conform the definition to the proposed definition of an ''inactive member'' as discussed below. The proposed changes would make the definition of ''member'' consistent in the FINRA rules that apply to FINRA's arbitration forum.

[9] In *Regulatory Notice* 17–33 (October 2017), discussed *infra,* FINRA proposed to define an ''inactive associated person'' as a person associated with a member whose registration is revoked or suspended, or whose registration has been terminated for a minimum of 365 days. FINRA is proposing to add ''expelled or barred from FINRA'' and ''whose registration is cancelled'' to this definition to capture other ways in which an individual could be categorized as inactive.

[10] Termination, in some cases, may be a voluntary action that can be of short duration.

[11] In its analysis of 2,054 customer cases closed by hearing, on the papers, or by stipulated award from 2014 to 2018, FINRA identified 78 cases where an associated person was not in the industry while the arbitration was pending but returned to the industry in fewer than 365 days.

[12] FINRA Rule 12309(d) would permit any party to file a response to an amended pleading, provided the response is filed and served within 20 days of receipt of the amended pleading, unless the panel determines otherwise. Thus, the newly-added party could file a response to the amended pleading for the panel or arbitrator to consider.

one or more parties. FINRA also charges an additional fee of $600 per arbitrator if a postponement takes place within 10 days of a scheduled hearing date. The additional $600 per arbitrator fee is paid to the arbitrators to compensate them for the late adjournment.[13] FINRA is proposing to amend FINRA Rule 12601 to provide that if FINRA notifies a customer that a firm or an associated person has become inactive and the scheduled hearing date is within 60 days of the date the customer receives the notice from FINRA, FINRA would not charge the customer a postponement fee or an additional fee of $600 per arbitrator if a customer chooses to postpone a scheduled hearing.

FINRA is also proposing to amend FINRA Rule 12214 to make it clear that it would continue to pay the $600 honoraria to the arbitrators to compensate them for their time if a customer chooses to postpone a scheduled hearing within 10 days before it is scheduled because the customer learns that the firm or associated person has become inactive.

D. Default Proceedings

FINRA Rule 12801 (Default Proceedings) permits a claimant to request default proceedings against any respondent whose registration is terminated, revoked or suspended, and who failed to file an answer[14] to a claim within the time provided in the Code. A single arbitrator will decide the case based on the claimant's pleadings and other documentation.[15] The claimants must present a sufficient basis to support the making of an award.[16] The arbitrator may not issue an award based solely on the nonappearance of a party.[17]

As noted, the proposed amendments would define an inactive associated person as a person associated with a member whose registration is revoked, cancelled, or suspended, who has been expelled or barred from FINRA, or whose registration has been terminated for a minimum of 365 days. In the context of a default proceeding, FINRA believes that it would be appropriate to continue to allow a customer to request default proceedings against any terminated associated person who fails to answer a claim, regardless of how long the associated person has been terminated, consistent with the existing rule. Accordingly, FINRA is proposing to amend FINRA Rule 12801(a) to specify that a claimant may request a default proceeding against a terminated associated person who fails to file an answer within the time provided in the Code regardless of the number of days since termination.[18]

E. Refunding Filing Fees

FINRA Rule 12900 (Fees Due When a Claim is Filed) specifies that if a claim is settled or withdrawn more than 10 days before the date that the hearing is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee. The rule also provides that FINRA will not refund any portion of the filing fee if a claim is settled or withdrawn within 10 days of the date that the hearing is scheduled to begin.

FINRA is proposing to amend FINRA Rule 12900 to provide that FINRA would refund a customer's full filing fee if FINRA notifies a customer that a firm or an associated person has become inactive during a pending arbitration, and the customer withdraws the case against all parties within 60 days of the notification. FINRA would refund the filing fee even if the customer withdraws the case within 10 days of the date that the hearing is scheduled to begin.

F. Non-Substantive Changes

In addition to amending FINRA Rules 12100, 12202, 12214, 12309, 12400, 12601, 12702, 12801, and 12900 to expand a customer's options to withdraw an arbitration claim if a member or an associated person becomes inactive before a claim is filed or during a pending arbitration, FINRA is also proposing to amend the Code to update cross-references and make other non-substantive, technical changes to the rules impacted by the proposal.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] 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 would protect investors and the public interest by expanding the options available to customers with claims against respondents who are unlikely to be able to pay. The proposed rule change would extend the concept of what it means to be inactive to expressly include associated persons, so that customers would have the same options during a case against inactive associated persons as they would against inactive members. The proposed change, therefore, would add consistency to FINRA rules.

Further, FINRA believes that the proposed amendments would provide customers with expanded options and flexibility to change case strategy if FINRA notifies them that a member or associated person has become inactive during a pending arbitration. In particular, the proposed rule change would permit a customer to amend his or her pleading or to add parties without arbitrator intervention. FINRA rules, however, permit the newly-added party to respond to the amended pleading and to have the panel or arbitrator consider any objections.

The proposed rule change would also clarify the default rule to include an inactive associated person who does not answer a claim, regardless of the number of days since termination. FINRA believes that the proposed rule change would add consistency to FINRA's default rule so that the procedures would apply to inactive members and inactive associated persons equally. As a result, investors would know that they have the same options and rights in default proceedings against any inactive respondent under the Customer Code. FINRA believes this could help expedite these arbitration cases, as any ambiguity about how the rule should be applied would be removed. Moreover, FINRA believes that exempting the minimum-day termination requirement would prevent an associated person from using the 365-day requirement as a shield to delay the arbitration case.

[13] *See* FINRA Rule 12214 (Payment of Arbitrators).

[14] A respondent must serve each party with a signed and dated Submission Agreement and answer specifying the relevant facts and available defenses to the statement of claim within 45 days of receipt of the statement of claim. *See* FINRA Rule 12303(a).

[15] *See* FINRA Rule 12801(b)(2)(B). No hearings are held in default proceedings unless the customer requests one. *See* FINRA Rule 12801(c).

[16] *See* FINRA Rule 12801(e)(1).

[17] *Id.* If the defaulting respondent files an answer before an award has been issued, the proceedings against this respondent will be terminated and the claim will proceed under the regular provisions of the Code. *See* FINRA Rule 12801(f).

[18] *See supra* note 10.

[19] 15 U.S.C. 78*o*-3(b)(6).

FINRA believes that the proposed amendments provide customers with more options and flexibility in how they choose to resolve claims against respondents who are unlikely to pay, and, thus, give them more control over the arbitration case when they are notified that a member or associated person has become inactive. Moreover, by eliminating the postponement fees and refunding filing fees in certain circumstances, the proposed amendments eliminate these costs as a potential barrier for customers who may opt to pursue their claims in other forums. For these reasons, FINRA believes that the proposed rule change protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed amendments will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. A discussion of the economic impacts of the proposed amendments follows.

Economic Impact Assessment

(a) Regulatory Need

The Code addresses situations where customers bring claims against inactive members. The Code does not address situations, however, where a member firm becomes inactive during a pending arbitration or where an associated person becomes inactive before a claim is filed or during a pending arbitration. This may limit the options available to customers to seek redress, as well as their ability to collect an award.

(b) Economic Baseline

The economic baseline for the proposed amendments is the current rules under the Code that address customer disputes in arbitration. The proposed amendments are expected to affect the parties to an arbitration, including customers, member firms, associated persons, and arbitrators.

FINRA is able to identify 2,054 customer cases closed by hearing, on the papers, or by stipulated award from 2014 to 2018. Among these cases, FINRA is able to identify 128 cases (six percent) where a member firm would have been defined as inactive (under the proposed amendments) before an arbitration. In these instances, the current rules under the Code provide customers the option to proceed in arbitration, to file the claim in court, or to take no action regardless of whether the customer signed a pre-dispute arbitration agreement. Customers are therefore able to evaluate the likelihood of collecting on an award and to choose the forum in which to proceed.

FINRA is also able to identify 427 cases (21 percent of 2,054) where a firm became inactive during a pending arbitration, or where an associated person would have been identified as inactive (under the proposed amendments) either before or during a pending arbitration. The current rules do not provide similar options to customers in these instances, and customers may be less able to choose the forum in which to proceed or to change their litigation strategy during a pending case.[20]

(c) Economic Impact

The proposed amendments would expand customers' options under the Code where a member becomes inactive during a pending arbitration or where an associated person becomes inactive before a claim is filed or during a pending arbitration. The benefits and costs of the proposed amendments are discussed below.

In general, the benefits of the proposed amendments arise from the expansion of customer options under the Code when a member becomes inactive during a pending arbitration, or when an associated person becomes inactive before a claim is filed or during a pending arbitration. In these instances, the proposed amendments would increase the flexibility of customers to determine whether and how to proceed in arbitration. Customers would exercise the options under the proposed amendments if they believe it would increase their ability to seek redress, and may increase the amount of monetary compensation they expect to receive.

The expansion of customer options under the Code would arise from the reduction of the restrictions and penalties to alter their litigation strategy in arbitration or to withdraw their claims from arbitration. For example, customers who proceed in arbitration may amend a pleading without arbitrators granting the motion. This includes the addition of a new respondent from whom the customer may be able to collect should the claim go to award. Customers who proceed in arbitration may also postpone a scheduled hearing without penalty to assess the options and gain additional time to prepare.[21] Customers may also withdraw their claim without prejudice if the party that submitted an answer is an inactive member or inactive associated person. Customers who withdraw their claims against all parties within the allotted time would also receive a full refund of the filing fee.

Customers who exercise the options under the proposed amendments, and the member firms and associated persons who are also parties to the arbitration, may incur additional costs. For example, if customers withdraw their claims from arbitration and restart the case in another venue, then the parties may incur additional legal expense and time to resolve the dispute. If instead customers amend their pleadings but remain in arbitration, the parties (including member firms and associated persons who are newly-named in the amended pleadings) may also incur additional legal expense to alter their litigation strategy, time to resolve the dispute, and forum fees (*e.g.,* hearing session fees).[22] Parties may also incur additional time to resolve the dispute if customers postpone scheduled hearings. Customers have the option to incur these additional expenses, and would likely incur them only if they believe the costs would increase the amount of monetary compensation they may expect to receive.

The proposed amendments would provide no significant benefits and impose no material costs on customers who would not change their behavior when notified of an associated person's or firm's change of status during arbitration in the presence of the amendments, nor on the members and associated persons who are party to their claims. In FINRA's experience, customers typically proceed in arbitration when notified that a member is inactive at the time of filing, and typically remain in arbitration when a member or an associated person leaves

[20] In the 427 cases, the total amount of compensatory damages sought by customers was $580.3 million, and customers were awarded compensatory damages of $96.0 million. For the 347 cases that closed from 2014 through 2017, 126 relate to an award that went unpaid, and the member firms or associated persons responsible for the unpaid awards would have been identified as inactive under the proposed amendments. The total amount of awards relating to these cases that went unpaid was $55.9 million. The respondents that would have been identified as inactive were responsible for nearly all of the awards that went unpaid.

[21] Among the 2,054 customer cases in the baseline sample, FINRA is able to identify 240 (12 percent) cases where a member or an associated person would have been identified as inactive after arbitrator ranking lists were due or FINRA appointed a panel. FINRA is also able to identify 119 (six percent) cases where a member or an associated person would have been identified as inactive within 60 days of a scheduled hearing.

[22] FINRA does not believe, however, that the proposed amendments would cause member firms and associated persons to be named without having a connection to the case. *See* discussion in Section II.C.

the industry while the arbitration is pending.[23] One reason customers remain in arbitration when a member or an associated person leaves the industry may be the additional costs of restarting a case in another venue. Another reason may be the expectation that another forum would not result in a higher likelihood of redress.

Based on this experience, FINRA believes that few customers would withdraw claims from the forum in the presence of the proposed rules, but would instead remain in arbitration. Customers are, therefore, more likely to exercise their new options under the proposed amendments to amend pleadings or to postpone hearings. The benefits and costs of the proposed amendments, therefore, may result more from the amendment of pleadings or the rescheduling of hearings than the withdrawal of claims.

(d) Alternatives Considered

FINRA exercised discretion in setting the minimum number of days for a terminated associated person to be considered inactive (365). FINRA also exercised discretion when setting the maximum number of days for customers to exercise the options under the proposed amendments after they receive notification of the inactive status of a member or an associated person (60).

The minimum-day requirement for a terminated associated person to be considered inactive affects the length of time that customers must wait before being able to exercise the options under the proposed amendments. A longer minimum-day requirement decreases the number of customers who may have access to the options under the proposed amendments, and therefore decreases their ability to seek redress.[24] A longer minimum-day requirement, however, also decreases the likelihood that an associated person returns to the industry after being identified as inactive.[25] Customers may therefore be less likely to exercise the options under the proposed amendments only for the inactive associated person to return to the industry, and parties may be less likely to incur the associated costs unnecessarily. A shorter minimum-day requirement, on the other hand, may increase the ability of customers to seek redress, but also may increase the costs parties may incur unnecessarily. FINRA believes that the 365-day minimum requirement would provide customers access to the options under the proposed amendments and help ensure that the associated person had permanently left the securities industry.

The 60-day maximum requirement for customers after receiving notice that a firm or an associated person has become inactive to withdraw their claims without prejudice or to amend a pleading would also limit their ability to exercise the options and decrease its associated benefits. The requirement, however, would also limit the effect of an inactive member or associated person on a pending arbitration, and provide certainty that the arbitration would continue after the time period had elapsed. FINRA believes that the 60-day maximum requirement would reduce the potential number of disruptions to the arbitration process, while still providing customers access to the proposed options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On October 18, 2017, FINRA published *Regulatory Notice* 17–33 (''*Notice*'') to solicit comment on the proposed amendments to the Code that would expand a customer's options to withdraw an arbitration claim if a member or an associated person becomes inactive before a claim is filed or during a pending arbitration as well as allow customers to amend pleadings, postpone hearings and receive a refund of filing fees in these situations.[26] FINRA received eight comments on the *Notice.*[27] While all of the commenters supported the proposed rule change discussed in the *Notice,* some stated that the proposed amendments did not go far enough,[28] and six commenters suggested modifications.[29] Commenters who supported the proposed rule change, in general, described it as ''a good faith effort to partially address some of the predicates that cause unpaid awards'' [30] as well as a proposal that would provide customers with additional options and flexibility to alter their litigation strategy.[31] Several commenters specifically noted their support for the proposed amendments to FINRA Rule 12100 (Definitions of Inactive Member and Inactive Associated Person),[32] FINRA Rule 12202 (Claims Against Inactive Members and Inactive Associated Persons),[33] FINRA Rule 12309 (Amending Pleadings),[34] FINRA Rule

[23] Among the 2,054 customer cases in the baseline sample, FINRA is able to identify 297 (14 percent) cases where a member firm or an associated person would have been identified as inactive during a pending arbitration.

[24] For example, a longer minimum-day requirement would increase the number of associated persons who left the industry as of the close of the arbitration but not considered inactive. In these instances, customers would not have access to the options because the associated persons would not have been considered inactive while the arbitration is pending. Among the 2,054 customer cases in the baseline sample, FINRA is able to identify 23 cases where an associated person had left the industry as of the close of the arbitration but for 60 days or fewer. The number of cases increases to 36 for 120 days, 58 for 180 days, and 129 for 365 days.

[25] With a longer minimum-day requirement, fewer associated persons would be deemed inactive as defined under the proposed amendments and then return to the industry. Fewer customers would therefore exercise the options under the proposed amendments only for the associated person to return to the industry. For example, among the 2,054 customer cases in the baseline sample, FINRA is able to identify 59 cases where an associated person was not in the industry while the arbitration was pending but returned to the industry in 60 days or fewer. The number of cases increases to 66 cases for 120 days, 69 cases for 180 days, and 78 cases for 365 days.

[26] *Available at http://www.finra.org/industry/notices/17-33.*

[27] *See* letters to Marcia E. Asquith including: Steven B. Caruso, Attorney, Maddox Hargett & Caruso, P.C., dated November 20, 2017 (''Caruso''); Gregory M. Curley, Senior Litigation Counsel, Advisor Group, dated December 1, 2017 (''Advisor Group''); William A. Jacobson, Clinical Professor of Law and Tina Davis, Law School Student, Cornell University School of Law, dated December 7, 2017 (''Cornell''); Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 15, 2017 (''SIFMA''); Andrew Stoltmann, President, Public Investors Arbitration Bar Association, dated December 18, 2017 (''PIABA''); Justin M. Daley, Legal Intern, St. John's University School of Law, dated December 18, 2017 (''SJU''); Robin M. Traxler, Vice President, Regulatory Affairs & Associate General Counsel, Financial Services Institute, dated December 18, 2017 (''FSI''); and Joseph Borg, President, North American Securities Administrators Association, Inc., dated December 20, 2017 (''NASAA'').

[28] *See* Caruso, FSI, NASAA, and PIABA.

[29] *See* Advisor Group, Cornell, FSI, PIABA, SIFMA, and SJU.

[30] *See* Caruso.

[31] *See* Cornell and NASAA.

[32] *See* FSI and SJU. FSI noted that ''the proposed amendments address a scenario that is not currently addressed in FINRA rules and, as such, brings important clarity to the arbitration process.'' SJU suggested that the proposed changes ''offer an important protection to customers . . . by providing them with ''the same options available with respect to individuals who are unregistered associated persons which they now have with respect to firms that are unregistered members.''

[33] *See* Cornell, FSI, PIABA, and SJU. FSI suggested that requiring FINRA to notify customers when a member or an associated person becomes inactive during a pending arbitration would ensure that customers are promptly informed of the change in the firm's or the associated person's status. PIABA supported this change as it ''would allow a customer to withdraw filed claims without prejudice (or in the case of inactive associated persons, never submit the claim to FINRA Arbitration in the first place), and file a claim in court, regardless of whether the customer signed a predispute arbitration agreement.'' SJU supported ''requiring the written consent of a customer in proceeding with an arbitration claim with a member or an associated person who is no longer registered . . . because it is essential that customers be given a fair opportunity to reconsider their arbitration strategies.''

[34] *See* Caruso, Cornell and PIABA.

12601 (Postponement of Hearings),[35] FINRA Rule 12801 (Default Proceedings) [36] and FINRA Rule 12900 (Fees Due When a Claim Is Filed).[37]

Effectiveness of the Proposed Amendments

Four commenters stated that the proposed rule change is not as effective as it could be.[38] FSI suggested that instead of directly addressing the issue of unpaid awards, the proposed rule change amends the arbitration process in ways that would bias the process in favor of one party's subsequent recovery efforts. FINRA's primary role in the arbitration process is to administer cases brought to the forum in a neutral, efficient and fair manner. In its capacity as a neutral administrator of the forum, FINRA must also ensure that its rules are not used to hinder a party's recovery efforts. Moreover, once customers are notified of a member's or associated person's status change during the arbitration case, they should be permitted to assess the collectability of their claims and change strategy during the case without penalty. FINRA believes that, rather than creating bias in the process against a particular group, the proposed rule change instead would provide customers with options under the rules to pursue claims against inactive respondents.

NASAA stated that when awards go unpaid, members and associated persons are not held responsible for their misconduct and investors are left without recourse. Under the Code, a respondent must pay a monetary award within 30 days of receipt.[39] In order to incentivize member firms or associated persons to pay customer awards, and restrict those who do not, FINRA expels or suspends from the brokerage industry any member firm or associated person who fails to pay an arbitration award. If a member firm or associated person fails to comply with an arbitration award or a settlement agreement related to an arbitration, FINRA notifies such firm or associated person in writing that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member.[40] If the threat of suspension is not effective in compelling payment of an award or settlement, FINRA notes that an investor-claimant may take an award to court and have it converted to a judgment. The claimant may then attempt to collect on the judgment using the court's collection procedures.[41]

The remaining two commenters in this group advocated for FINRA to create a monetary solution to address unpaid awards. PIABA stated that FINRA should establish a national investor recovery pool. Caruso suggested a ''viable economic solution,'' stating ''very few investors would be able to actually recover their losses'' under the proposed amendments.[42] Although these comments are outside the scope of the proposed rule change, FINRA notes that in its Discussion Paper on Customer Recovery,[43] FINRA has identified a number of alternative approaches that could be taken to further address the issue of unpaid customer arbitration awards, and FINRA continues to focus on this important issue.[44]

As noted above, six commenters suggested modifications to the proposed amendments.[45] FINRA addresses these suggestions in the following discussion.

Amendment To Add a Party

Three commenters stated that FINRA should revise the proposed amendment to FINRA Rule 12309(c) to require that a customer's right to add parties to an arbitration case should be subject to the arbitration panel's approval.[46] Advisor Group suggested that the proposed amendment would prejudice the rights of member firms to participate in the arbitrator selection process [47] by requiring them to enter the arbitration case after the parties had selected an arbitrator or a panel. FSI suggested that allowing a claimant to add a new party without prior arbitrator or panel approval could cause a party to incur costs in defending against potentially meritless claims. SIFMA stated that allowing a customer claimant to amend his or her pleading after learning that a respondent firm or associated person has become inactive could prejudice the other active respondents remaining in the case by eliminating their right to review the proposed amended pleading, respond in writing, and if there is a claim of prejudice, obtain a ruling on the amended pleading from the panel.

Currently, FINRA Rule 12309 permits a party to amend a pleading any time before the panel is appointed.[48] Once a panel is appointed, however, the party must receive the panel's approval prior to amending a pleading.[49] The rule also requires that, if a panel has been selected, a party must request approval from the panel prior to adding a new party.[50] Under the proposed amendments, if FINRA notifies a customer that a member or associated person has become inactive, proposed FINRA Rules 12309(b) and (c) would make it easier to amend pleadings to add a claim or party by eliminating the need for pre-approval by an arbitrator or panel. If the amended pleading to add a party occurs after panel appointment, the newly-added party would not be able to participate in the arbitration selection process.

In this scenario, FINRA would provide the arbitrator disclosure reports [51] of the sitting panelists to the parties and permit the parties to raise any conflicts they find with the panel.[52]

[35] *See* Caruso, Cornell, and SJU. SJU stated that ''any additional costs involving arbitration could persuade customers to drop otherwise justifiable claims,'' thus, ''the rules should not put undue financial burdens on customers.''

[36] *See* Cornell, PIABA, and SJU.

[37] *See* Caruso and Cornell.

[38] *See supra* note 30.

[39] *See* FINRA Rule 12904(j). An associated person or firm has four available defenses to FINRA disciplinary measures for non-payment in customer cases: (1) The firm or associated person paid the award in full; (2) the parties have agreed to installment payments or have otherwise settled the matter; (3) the firm or associated person has filed a timely motion to vacate or modify the award and such motion has not been denied; and (4) the firm or associated person has filed a petition in bankruptcy and the bankruptcy proceeding is pending or the award has been discharged by the bankruptcy court. *See Notice to Members* 00–55 (August 2000). In July 2010, FINRA eliminated the ''bona fide inability to pay'' defense in the expedited suspension proceedings it initiates when a firm or associated person fails to pay an arbitration award to a customer. *See Regulatory Notice* 10–31 (June 2010).

[40] *See* FINRA Rule 9554(a).

[41] An investor-claimant in the FINRA arbitration forum would be in a similar position as a claimant who had brought an action in court and had been awarded the same amount of damages.

[42] Caruso also suggested that FINRA convene a group to consider the extent of the unpaid awards problem and develop solutions to address it.

[43] *See* Discussion Paper, FINRA Perspectives on Customer Recovery (February 8, 2018), *http://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf.*

[44] *See* Discussion Paper at 16–18.

[45] *See supra* note 26.

[46] *See* Advisor Group, FSI, and SIFMA.

[47] Arbitrator selection is the process in which the parties receive lists of potential arbitrators and select the panel to hear their case. The number of arbitrators who hear a case is determined by the amount of the claim. *See generally* Part IV (Appointment, Disqualification, and Authority of Arbitrators) of the Code. *See also* Arbitrator Selection, *http://www.finra.org/arbitration-and-mediation/arbitrator-selection.*

[48] *See* FINRA Rule 12309(a).

[49] *See* FINRA Rule 12309(b).

[50] *See* FINRA Rule 12309(c).

[51] An arbitrator disclosure report is a summary of the arbitrator's background and is provided to the parties to help them make informed decisions during the arbitrator selection process.

[52] Arbitrators must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including, for example, any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely

If a party discovers a conflict, the party may file a motion to recuse the arbitrator.[53] The arbitrator who is the subject of the motion to recuse would consider whether to withdraw [54] from the case and rule on the motion.[55] The party may also request removal of the arbitrator by the Director, under certain circumstances.[56]

FINRA does not believe that the proposed amendments would encourage claimants to add members or associated persons who have no nexus to the arbitration case as some commenters fear. While the proposed amendments to FINRA Rule 12309 would remove the requirement for arbitrator or panel approval prior to adding a claim or party, FINRA Rule 12309(d) permits any party, whether existing or newly-added, to respond to an amended pleading after it is filed by filing an answer and raising any available defenses.[57] Thus, if the claim or party to be added has no connection to the arbitration case, the respondents would have an opportunity to make that argument to the arbitrator or panel.[58] It would not be in the claimant's interest, therefore, to add frivolous claims or unnecessary parties, as doing so would likely increase a claimant's costs in supporting the amended pleading and would delay the outcome of the case.

FSI suggested that if the arbitrator or panel no longer has the right to approve adding a new claim or new parties, the proposed amendments could result in orphaned accounts. FSI commented that FSI's members may no longer accept customer accounts from inactive firms to minimize service interruptions because the proposed amendments would ''make it easier for, and likely encourage, customers to pursue claims against the firm that accepts the customer accounts.''

FINRA believes it is unlikely that a customer would add the firm that accepted his or her accounts from an inactive firm as a party to an arbitration case against the inactive firm because the rules permit the customer to add new parties without pre-approval of the arbitrator or panel. If the customer's new firm has no connection to the dispute involving the inactive firm, yet the customer adds the new firm to the case, the customer risks jeopardizing the business relationship with the new firm, increasing his or her costs to support a frivolous claim, and alienating the panel by adding a member that was not associated with the account or conduct at issue [59] until after the named respondent had gone out of business. FINRA believes, therefore, that these risks outweigh any benefit to the customer who might consider adding a party that has no connection to the arbitration case.

Length of Termination Period for Associated Persons

In the Notice, FINRA proposed to define an ''inactive associated person'' as a person associated with a member whose registration is revoked or suspended, or whose registration has been terminated for a minimum of 365 days. Three commenters stated that the timeframe should be shortened to 6 months,[60] 120 days,[61] or 60 days.[62]

FINRA recognizes the commenters' concerns, but believes that the 365-day minimum termination requirement for associated persons would help ensure that enough time has elapsed to assume reasonably that the associated person has permanently left the securities industry. FINRA believes the requirement would benefit those customers who would exercise the option to withdraw the case from the arbitration forum and move it to an alternate venue, because they would have more certainty that the associated person would not return to the securities industry to exercise his or her rights under the predispute arbitration agreement. Further, the 365-day requirement could reduce potential costs to these customers, as they would save money on filing fees and avoid procedural delays, such as staying the case in an alternate venue and re-starting it in FINRA's arbitration forum, which could result if the associated person is only temporarily out of the industry.

Length of Time To Decide Whether To Withdraw Claim

Under the proposed amendments to FINRA Rule 12202(b), if a member or an associated person becomes inactive during a pending arbitration, FINRA would notify the customer about the status change. The customer would be permitted to withdraw the claim against the inactive member or inactive associated person with or without prejudice within 60 days of receiving notice of a status change.[63] SJU suggested that the 60-day period should be increased to 90 days to provide the customer with additional time to decide whether to pursue the claim in court (and consult with and secure appropriate counsel), to continue with the arbitration, and to amend pleadings. FINRA believes that once a customer is notified of a member's or associated person's inactive status, the proposed 60-day timeframe is a reasonable amount of time for the customer to

to affect impartiality or might reasonably create an appearance of partiality or bias. *See* FINRA Rule 12405(a). The duty to disclose any relationship, experience and background information that may affect, or even appear to affect, the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision, is an ongoing duty. *See* FINRA Rule 12405(b). Thus, if a party is added under proposed FINRA Rule 12309(c)(2), the panelists must update their disclosures or review them to ensure that further updates are not warranted.

[53] *See* FINRA Rule 12406.

[54] The Code of Ethics for Arbitrators in Commercial Disputes (''Canon of Ethics'') applies to arbitrators on FINRA's arbitrator rosters. *See* Canon of Ethics, *http://www.finra.org/arbitration-and-mediation/code-ethics-arbitrators-commercial-disputes.* Canon II provides that if an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw except in two circumstances. In one such circumstance, the arbitrator could consider the matter, determine that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly. *See* Canon II (An Arbitrator Should Disclose Any Interest Or Relationship Likely To Affect Impartiality Or Which Might Create An Appearance Of Partiality), Section G.

[55] *See* FINRA Rule 12406.

[56] The rule states, in relevant part, that before the first hearing session begins, the Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative. *See* FINRA Rule 12407(a)(1). After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 12405 that was not previously known by the parties. *See* FINRA Rule 12407(b).

[57] *See* FINRA Rule 12303(a).

[58] After the newly-added party files an answer, the party could seek to have the claim dismissed prior to the conclusion of the case in chief, on the basis that the moving party was not associated with the account(s), security(ies), or conduct at issue. *See* FINRA Rules 12504(a)(2) and (a)(6).

[59] After the member responds to the amended claim, the member could then file a motion to dismiss prior to the conclusion of the customer's case on the ground that the member was not associated with the account(s), security(ies), or conduct at issue. *See* FINRA Rule 12504(a)(6)(B).

[60] *See* SJU.

[61] *See* Cornell, stating that ''FINRA should consider the average time it takes to find new employment, and the economic costs to parties having to pursue a claim when the associated person has left the industry permanently but has not yet hit the 365-day minimum requirement.''

[62] *See* PIABA, stating that ''a shorter window simply provides the customer with more options regarding amendment and/or withdrawal of the claims without prejudice.''

[63] Within the same 60-day period, the customer would also be permitted to amend a pleading or add a party without pre-approval from the arbitrator or panel, under the proposed amendments to FINRA Rules 12309(b)(2) and (c)(2).

decide whether to withdraw the claim, amend the claim or add a party. FINRA believes the 60-day timeframe provides customers with enough time to make informed decisions on how to proceed in the case, while still keeping the case on track for timely resolution, which could improve the customer's chances at recovery, if an arbitrator or panel issued an award.

Extend the Proposed Amendments to Intra-Industry Cases

The proposed amendments would apply to customer cases only. SIFMA contended that the proposed amendments should apply also to intra-industry cases (*i.e.,* disputes between or among members and associated persons).[64] SIFMA stated that ''all of the arguments and justifications that FINRA makes in favor of expanding the options available to a customer claimant when dealing with those member firms or associated persons who are responsible for most unpaid awards apply equally to industry claimants when dealing with those same member firms and associated persons.''

FINRA acknowledges SIFMA's concerns. At this time, however, FINRA has decided to apply the proposed amendments to customer cases only because providing customers with more control over the arbitration process when faced with a respondent that likely will not be able to pay an award furthers FINRA's goal of investor protection.

Related Claims Should Be Litigated in Same Forum

Under the proposed amendments to FINRA Rule 12202, claims against inactive firms or inactive associated persons would not be eligible for arbitration, unless the customer agrees in writing to arbitrate after the claim arises. FSI expressed concern that, under the proposed rule change, customers could proceed against a member in arbitration and an associated person in court. In this scenario, FSI stated that the discovery in the customer's case against the associated person in court could reveal additional facts that the customer could use against the firm in its arbitration case. FSI suggested that the member would not have the opportunity to seek comparable information from the customer during the arbitration case. FSI requested, therefore, that FINRA clarify in the proposed amendments that customers be required to pursue related claims (*i.e.,* a claim against the firm and a claim against the associated person that arise from the same facts and alleged misconduct) in the same forum.

FINRA notes that the goal of the proposed amendments is to provide customers with the same options against an associated person who is inactive at the time of filing as those that currently exist against an inactive member. By providing a customer with the option to pursue his or her claim in court against an inactive associated person, the proposed amendments could result in customers filing claims based on the same facts and circumstances in FINRA arbitration and in court at the same time. FINRA notes that this approach would increase the parties' costs, but would have little effect on a member's access to information during its case with the customer.

FINRA provides the Discovery Guide for customer cases only, which outlines documents that the parties should exchange without arbitrator intervention. The Discovery Guide contains two document production lists of presumptively discoverable documents: one for the firm/associated persons to produce and one for the customer to produce.[65] Thus, at the outset of the arbitration, the member would be permitted to seek information from the customer that is in the customer's possession or control and is relevant to the member's case. In addition, under the Customer Code, the member would be permitted to request additional documents or information from any party in arbitration,[66] and arbitrators have the authority to issue subpoenas [67] or orders [68] compelling discovery if the subject of the request fails to comply with a request. If the customer learns of information during the court proceeding that he or she intends to use during the arbitration proceeding, the customer must provide copies of all documents and materials in customer's possession or control that have not already been produced at the 20-day exchange deadline.[69] For these reasons, FINRA declines to amend the proposed rule change as suggested.

Request for Additional FINRA Data

PIABA requested that FINRA release the data and other statistical information FINRA used to support the proposed amendments. FINRA has made available data on which it relied in its discussion of the economic impacts of the proposed amendments.

Minimize Delays and Postponements From Newly-Added Party

PIABA expressed concern that newly-named respondents may demand extended delays and postponements of scheduled hearing dates. PIABA urged FINRA to consider adopting arbitrator training and guidelines to instruct arbitrators to balance carefully the interests of all the parties to the arbitration when considering newly-added respondent requests to extend deadlines or hearings.

When FINRA receives approval of proposed rule changes that involve arbitration practices and procedures, FINRA's Office of Dispute Resolution (''ODR'') will include articles on the new rules in *The Neutral Corner,* an ODR newsletter for arbitrators and other neutrals that includes updates on rules affecting dispute resolution and tips on how to be a better arbitrator or mediator.[70] In addition, ODR will develop arbitrator training to explain how the new rules would work and provide guidance to arbitrators on their roles and responsibilities under the new rules. These informational and training materials will provide examples of best practices that arbitrators could use as guides to assist them when they are deciding a newly-added respondent's request for an extension or postponement. As is current practice under the Code, arbitrators would have the authority under the proposed amendments to exercise their judgment when addressing these matters, based on the facts and circumstances of the case.

Reporting Mechanisms Should Be Accurate and Made Available to the Public

Under the proposed amendments, an ''inactive member'' would be defined as a member whose membership has been terminated, suspended, cancelled, revoked, the member has been expelled from FINRA, or the member is otherwise defunct. An ''inactive associated person'' would be defined as a person whose registration is revoked or suspended, who has been expelled or barred from FINRA, or has been terminated for a minimum of 365 days. NASAA suggested that the withdrawal statistic that ODR publishes [71] should be broken down to reflect the appropriate subcategory (*e.g.,* terminated,

[64] *See* FINRA Rule 13000 Series.

[65] *See* Discovery Guide, *http://www.finra.org/arbitration-and-mediation/discovery-guide.*

[66] *See* FINRA Rule 12507.

[67] *See* FINRA Rule 12512.

[68] *See* FINRA Rule 12513.

[69] *See* FINRA Rule 12514.

[70] The Neutral Corner, Volume 1—2019, *http://www.finra.org/arbitration-and-mediation/neutral-corner-volume-1-2019-0319. See also* the previous editions at *http://www.finra.org/arbitration-and-mediation/previous-editions-neutral-corner.*

[71] Dispute Resolution Statistics, *https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics.*

suspended, canceled, etc.) that customers use to withdraw their claims. FINRA cannot commit to publishing subcategories of withdrawals as requested, because the programming costs required to capture that level of detail would likely be significant. FINRA agrees, however, that its withdrawal statistics should distinguish between a claim (or case) withdrawn because a claimant exercised rights under the rules after a respondent became inactive and claims withdrawn for other reasons. If the SEC approves the proposed rule change, FINRA would assess its technology platforms to determine what programming changes would be needed to capture the data relating to claims or cases withdrawn due to an inactive respondent.

NASAA also suggested that FINRA create and make public a separate report to capture the members and associated persons who become inactive due to unpaid arbitration awards or judgments in favor of customers. NASAA stated that such a report would provide transparency on industry participants that leave the industry due to customer complaints and would provide customers with additional information when making a decision about whether to work with a specific FINRA member or associated person.

FINRA is committed to providing customers with information on the state of unpaid customer arbitration awards in the forum, so that they may make informed decisions about whom to entrust with their money and, therefore, has made data on unpaid customer arbitration awards available on its website.[72] Moreover, FINRA has published a list of member firms and associated persons with unpaid customer arbitration awards.[73] This information will continue to appear on the firm's or individual's BrokerCheck®[74] report.

[72] *See* Statistics on Unpaid Customer Awards in FINRA Arbitration, *http://www.finra.org/arbitration-and-mediation/statistics-unpaid-customer-awards-finra-arbitration.* FINRA updates these data periodically.

[73] *See* Member Firms and Associated Persons with Unpaid Customer Arbitration Awards, *http://www.finra.org/arbitration-and-mediation/members-firms-and-associated-persons-unpaid-customer-arbitration-awards.* FINRA updates these data periodically.

[74] FINRA developed and operates this free tool under the oversight of the SEC to provide investors with information regarding a broker's employment history, regulatory actions, investment-related licensing information, arbitrations and complaints. *See* BrokerCheck®, *https://brokercheck.finra.org.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–027 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–2019–027. 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 a.m. and 3 p.m. 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–2019–027 and should be submitted on or before December 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25324 Filed 11–21–19; 8:45 am]

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[75] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87556; File No. SR–NYSEArca–2019–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Permitting the Listing and Trading of Shares of the Nationwide Risk-Managed Income ETF Under NYSE Arca Rule 8.600–E

November 18, 2019.

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 November 5, 2019, 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 permit the listing and trading of shares under NYSE Arca Rule 8.600–E of the Nationwide Risk-Managed Income ETF, a series of ETF Series Solutions, notwithstanding that the fund does not meet the requirements of Commentary .01(d)(2) to Rule 8.600–E. The proposed rule change is available on the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to permit the listing and trading under NYSE Arca Rule 8.600–E (''Managed Fund Shares'') [4] of shares (''Shares'') of the Nationwide Risk-Managed Income ETF (the ''Fund''), a series of ETF Series Solutions (the ''Trust''), notwithstanding that the Fund does not meet not meet the requirements of Commentary .01(d)(2) to Rule 8.600–E.

The Shares are offered by the Trust, which is registered with the Commission as an open-end management investment company consisting of multiple investment series.[5] The Fund is a series of the Trust. Nationwide Fund Advisors (the ''Adviser'') is the investment adviser to the Fund. Harvest Volatility Management, LLC (''Sub-Adviser'') is the sub-adviser for the Fund and is responsible for the day-to-day management of the Fund. U.S. Bank National Association is the custodian of the Trust (the ''Custodian''). U.S. Bancorp Fund Services, LLC will serve as administrator and transfer agent for the Fund. Quasar Distributors, LLC, will serve as the Fund's distributor.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Neither the Adviser nor the Sub-Adviser is a registered broker-dealer. The Sub-Adviser is not affiliated with a broker-dealer, but the Adviser is affiliated with a broker-dealer. In addition, Adviser and Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. The Adviser has implemented and will maintain a fire wall with respect to its relevant personnel and such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and is subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investments of the Fund

According to the Registration Statement, the investment objective of the Fund is current income with downside protection. The Fund is an actively-managed exchange-traded fund (''ETF'') [7] that will seek, under normal market conditions,[8] to achieve its objective principally by investing in (1) a portfolio of the stocks included in the Nasdaq-100 Index (the ''Nasdaq-100'' or the ''Reference Index''), and (2) a mix of written call options and long put options on the Nasdaq-100 (the ''Options Collar'') intended to reduce the Fund's volatility and provide a measure of downside protection (the ''Options Collar Strategy'', described more fully below).

The Nasdaq-100 is a market capitalization weighted index comprised of the securities of 100 of the largest non-financial companies listed on The Nasdaq Stock Market LLC based on market capitalization. Such securities may include companies domiciled domestically or internationally (including in emerging markets), and may include common stocks, ordinary shares, depositary

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On September 9, 2019, the Trust filed with the Securities and Exchange Commission (''SEC'' or Commission'') a post-effective amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–179562 and 811–22668) with respect to Shares of the Fund (''Registration Statement''). The description of the operation of the Trust and of the Fund and Shares herein is based, in part, on the Registration Statement. There are no permissible holdings for the Fund that are not described in this proposal. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 33065 (April 3, 2018).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] For purposes of this filing, the term ''ETFs'' means Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[8] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

receipts representing interests in non-U.S. companies, and tracking stocks, which instruments, along with the Options Collar, will constitute the principal investments of the Fund.

The Fund may hold cash and cash equivalents.[9]

The Options Collar Strategy

According to the Registration Statement, the Fund's Options Collar strategy consists of two components: (1) Selling call options on the Nasdaq-100 on up to 100% of the value of the equity securities held by the Fund to generate premium from such options, while (2) simultaneously reinvesting a portion of such premium to buy put options on the same reference asset to ''hedge'' or mitigate the downside risk associated with owning equity securities.

The Fund will use a portion of the premium received from writing call options to purchase put options. Both the Fund's call and put options will be traded on a national securities exchange and settled in cash.

Non-Principal Investments

In addition to the principal investments described above, the Fund may invest in U.S. exchange-listed options on reference assets other than the Nasdaq-100 that will comply with Commentary .01(d)(2) to Rule 8.600–E, including but not limited to the NASDAQ-100 Equal Weight Index, Invesco QQQ Trust, Series 1, S&P 500 Index, and the individual equity securities comprising the Nasdaq-100 or S&P 500 Index.

The Fund may also invest in U.S. exchange-listed common stocks, ordinary shares, and American Depositary Receipts representing interests in non-U.S. companies, and tracking stocks that are not included in the Nasdaq-100. The Fund may also invest in the securities of other investment companies registered under the 1940 Act, including money market funds, exchange traded funds (''ETFs''), and Real Estate Investment Trusts (''REITS''). The Fund may also invest in exchange-traded rights and warrants.

The Fund may also invest in U.S. Government securities, including bills, notes and bonds, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities, with maturities 3 months or longer.

[9] For purposes of this filing, cash equivalents mean the securities described in Commentary .01(c) to NYSE Arca Rule 8.600–E.

Application of Generic Listing Requirements

The Exchange submits this proposal in order to list and trade Shares of the Fund and to allow the Fund to hold listed derivatives, in particular put and call options on the Nasdaq-100 Index, in a manner that may not comply with Commentary .01(d)(2) to Rule 8.600–E.[10] Otherwise, the Fund will comply with all other listing requirements of the Generic Listing Standards [11] for Managed Fund Shares on an initial and continued listing basis under Commentary .01 to Rule 8.600–E.[12]

The market for options contracts on the Nasdaq-100 Index (''Nasdaq-100 Index Options'') is deep and liquid. In 2018, more than 15,000 options contracts on the Nasdaq-100 Index were traded per day, which is more than $10 billion in notional volume traded on a daily basis. The Exchange believes that the liquidity in Nasdaq-100 Index Options markets mitigates the concerns that Commentary .01(d)(2) to Rule 8.600–E is intended to address and that such liquidity would discourage manipulation of the Shares.

In addition, the Exchange believes that sufficient protections are in place to protect against market manipulation of the Shares and Nasdaq-100 Index Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the Nasdaq-100 Index; and (ii) surveillance by the Exchange, other options exchanges,[13] and the Financial Industry Regulatory Authority (''FINRA'') designed to detect violations of the federal securities laws and self-regulatory organization (''SRO'') rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses. Further, the Exchange believes that because the Nasdaq-100 Index Options in the Fund's portfolio will be acquired in liquid and highly regulated markets,[14] the Exchange believes that manipulation of Nasdaq-100 Index Options would be discouraged and that any potential manipulation would be more easily identified.

As noted above, options on the Nasdaq-100 Index are among the most liquid options in the world and derive their value from the actively traded Nasdaq-100 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the Nasdaq-100 Index make securities that derive their value from that index would discourage market manipulation in view of market capitalization and liquidity of the Nasdaq-100 Index components, price and quote transparency, and arbitrage opportunities, and that any potential manipulation would be more easily identified.

[10] Commentary .01(d)(2) to Rule 8.600–E provides that ''the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).'' The Fund would not meet the generic listing standards because it would fail to meet the requirement of Commentary .01(d)(2) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

[11] For purposes of this proposal, the term ''Generic Listing Standards'' means the generic listing rules for Managed Fund Shares under Commentary .01 to Rule 8.600–E.

[12] The Exchange notes that this proposed rule change is similar to previous rule changes involving Managed Fund Shares with similar exposures to one or more underlying reference asset and U.S. exchange-listed equity securities. *See* Securities Exchange Act Release No. 87108 (September 25, 2019), 84 FR 52152 (October 1, 2019) (SR–CboeBZX–2019–067). *See generally* Securities Exchange Act Release No. 82906 (March 20, 2018), 83 FR 12992 (March 26, 2018) (SR–CboeBZX–2017–012) (order approving the listing and trading of the LHA Market State Tactical U.S. Equity ETF); Securities Exchange Act Release No. 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018) (SR–BatsBZX–2017–72) (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, to List and Trade Shares of the Innovator S&P 500 Buffer ETF Series, Innovator S&P 500 Power Buffer ETF Series, and Innovator S&P 500 Ultra Buffer ETF Series Under Rule 14.11(i)); Securities Exchange Act Release No. 86773 (August 27, 2019), 84 FR 46051 (September 3, 2019) (SR–CboeBZX–2019–077); Securities Exchange Act Release No. 83146 (May 1, 2018), 83 FR 20103 (May 2, 2017) (SR–CboeBZX–2018–29); Securities Exchange Act Release No. 80529 (April 26, 2017), 82 FR 20506 (May 2, 2017) (SR–BatsBZX–2017–14).

[13] The Exchange and all nine [sic] U.S. options exchanges are members of the Options Regulatory Surveillance Authority, which was established in 2006 to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in investigations for the U.S. options exchanges.

[14] All exchange-listed securities that the Fund may hold will trade on a market that is a member of the Intermarket Surveillance Group (''ISG'') and the Fund will not hold any non-exchange-listed equities or options; however, not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, *see www.isgportal.org.*

The Exchange believes that the liquidity of the markets for securities in the Nasdaq-100 Index, Nasdaq-100 Index Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Fund's Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Shares would present manipulation concerns.

Availability of Information

The Fund's website (*www.etf.nationwide.com*) will include the prospectus for the Fund that may be downloaded. The Fund's website will include ticker, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's net asset value (''NAV'') per share and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV per share (the ''Bid/Ask Price''),[15] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV per share; and (2) a table showing the number of days of such premium or discount for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of Fund, if shorter). On each business day, before commencement of trading in Shares in the Core Trading Session [16] on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.

On a daily basis, the Fund will disclose the information required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR and Forms N–CEN. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX, Form N–PORT and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

The intra-day, closing and settlement prices of exchange-traded options will be readily available from the Options Price Reporting Authority (''OPRA''), the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares, the stocks included in the Nasdaq-100, and for portfolio holdings that are U.S. exchange-listed, including common stocks, rights, warrants, ETFs, REITS and ADRs will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance.

Price information regarding U.S. government securities and other cash equivalents may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[17] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Fund's Shares also will be subject to Rule 8.600–E(d)(2)(D) (''Trading Halts'').

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With the exception of the requirements of Commentary .01(d)(2) (with respect to listed derivatives) as described above, the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. Consistent with Commentary .06 of NYSE Arca Rule 8.600–E, the Adviser or Sub-Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 [18] under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange

[15] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[16] The Core Trading Session begins for each security at 9:30 a.m. Eastern time and ends at the conclusion of Core Trading Hours or the Core Closing Auction, whichever comes later. *See* NYSE Arca Rule 7.34–E. ''Core Trading Hours'' is defined as the hours of 9:30 a.m. Eastern time through 4:00 p.m. (Eastern Time) or such other hours as may be determined by the Exchange from time to time. See Rule 1.1(j).

[17] *See* NYSE Arca Rule 7.12–E.

[18] 17 CFR 240.10A–3.

represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[19]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, options and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[20] 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 Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest in that the Shares will meet each of the initial and continued listing criteria in Commentary .01 to NYSE Arca Rule 8.600–E, with the exception of Commentary .01(d)(2) to NYSE Arca Rule 8.600–E, which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).[21] Commentary .01(d)(2) to NYSE Arca Rule 8.600–E, is intended to ensure that a fund is not subject to manipulation by virtue of significant exposure to a manipulable underlying reference asset by establishing concentration limits among the underlying reference assets for listed derivatives held by a particular fund. The Exchange notes that this proposed rule change is similar to previous rule changes involving Managed Fund Shares with similar exposure to one or more underlying reference asset and U.S. exchange-listed equity securities.[22]

The market for Nasdaq-100 Index Options is deep and liquid. In 2018, more than 15,000 options contracts on the Nasdaq-100 Price Index were traded per day, which is more than $10 billion in notional volume traded on a daily basis. The Exchange believes that the liquidity in the Nasdaq-100 Index Options markets mitigates the concerns that Commentary .01(d)(2) to Rule 8.600–E is intended to address and that such liquidity would discourage manipulation of the Shares.

In addition, the Exchange believes that sufficient protections are in place to protect against market manipulation of the Shares and Nasdaq-100 Index Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the Nasdaq-100 Index; and (ii) surveillance by the Exchange, other options exchanges, and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in

[19] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] 15 U.S.C. 78f(b)(5).

[21] As noted above, the Exchange is submitting this proposal because the Fund does not meet the requirements of Rule 14.11(i)(4)(C)(iv)(b) [sic] which prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures).

[22] *See* note 12, *supra.*

ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses. Further, the Exchange believes that because the Nasdaq-100 Index Options in the Fund's portfolio will be acquired in highly regulated markets, manipulation of Nasdaq-100 Index Options would be discouraged and that any potential manipulation would be more easily identified.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, options and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.

The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, Nasdaq-100 Index Options are liquid and derive their value from the actively traded Nasdaq-100 Index components. The Exchange believes the highly regulated options markets and the broad base and scope of the Nasdaq-100 Index make securities that derive their value from the Nasdaq-100 Index would discourage market manipulation in view of market capitalization and liquidity of the Nasdaq-100 Index components, price and quote transparency, and arbitrage opportunities, and that any potential manipulation would be more easily identified.

The Exchange believes that the liquidity of the markets for securities in the Nasdaq-100 Index Options and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Fund's Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Fund's Shares would present manipulation concerns.

All of the options contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange represents that, except as described above, the Fund will meet and be subject to all other requirements of the Generic Listing Standards and other applicable continued listing requirements for Managed Fund Shares under Rule 8.600–E, including those requirements regarding the Disclosed Portfolio, Portfolio Indicative Value, suspension of trading or removal, trading halts, disclosure, and firewalls. The Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of the Fund.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange notes that the proposed rule change will permit the listing and trading of an additional type of Managed Fund Shares that holds U.S. exchange-traded options and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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[23] and Rule 19b–4(f)(6) thereunder.[24] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[26] 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 Fund is seeking an exception from the generic listing requirements of Commentary .01(d)(2) to Rule 8.600–E similar to exceptions sought by other exchange-traded funds with exposure to a single underlying reference asset, and which have been approved by the Commission.[27] The Exchange also notes that the underlying Nasdaq-100 Index Options will be acquired in liquid and highly regulated markets, which may protect against market manipulation of such options. Therefore, the Commission believes that the proposal does not raise new or novel issues, and that waiver of the 30-day operative delay would permit the Fund to list and trade without undue delay. For these reasons, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[28]

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 shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] *See supra* note 12.

[28] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–82. 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–2019–82 and should be submitted on or before December 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25320 Filed 11–21–19; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33687; File No. 812–14626–01]

AMG Pantheon Master Fund, LLC, et al.

November 18, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment funds.

APPLICANTS: AMG Pantheon Master Fund, LLC (the ''Existing Registered Fund'' or the ''Fund''), AMG Pantheon Subsidiary Fund, LLC (the ''Wholly-Owned Subsidiary''), Pantheon Ventures (US) LP, Pantheon Ventures (UK) LLP (individually or collectively, ''Pantheon''), Pantheon Asia Fund VI, L.P., Pantheon Emerging Asia Fund VI, L.P., Pantheon Emerging Markets Fund (Ex-Asia), L.P., Pantheon Global Infrastructure Fund II, L.P., Pantheon Global Secondary Fund IV, L.P., Pantheon Global Secondary Fund V, L.P., Pantheon USA Fund VIII, L.P., Pantheon USA Fund IX, L.P., Pantheon USA Small Funds Program IX, L.P., Pantheon Global Co-Investment Opportunities Fund II, L.P., Pantheon Global Co-Investment Opportunities Fund III, L.P., Pantheon Access (US), L.P., Pantheon Access (ERISA), L.P., Pantheon Multi-Strategy Program 2014 (US), L.P., Pantheon Multi-Strategy Program 2014 (ERISA), L.P., BVK Private Equity 2011, L.P., BVK Private Equity 2014, L.P., Industriens Vintage Infrastructure, L.P., Industriens Vintage Infrastructure II, L.P., Pantheon Global Secondary Fund IV OPERS, L.P., Pantheon Global GT Fund, L.P., Pantheon Global HO Fund, L.P., Pantheon Global Secondary Fund IV KSA, L.P., Pantheon Global Real Assets GT Fund, L.P., Pantheon Global Real Assets HO Fund, L.P., Global Infrastructure 2015–K, L.P., Pantheon Global Infrastructure Fund II NPS, L.P., Pantheon Global Infrastructure Fund III NPS, L.P., Psagot-Pantheon 1, L.P., Sacramento County Employees' Retirement System Secondary Infrastructure and Real Assets Fund, LLC, KFH Strategic Private Investments, L.P., KGT Strategic Private Investments, L.P., Pantheon Real Assets Opportunities Fund, L.P., Pantheon/VA NRP, LP, Pantheon Global Infrastructure EUR Investments Unit Trust, Pantheon Global Infrastructure USD Investments Unit Trust, Pantheon Global Infrastructure Investments Fund (Cayman) LP, PGIF III Co-mingled Fund, L.P., VA-Pantheon Infrastructure II, LP, Pantheon G Infrastructure Opportunities LP, Amalienborg Vintage Infrastructure K/S, Global Infrastructure 2015–K Holdings, L.P., Pantheon Global Co-Investment Opportunities Fund, L.P., Pantheon Global Co-Investment Opportunities Fund II (Sidecar), L.P., Pantheon Global Secondary Holdings, L.P., Pantheon Global Secondary Holdings II, L.P., Pantheon GT Holdings, L.P., Pantheon HO Holdings, L.P., SCERS SIRF (Holdings), LLC, Pantheon Multi-Strategy Primary Program 2014, L.P., Pantheon Multi-Strategy Secondary Program 2014, L.P., Pantheon Multi-Strategy Co-Investment Program 2014, L.P., Pantheon Access Primary Program, L.P., Pantheon Access Secondary Program, L.P., Pantheon Access Co-Investment Program, L.P., Pantheon Strategic Investments A, L.P., Pantheon G Infrastructure Holdings LP, BVK Private Equity 2018, L.P., Lincoln Brook Opportunities Fund, L.P., Pantheon Global Infrastructure Fund II (Luxembourg) SCSP, Pantheon Access (Luxembourg) SLP SICAV SIF, Pantheon Multi-Strategy Program 2014 (Luxembourg) SLP SICAV SIF, PGCO IV Co-Mingled Fund SCSP, ASGA Global Infrastructure L.P., CPEG-Pantheon Infrastructure L.P., Solutio Premium Private Equity VI Master SCSP, Solutio Premium Private Equity VII Master SCSP, Solutio Premium Private Debt I SCSP and Pantheon Global Secondary Fund VI SCSP (the ''Existing Affiliated Funds,'' and together with the Existing Registered Fund, the Wholly-Owned Subsidiary and Pantheon, the ''Applicants'').

FILING DATES: The application was filed on March 15, 2016, and amended on December 29, 2017, December 27, 2018, September 5, 2019 and October 30, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 12, 2019, and

should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: 600 Steamboat Road, Suite 300, Greenwich, CT 06830.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Existing Registered Fund [1] is a Delaware limited liability company that is registered as a closed-end management investment company under the Act. The Fund's investment objective is to seek long-term capital appreciation by investing in private equity investments. The board of directors of the Fund (the ''Board'') [2] is currently comprised of four members, three of whom are not ''interested persons'' within the meaning of Section 2(a)(19) of the 1940 Act (the ''Independent Directors''),[3] of the Fund.

2. Each of the Existing Affiliated Funds would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

3. Pantheon Ventures (US) LP is a limited partnership organized under the laws of the State of Delaware and is registered with the Commission as an investment adviser under the Advisers Act. Affiliated Managers Group, Inc. (''AMG''), a publicly-traded company, indirectly owns a majority of the interests of Pantheon Ventures (US) LP. Pantheon Ventures (US) LP serves as the investment adviser to the Existing Registered Fund pursuant to an investment advisory agreement and as the investment adviser of many of the Existing Unregistered Funds.

4. Pantheon Ventures (UK) LLP is a limited liability partnership organized under the laws of England and Wales and is an exempt reporting adviser under the Advisers Act. AMG indirectly owns a majority of the interests of Pantheon Ventures (UK) LLP. Pantheon Ventures (UK) LLP serves as the investment adviser of many of the Existing Unregistered Funds.

5. Applicants seek an order (''Order'') to permit a Registered Fund and one or more other Registered Funds and/or Unregistered Funds [4] (collectively ''Co-Investment Affiliates'') to (a) participate in the same investment opportunities through a proposed co-investment program in circumstances where such participation would otherwise be prohibited under Section 17 of the Act and (B) make additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Registered Fund (or its Wholly-Owned Investment Subsidiary, as defined below) participate with one or more Co-Investment Affiliates in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Subsidiaries) could not participate together with one or more Co-Investment Affiliates without obtaining and relying on the Order.[5]

6. Applicants state that a Registered Fund may, from time to time, form one or more Wholly-Owned Investment Subsidiaries.[6] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Co-Investment Affiliate because it would be a company controlled by its parent Registered Fund for purposes of rule 17d–1 under the Act. Applicants request that a Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Registered Fund and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the Order, as though the parent Registered Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Registered Fund's investments and, therefore, no conflicts of interest could arise between the Registered Fund and the Wholly-Owned Investment Subsidiary. The Registered Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Registered Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Registered Fund's place. If the Registered Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Registered Fund and the Wholly-Owned Investment Subsidiary.

7. When considering Potential Co-Investment Transactions for any Registered Fund, an Investment Adviser will consider only the Objectives and

[1] The Existing Registered Fund and any Future Registered Fund are referred to collectively as the ''Registered Funds.'' The term ''Future Registered Fund'' means any closed-end management investment company (a) that is registered under the Act, (b) whose investment adviser is an Investment Adviser (defined below), and (c) that intends to participate in Co-Investment Transactions (defined below). The term ''Investment Adviser'' means (a) Pantheon and (b) any future investment adviser that controls, is controlled by or is under common control with Pantheon and is registered as an investment adviser or is an exempt reporting adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'').

[2] The term ''Board'' means the board of directors of the Existing Registered Fund as well as the board of directors or trustees of any Future Registered Fund.

[3] The ''Independent Directors'' means the members of a Board who are not ''interested persons'' of a Registered Fund within the meaning of Section 2(a)(19) of the 1940 Act.

[4] ''Unregistered Funds'' means (a) the Existing Unregistered Funds and (b) any future entity (i) whose investment adviser is an Investment Adviser, (ii) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act, and (iii) that intends to participate in Co-Investment Transactions.

[5] All existing entities that currently intend to rely on the requested Order have been named as Applicants, and any entity that subsequently relies on the Order will comply with the terms and conditions of the Application.

[6] The term ''Wholly-Owned Investment Subsidiary'' means any entity: (i) That is wholly-owned by a Registered Fund (with such Registered Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Registered Fund; (iii) with respect to which the Board of such Registered Fund has the sole authority to make all determinations with respect to the entity's participation under the conditions of this Application; and (iv) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act. The Wholly-Owned Subsidiary is a Wholly-Owned Investment Subsidiary, and any subsidiary of a Registered Fund that participates in a Co-Investment Transaction will be a Wholly-Owned Investment Subsidiary.

Strategies,[7] investment restrictions, regulatory and tax requirements, capital available for investment (''Available Capital''),[8] and other pertinent factors applicable to the Registered Fund. Each Investment Adviser, as applicable, undertakes to perform these duties consistently for each Registered Fund, as applicable, regardless of which of them serves as investment advisers to these entities. The participation of a Registered Fund in a Potential Co-Investment Transaction may only be approved by a Required Majority [9] of the directors eligible to vote on that Co-Investment Transaction (the ''Eligible Directors'').[10] Due to the similarity in Objectives and Strategies of certain Registered Funds with the investment objectives, policies and strategies of certain Co-Investment Affiliates, the Investment Adviser expects that investments for a Registered Fund should also generally be appropriate investments for one or more other Co-Investment Affiliates.

8. With respect to participation in a Potential Co-Investment Transaction by a Registered Fund, the applicable Investment Adviser will present each Potential Co-Investment Transaction and the proposed allocation of each investment opportunity to the Eligible Directors. The Required Majority of a Registered Fund will approve each Co-Investment Transaction prior to any investment by the Registered Fund.

9. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Registered Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Co-Investment Affiliate and a Registered Fund and each Affiliated Account in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board has approved the Registered Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Registered Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Eligible Directors. The Board may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

10. No Independent Director of any Registered Fund will have a direct or indirect financial interest in any Co-Investment Transaction (other than indirectly through share ownership in one of the Registered Funds), including any interest in any issuer whose securities would be acquired in a Co-Investment Transaction.

11. If the Investment Adviser, the principal owners of the Investment Adviser (''Principals''), or any person controlling, controlled by, or under common control with the Investment Adviser or the Principals, and the Co-Investment Affiliates (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Registered Fund (the ''Shares''), then the Holders will vote such Shares as required under the condition 14. Applicants believe that this condition will ensure that the Independent Directors will act independently in evaluating the Co-Investment Transactions, because the ability of the Investment Adviser or the Principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve the independent third party, taking into account its qualifications, reputation for independence, cost to the investors, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that they expect that participation in Potential Co-Investment Transactions by any of the Registered Funds and the Co-Investment Affiliates may increase favorable investment opportunities for the Registered Funds and the Co-Investmant Affiliates. The conditions are designed to ensure that the Investment Advisers would not be able to favor a Co-Investment Affiliate over a Registered Fund through the allocation of investment opportunities between them. Applicants state that the Regulated Fund's participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from, or less advantageous than, the other participants.

Applicants' Conditions

Applicants agree that any Order granting the requested relief shall be subject to the following conditions:

1. Each time an Investment Adviser considers a Potential Co-Investment Transaction for an Unregistered Fund or another Registered Fund that falls within a Registered Fund's then-current Objectives and Strategies, the Investment Adviser to the Registered Fund will make an independent determination of the appropriateness of the investment for such Registered Fund in light of the Registered Fund's then-current circumstances.

2.(a). If the Investment Adviser to a Registered Fund deems the Registered Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Registered Fund, it will then determine an appropriate level of investment for the Registered Fund.

(b). If the aggregate amount recommended by the applicable Investment Adviser to be invested by the applicable Registered Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Registered Funds and Unregistered Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount of the investment opportunity will be allocated among them pro rata based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each. The applicable

[7] ''Objectives and Strategies'' means the investment objectives and strategies of the Registered Funds, as described in the Registered Funds' registration statements on Form N–2, other filings the Registered Funds have made with the Commission under the Securities Act of 1933 (''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and the Registered Funds' reports to shareholders.

[8] ''Available Capital'' will be determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Registered Fund or imposed by applicable laws, rules, regulations or interpretations.

[9] ''Required Majority'' has the meaning provided in Section 57(o) of the 1940 Act. The Board members of a Registered Fund that make up the Required Majority will be determined as if the Registered Fund was a was a business development company subject to section 57(o) (''BDC'').

[10] The term ''Eligible Directors'' means the directors who are eligible to vote under Section 57(o) of the 1940 Act as if the Registered Fund was a BDC.

Investment Adviser will provide the Eligible Directors of each participating Registered Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Registered Fund's investments for compliance with these allocation procedures.

(c). After making the determinations required in conditions 1 and 2(a), the applicable Investment Adviser will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each participating Registered Fund and Unregistered Fund, to the Eligible Directors of each participating Registered Fund for their consideration. A Registered Fund will co-invest with one or more other Registered Funds and/or one or more Unregistered Funds only if, prior to the Registered Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i). The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Registered Fund and its shareholders and do not involve overreaching in respect of the Registered Fund or its shareholders on the part of any person concerned;

(ii). the Potential Co-Investment Transaction is consistent with:

(A). The interests of the shareholders of the Registered Fund; and

(B). the Registered Fund's then-current Objectives and Strategies;

(iii). the investment by any other Registered Funds or Unregistered Funds would not disadvantage the Registered Fund, and participation by the Registered Fund would not be on a basis different from or less advantageous than that of other Registered Funds or Unregistered Funds; provided, that if any other Registered Fund or Unregistered Fund, but not the Registered Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A). The Eligible Directors will have the right to ratify the selection of such director or board observer or participant, if any;

(B). the applicable Investment Adviser agrees to, and does, provide periodic reports to the Registered Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C). any fees or other compensation that any Unregistered Fund or any Registered Fund or any affiliated person of any Unregistered Fund or any Registered Fund receives in connection with the right of an Unregistered Fund or a Registered Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Unregistered Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Registered Funds in accordance with the amount of each party's investment; and

(iv). the proposed investment by the Registered Fund will not benefit the Investment Advisers, the Unregistered Funds or the other Registered Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except

(A). to the extent permitted by condition 13,

(B). to the extent permitted by Section 17(e) of the Act, as applicable,

(C). indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or

(D). in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Registered Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Investment Adviser will present to the Board of each Registered Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Registered Funds or Unregistered Funds during the preceding quarter that fell within the Registered Fund's then-current Objectives and Strategies that were not made available to the Registered Fund, and an explanation of why the investment opportunities were not offered to the Registered Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Registered Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[11] a Registered Fund will not invest in reliance on the Order in any issuer in which another Registered Fund, Unregistered Fund, or any affiliated person of another Registered Fund or Unregistered Fund is an existing investor.

6. A Registered Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Registered Fund and Unregistered Fund. The grant to an Unregistered Fund or another Registered Fund, but not the Registered Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7.(a). If any Unregistered Fund or any Registered Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Investment Adviser will:

(i). Notify each Registered Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii). formulate a recommendation as to participation by each Registered Fund in the disposition.

(b). Each Registered Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Unregistered Funds and Registered Funds.

(c). A Registered Fund may participate in such disposition without obtaining prior approval of the Required Majority if:

(i). The proposed participation of each Registered Fund and each Unregistered Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition;

(ii). the Board of the Registered Fund has approved as being in the best interests of the Registered Fund the ability to participate in such dispositions on a pro rata basis (as

[11] This exception applies only to Follow-On Investments by a Registered Fund in issuers in which that Registered Fund already holds investments.

described in greater detail in the application); and

(iii). the Board of the Registered Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Investment Adviser will provide its written recommendation as to the Registered Fund's participation to the Eligible Directors, and the Registered Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Registered Fund's best interests.

(d). Each Unregistered Fund and each Registered Fund will bear its own expenses in connection with any such disposition.

8.(a). If any Unregistered Fund or any Registered Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Investment Adviser will:

(i). Notify each Registered Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii). formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Registered Fund.

(b). A Registered Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if:

(i). The proposed participation of each Registered Fund and each Unregistered Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and

(ii). the Board of the Registered Fund has approved as being in the best interests of the Registered Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Investment Adviser will provide its written recommendation as to the Registered Fund's participation to the Eligible Directors, and the Registered Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Registered Fund's best interests.

(c). If, with respect to any Follow-On Investment:

(i). The amount of the opportunity is not based on the Registered Funds' and the Unregistered Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the applicable Investment Adviser to be invested by the applicable Registered Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Registered Funds and Unregistered Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then amount invested by each such party will be allocated among them pro rata based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d). The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Independent Directors of each Registered Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Registered Funds or Unregistered Funds that the Registered Fund considered but declined to participate in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments that the Registered Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually the continued appropriateness for the Registered Fund of participating in new and existing Co-Investment Transactions.

10. Each Registered Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Registered Funds were a business development company and each of the investments permitted under these conditions were approved by the Required Majority under Section 57(f) of the Act.

11. No Independent Director of a Registered Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Unregistered Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Investment Advisers under their respective investment advisory agreements with Unregistered Funds and the Registered Funds, be shared by the Registered Funds and the Unregistered Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [12] (including break-up or commitment fees but excluding broker's fees contemplated by Section 17(e) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Registered Funds and Unregistered Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Investment Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Investment Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Registered Funds and Unregistered Funds based on the amounts they invest in such Co-Investment Transaction. None of the Unregistered Funds, the Investment Advisers, the other Registered Funds or any affiliated person of the Registered Funds or Unregistered Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Registered Funds and the Unregistered Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Investment Adviser, investment advisory fees paid in accordance with the agreement between the Investment Adviser and the Registered Fund or Unregistered Fund).

14. If the Holders own in the aggregate more than 25% of the Shares of a Registered Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

15. Each Registered Fund's chief compliance officer, as defined in Rule 38a–1(a)(4) of the Act, will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Registered Fund's

[12] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87561; File No. SR–CboeBZX–2019–096]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Fat Finger Check in Rule 21.17 as it Applies To Stop Limit Orders

November 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to amend the fat finger check in Rule 21.17 as it applies to Stop Limit Orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fat finger check under Rule 21.17(b) as it applies to Stop Limit Orders. Currently, Rule 21.17(b) provides that if a User submits a buy (sell) limit order to the System with a price that is more than an Exchange-determined buffer amount above (below) the NBO (NBB), the System will reject or cancel back to the User the limit order (*i.e.,* the ''fat finger'' check). This check applies to orders and quotes with a limit price with the exception of bulk messages.[5]

The Exchange proposes to add Stop Limit Orders to Rule 21.17(b) as an additional order type to which the fat finger check does not apply. A Stop Limit Order is an order that becomes a limit order when the stop price (selected by the User) is elected. A Stop Limit Order to buy is elected and becomes a buy limit order when the consolidated last sale in the option occurs at or above, or the NBB is equal to or higher than, the specified stop price. A Stop Limit Order to sell is elected and becomes a sell limit order when the consolidated last sale in the option occurs at or below, or the NBO is equal to or lower than, the specified stop price.[6] Stop Limit Orders allow Users increased control and flexibility over their transactions and the prices at which they are willing to execute an order. The purpose of a Stop Limit Order is to not execute upon entry, and instead rest in the System until the market reaches a certain price level, at which time the order could be executed. As such, when a buy (sell) Stop Limit Order is activated, its limit price may likely be outside of the buffer amount above (below) the NBO (NBB) in anticipation of capturing rapidly increasing (decreasing) market prices.

The primary purpose of the fat finger check is to prevent limit orders from executing at potentially erroneous prices upon entry, because the limit prices are ''too far away'' from the then-current NBBO. As noted above, a Stop Limit Order is not intended to execute upon entry. Currently, because a Stop Limit Order does not ''become'' a limit order until activated, the limit order fat finger check applies to a Stop Limit Order at the time the order is activated. As noted above, at that time, the limit price may cross the NBO, and thus may be cancelled due to the fat finger check if the limit price crosses the NBO by more than the buffer. Therefore, the manner in which the fat finger check cancels/rejects a Stop Limit Order may conflict with the intended purpose of a Stop Limit Order and a User's control over the time when and the price at which it executes. For example, assume that when the NBBO is 8.00×8.05, a User submits a Stop Limit Order to buy at 9.25 and a stop price of 8.15 and the Exchange has set the fat finger buffer to $1.00. Assume the NBBO then updates to 8.15×8.20. The updated NBB equals the stop price of the order will activate the stop price of the Stop Limit Order, converting it into a limit order to buy at 9.25, which would be more than the fat finger buffer of $1.00 above the current NBO, thus canceled/rejected by the System in accordance with the fat finger check. The Exchange also notes that the System is currently able to apply only one buffer amount across multiple order types. Therefore, the Exchange would not be able to expand the buffer amount to accommodate Stop Limit Orders without potentially over-expanding the buffer amount for other limit orders that execute upon entry.

The Exchange notes that a User's Stop Limit Orders would still be subject to other price protections already in place on the Exchange. In particular, drill-through price protections are in place pursuant to Rule 21.17(d), such that, if a buy (sell) order would execute (*i.e.,* when the stop price for a Stop Limit Order is activated), the System executes the order up to a buffer amount (established by the Exchange) above (below) the NBO (NBB) that existed at the time of order entry (''the drill-through price'').

The Exchange believes that allowing a Stop Limit Order, once activated, with a limit price outside of the NBBO (notwithstanding any fat finger buffer) to execute at that limit price (up to the drill-through buffer amount) is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange notes that a separate provision governs a fat finger check specific to bulk messages. *See* Rule 21.17(f).

[6] *See* Rule 21.1(d)(12) (definition of Stop Limit Order).

consistent with the intended purpose of a Stop Limit Order. As stated, when a buy (sell) Stop Limit Order is activated, its limit price is intended to be at a consequential amount above (below) the NBO (NBB) in order to capture rapidly increasing (decreasing) trade prices, to which the NBBO would as rapidly track and reflect. To cancel or reject such orders based on the NBBO at the time of its activation would inhibit Stop Limit Orders from capturing favorable trade prices as a result of a rapidly shifting market. The Exchange further notes that its affiliated exchange, Cboe Exchange, Inc. (''Cboe Options''), recently submitted a rule filing that also proposed to exclude Stop Limit Orders from its fat finger check, which function in substantively the same manner as on the Exchange.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change benefits market participants by ensuring that they are able to use Stop Limit Orders to achieve their intended purpose. As stated, Stop Limit Orders are intended to increase User price control and flexibility, particularly in the face of price swings and market volatility, by resting in the System until the market reaches a certain price level. Thus, they are not intended to execute upon entry. Conversely, the primary purpose of the fat finger check is to prevent limit orders from executing at potentially erroneous prices upon entry, because the limit prices are ''too far away'' from the then-current NBBO. By excluding Stop Limit Orders from the fat finger check, which would currently cancel/reject a Stop Limit Order if its buy (sell) limit price was above (below) the NBO (NBB) upon activation of its stop limit price, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system by allowing Users the control and flexibility to set the limit prices on Stop Limit Orders so as to capture significant market fluctuations, which, as stated, result in corresponding significant adjustments in the NBBO. Therefore, the proposed rule change is designed to protect investors by allowing their Stop Limit Orders to execute as intended without being canceled or rejected in connection with the NBBO that existed at the time of their activation, and instead to consider rapid price movements and corresponding NBBO adjustments. The Exchange notes that the proposed rule change will not affect the protection of investors or the maintenance of a fair and orderly market because the drill-through price controls would apply to Stop Limit Orders when their stop prices are activated and they become limit orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users' Stop Limit Orders will be excluded from the fat finger check in the same manner. Also, all Users' Stop Limit Orders will continue to be subject to other specific price controls in place once their stop prices are activated and they become limit orders. The proposed rule change will not impose any burden on intermarket competition that that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is merely designed to allow Users' Stop Limit Orders to execute in a manner that achieves their intended purpose by updating a price protection mechanism already in place on the Exchange and applicable only to trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to 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. The Exchange believes that waiver of the operative delay is appropriate because, as the Exchange discussed above, excluding Stop Limit Orders from the fat finger check, which would currently cancel/reject a Stop Limit Order if its buy (sell) limit price was above (below) the NBO (NBB) upon activation of its stop limit price, will benefit market participants by ensuring that they are able to use Stop Limit Orders to achieve their intended purpose. Thus, the Exchange believes that the proposed rule change is designed to protect investors by allowing their Stop Limit Orders to execute as intended without being canceled or rejected due to the application of the fat finger check provision.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of

[7] *See* Securities Exchange Act Release No. 87455 (November 4, 2019), 84 FR 60461 (November 8, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Fat Finger Check in Rule 5.34 as It Applies to Stop-Limit Orders) (SR–CBOE–2019–102).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

investors and the public interest because the proposal will permit Stop Limit Orders to execute as intended and not be inadvertently cancelled in certain situation, as discussed above, by the fat finger check provision. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–CboeBZX–2019–096 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–CboeBZX–2019–096. 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–CboeBZX–2019–096 and should be submitted on or before December 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25318 Filed 11–21–19; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87558; File No. SR–ICEEU–2019–025]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Amendments to the ICE Clear Europe Clearing Rules and General Contract Terms

November 18, 2019.

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 November 12, 2019, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4)(ii) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Clearing Rules (the ''Rules'')[5] and General Contact Terms in connection with the clearing of F&O contracts for a new market, ICE Futures Abu Dhabi (''IFAD'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

ICE Clear Europe is proposing to amend its Rules in order to provide clearing services to IFAD, an affiliated newly established futures exchange which will form part of the Intercontinental Exchange, Inc. global network of exchanges.[6] IFAD will operate an energy futures and options market and intends to initially launch a physically delivered futures contract whose underlying is Murban crude oil.[7]

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

[6] Intercontinental Exchange, Inc. has announced the planned launch of IFAD, which will be a recognized investment exchange under the laws of the Abu Dhabi Global Market (''ADGM'').

[7] The initial launch of IFAD trading is expected to be in the first half of 2020, subject to completion of all regulatory approvals and other conditions. ICE Clear Europe expects that prior to the launch, it will adopt amendments to its Delivery Procedures relating to settlement of the launched contracts, which will be filed with the Commission under Rule 19b–4.

IFAD has stated that it may in the future list other crude oil and crude-oil related products and other financial futures or options contracts on such futures contracts, subject to applicable regulatory authorizations.

The proposed amendments to the Rules reflect the addition of IFAD as a trading market cleared by ICE Clear Europe and include relevant references to applicable ADGM laws and regulations. Contracts traded on IFAD and cleared at ICE Clear Europe will be F&O Contracts for purposes of the Rules.

In Rule 101, new defined terms would be added to reference IFAD itself, its rules and the various types of IFAD transactions, in a manner generally consistent with the defined terms applicable to other F&O energy markets (and transactions thereon) cleared by ICE Clear Europe. These defined terms include ''IFAD,'' ''IFAD Block Contract,'' ''IFAD Block Trade Facility,'' ''IFAD Block Transaction,'' ''IFAD Contract,'' ''IFAD Matched Contract,'' ''IFAD Matched Transaction,'' ''IFAD Rules'' and ''IFAD Transaction''. In addition, defined terms would be added for relevant regulatory matters, including ''FSMR'' (the Financial Services and Markets Regulations 2015 of the Abu Dhabi Global Market), ''FSRA'' (the Abu Dhabi Global Market's Financial Services Regulatory Authority) and ''FSRA Rules'' (the rules and similar materials of the FSRA).

Certain existing definitions would be updated to reference IFAD and the new defined terms (consistent with existing references to other cleared markets), including: ''Applicable Law'' to include references to the FSMR and the FSRA Rules; ''Regulatory Authority'' to include the FSRA; ''Energy'' to also refer to the clearing of IFAD Markets; ''Energy Transaction'' to include IFAD Transactions; ''Market'' to include IFAD; and ''Non-DCM/Swap'' to include an IFAD Transaction and an IFAD Contract.

The introductions to Part 9 (Default Rules) and Part 12 (Settlement Finality Regulations and Companies Act 1989) of the Rules would also be amended to reference the FSMR among other relevant Applicable Laws on which the Clearing House may rely for purposes of default management.

A new Rule 1208 would be added to address specifically settlement finality under ADGM laws. Pursuant to the proposed rule, Clearing Members and other Participants would acknowledge that modifications to Applicable Laws in the Abu Dhabi Global Market related to insolvency, which may affect Clearing Members, the Clearing House and other Participants, may apply pursuant to the FSMR as a matter of ADGM law. The rule would give notice to Clearing Members and other Participants that these modifications may apply in relation to a broader range of circumstances than those set out in Part 12 itself, and may provide expanded settlement finality protections as a matter of ADGM law compared to those which are available under English and European law, particularly as regards the settlement finality upon delivery of non-securities products such as oil.

ICE Clear Europe would also make a conforming change to its General Contact Terms to include a reference to the IFAD rules, which set out certain contract terms for IFAD contracts.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act[8] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are designed to facilitate the clearing of F&O Contracts, including physically delivered crude oil futures contracts, that are expected to be launched for trading on the IFAD exchange and that will be cleared by ICE Clear Europe. The amendments would supplement the Rules to include references to IFAD and related transactional and regulatory definitions, on a similar basis to the other F&O markets that ICE Clear Europe currently clears. ICE Clear Europe believes that its existing financial resources, account infrastructure, risk management, systems and operational arrangements would be sufficient to support clearing of such Contracts and to manage the risks associated with such Contracts in compliance with applicable law. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of IFAD contracts under the Rules, the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[9]

The amendments are also consistent with relevant requirements under Rule 17Ad–22.[10]

Legal Framework. Consistent with the requirement that clearing agencies provide a well-founded, clear, transparent, and enforceable legal basis for their activities pursuant to Rule 17Ad–22(e)(1),[11] the amendments add references to ADGM regulations and regulatory authorities into relevant provisions of the Rules, such as the defined term Applicable Laws, as well as generally incorporate IFAD transactions into the framework of the Rules. Other amendments would further clarify the Clearing House's ability to rely on rights under the FSMR in managing a default, where applicable.

Financial Resources. ICE Clear Europe will apply its existing energy margin methodology to IFAD contracts. ICE Clear Europe believes that this methodology will provide sufficient margin to cover the risks from clearing such contracts, which are similar to other energy contracts cleared by ICE Clear Europe. In addition, for similar reasons, ICE Clear Europe will apply its existing F&O Guaranty Fund methodology in connection with the IFAD contracts. In ICE Clear Europe's view, the existing methodology will be sufficient to support clearing of the IFAD contracts in addition to other F&O Contracts. As a result, ICE Clear Europe believes that its financial resources will be sufficient to support clearing of IFAD contracts, consistent with the requirements of Rule 17Ad–22(b)(2–3)[12] and (e)(4).[13]

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 270.17Ad–22.

[11] 17 CFR 240.17Ad–22(e)(1), which requires that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.''

[12] 17 CFR 240.17Ad–22(b)(2–3), which requires that ''[a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to:

(2) Use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.

(3) Maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions; provided that a registered clearing agency acting as a central counterparty for security-based swaps shall maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security-based swaps. Such policies and procedures may provide that the additional financial resources may be maintained by the security-based swap clearing agency generally or in separately maintained funds.

[13] 17 CFR 240.17Ad–22(e)(4), which requires that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (4) [e]ffectively identify, measure,

Continued

Operational Resources. ICE Clear Europe will have sufficient operational and managerial capacity to clear the IFAD contracts. Specifically, ICE Clear Europe believes that is existing systems and procedures are appropriately scalable to handle the additional IFAD contracts, which will be generally similar to other energy contracts currently cleared by ICE Clear Europe. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(17).[14]

Default Management. These amendments make clarifications to the default management provisions in Parts 9 and 12 of the Rules to reflect relevant rights under ADGM regulations. As such, the amendments are consistent with the Clearing House's ability to take timely action to continue to meet its obligations in the case of default, as required under Rule 17Ad–22(e)(13).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in connection with the addition of clearing services for contracts traded on IFAD, a new energy futures and options market. ICE Clear Europe believes that its clearing of IFAD contracts would provide additional opportunities for interested market participants to engage in cleared trading activity in the energy derivatives markets market, and will not adversely affect its existing cleared markets or participants in them. Specifically, ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe has conducted a public consultation with respect to the proposed amendments.[16] ICE Clear Europe received one question from a Clearing Member with respect to the launch of clearing of IFAD contracts which has been addressed and did not require changes to the proposed rules.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f) of Rule 19b–4[18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2019–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2019–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:

(i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency not subject to paragraph (e)(4)(ii) of this section, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iv) Including prefunded financial resources, exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under paragraphs (e)(4)(i) through (iii) of this section, as applicable;

(v) Maintaining the financial resources required under paragraphs (e)(4)(ii) and (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds; . . .''

[14] 17 CFR 240.17Ad–22(e)(4), which requires that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (17) Manage the covered clearing agency's operational risks by:

(i) Identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls;

(ii) Ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and

(iii) Establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.

[15] 17 CFR 240.17Ad–22(e)(13), which requires that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (13) ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures. . . .''

[16] Circular C19/164 (25 October 2019), available at *https://www.theice.com/publicdocs/clear_europe/circulars/C19164.pdf.*

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2019–025 and should be submitted on or before December 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25315 Filed 11–21–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87562; File No. SR–C2–2019–024]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Fat Finger Check in Rule 6.14 as It Applies to Stop-Limit Orders

November 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2019, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend the fat finger check in Rule 6.14 as it applies to Stop-Limit orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fat finger check under Rule 6.14(c)(1) as it applies to Stop-Limit orders. Currently, Rule 6.14(c)(1) provides that if a User submits a buy (sell) limit order to the System with a price that is more than a buffer amount above (below) the NBO (NBB), the System cancels or rejects the order (*i.e.* the ''fat finger'' check). The Exchange determines a default buffer amount; however, a User may establish a higher or lower amount than the Exchange default. This check generally applies to orders and quotes with a limit price, subject to certain exceptions set forth in current Rules 6.14(c)(1)(B) through (D). For example, current Rule 6.14(c)(1)(D) provides that the check does not apply to bulk messages.[5]

The Exchange proposes to add Stop-Limit orders to Rule 6.14(c)(1)(D) as an additional order type to which the fat finger check does not apply. A ''Stop-Limit'' order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User.[6] Stop-Limit orders allow Users increased control and flexibility over their transactions and the prices at which they are willing to execute an order. The purpose of a Stop-Limit order is to not execute upon entry, and instead rest in the System until the market reaches a certain price level, at which time the order could be executed. As such, when a buy (sell) Stop-Limit order is activated, its limit price may likely be outside of the buffer amount above (below) the NBO (NBB) in anticipation of capturing rapidly increasing (decreasing) market prices.

The primary purpose of the fat finger check is to prevent limit orders from executing at potentially erroneous prices upon entry, because the limit prices are ''too far away'' from the then-current NBBO. As noted above, a Stop-Limit order is not intended to execute upon entry. Currently, because a Stop-Limit order does not ''become'' a limit order until activated, the limit order fat finger check applies to a Stop-Limit order at the time the order is activated. As noted above, at that time, the limit price may cross the NBO, and thus may be cancelled due to the fat finger check if the limit price crosses the NBO by more than the buffer. Therefore, the manner in which the fat finger check cancels/rejects a Stop-Limit order may conflict with the intended purpose of a Stop-Limit order and a User's control over the time when and the price at which it executes. For example, assume that when the NBBO is 8.00×8.05, a User submits a Stop-Limit order to buy at 9.25 and a stop price of 8.15 and the User has set the fat finger buffer to $1.00. Assume the NBBO then updates to 8.15×8.20. The updated NBB equals the stop price of the order will activate the stop price of the Stop Limit Order, converting it into a limit order to buy at 9.25, which would be more than the fat finger buffer of $1.00 above the current NBO, thus canceled/rejected by the System in accordance with the fat finger check. The Exchange also notes that the System is currently able to apply only one buffer amount (either the Exchange default amount or a User's established amount) across multiple order types. Therefore, a User would not be able to expand the buffer amount to accommodate Stop-Limit orders without potentially over-expanding the buffer

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange notes that a separate provision governs a fat finger check specific to bulk messages. *See* Rule 6.14(a)(5).

[6] *See* Rule 6.10(c) (definition of Stop-Limit order).

amount for other limit orders that execute upon entry.

The Exchange notes that a User's Stop-Limit orders would still be subject to other price protections already in place on the Exchange. In particular, Rule 6.12(c)(2) specifically applies to Stop-Limit orders and provides that the System cancels or rejects a buy (sell) Stop-Limit order if the NBB (NBO) at the time the System receives the order is equal to or above (below) the stop price.[7] Because the purpose of a Stop-Limit order is to rest in the Book until a specified price is reached, the Exchange believes rejecting a stop or stop-limit order entered above or below, as applicable, that price may be erroneous, as entry at that time would be inconsistent with the purpose of the order. Additionally, drill-through protections are in place pursuant to Rule 6.14(a)(4), such that, if a buy (sell) order would execute (*i.e.,* when the stop price for a Stop-Limit order is activated), the System executes the order up to a buffer amount (the Exchange determines the amount on a class and premium basis) above (below) the NBO (NBB) that existed at the time of order entry (''the drill-through price'').

The Exchange believes that allowing a Stop-Limit order, once activated, with a limit price outside of the NBBO (notwithstanding any fat finger buffer) to execute at that limit price (up to the drill-through buffer amount) is consistent with the intended purpose of a Stop-Limit order. As stated, when a buy (sell) Stop-Limit order is activated, its limit price is intended to be at a consequential amount above (below) the NBO (NBB) in order to capture rapidly increasing (decreasing) trade prices, to which the NBBO would as rapidly track and reflect. To cancel or reject such orders based on the NBBO at the time of its activation would inhibit Stop-Limit orders from capturing favorable trade prices as a result of a rapidly shifting market. The Exchange further notes that its affiliated exchange, Cboe Exchange, Inc. (''Cboe Options''), recently submitted a rule filing that also proposed to exclude Stop Limit Orders from its fat finger check, which function in substantively the same manner as on the Exchange.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change benefits market participants by ensuring that they are able to use Stop-Limit orders to achieve their intended purpose. As stated, Stop-Limit orders are intended to increase User price control and flexibility, particularly in the face of price swings and market volatility, by resting in the System until the market reaches a certain price level. Thus, they are not intended to execute upon entry. Conversely, the primary purpose of the fat finger check is to prevent limit orders from executing at potentially erroneous prices upon entry, because the limit prices are ''too far away'' from the then-current NBBO. By excluding Stop-Limit orders from the fat finger check, which would currently cancel/reject a Stop-Limit order if its buy (sell) limit price was above (below) the NBO (NBB) upon activation of its stop limit price, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system by allowing Users the control and flexibility to set the limit prices on Stop-Limit orders so as to capture significant market fluctuations, which, as stated, result in corresponding significant adjustments in the NBBO. Therefore, the proposed rule change is designed to protect investors by allowing their Stop-Limit orders to execute as intended without being canceled or rejected in connection with the NBBO that existed at the time of their activation, and instead to consider rapid price movements and corresponding NBBO adjustments. The Exchange notes that the proposed rule change will not affect the protection of investors or the maintenance of a fair and orderly market because other price controls would apply to Stop-Limit orders, both at the time of their submission and when their stop prices are activated and they become limit orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users' Stop-Limit orders will be excluded from the fat finger check in the same manner. Also, all Users' Stop-Limit orders will continue to be subject to other specific price controls in place, both at the time of their submission and once their stop prices are activated and they become limit orders. The proposed rule change will not impose any burden on intermarket competition that that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is merely designed to allow Users' Stop-Limit orders to execute in a manner that achieves their intended purpose by updating a price protection mechanism already in place on the Exchange and applicable only to trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public

[7] However, the System accepts a buy (sell) Stop-Limit order if the consolidated last sale price at the time the System receives the order is equal to or above (below) the stop price. The Exchange notes that the System is unable to compare the stop price of a stop-limit order to the last consolidated sale price upon receipt of the order, which is why the order is accepted when the stop price is above (below) the last consolidated sale price when the System receives it.

[8] *See* Securities Exchange Act Release No. 87455 (November 4, 2019), 84 FR 60461 (November 8, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Fat Finger Check in Rule 5.34 as It Applies to Stop-Limit Orders) (SR–CBOE–2019–102).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

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 [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to 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. The Exchange believes that waiver of the operative delay is appropriate because, as the Exchange discussed above, excluding Stop-Limit orders from the fat finger check, which would currently cancel/reject a Stop-Limit order if its buy (sell) limit price was above (below) the NBO (NBB) upon activation of its stop limit price, will benefit market participants by ensuring that they are able to use Stop-Limit orders to achieve their intended purpose. Thus, the Exchange believes that the proposed rule change is designed to protect investors by allowing their Stop-Limit orders to execute as intended without being canceled or rejected due to the application of the fat finger check provision.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will permit Stop-Limit orders to execute as intended and not be inadvertently cancelled in certain situation, as discussed above, by the fat finger check provision. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2019–024 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–C2–2019–024. 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–C2–2019–024 and should be submitted on or before December 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87560; File No. SR–CboeBZX–2019–097]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt BZX Rule 14.11(l) To Permit the Listing and Trading of Exchange-Traded Fund Shares That Are Permitted To Operate in Reliance on Rule 6c–11 Under the Investment Company Act of 1940

November 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2019 Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to adopt BZX Rule 14.11(l) to permit the listing and trading of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940. The Exchange is also proposing to discontinue the quarterly reports required with respect to Managed Fund Shares listed on the Exchange pursuant to the generic listing standards under Rule 14.11(i).

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Rule 14.11(l) [3] for the purpose of permitting the generic listing and trading, or trading pursuant to unlisted trading privileges, of Exchange-Traded Fund Shares [4] that are permitted to operate in reliance on Rule 6c–11 (''Rule 6c–11'') under the Investment Company Act of 1940 (the ''1940 Act'').[5] The Exchange is also proposing to discontinue the quarterly reports required with respect to Managed Fund Shares listed on the Exchange pursuant to the generic listing standards under Rule 14.11(i).

The Commission recently adopted Rule 6c–11 to permit exchange-traded funds (''ETFs'') that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.[6] Since the first ETF was approved by the Commission in 1992, the Commission has routinely granted exemptive orders permitting ETFs to operate under the 1940 Act because there was no ETF specific rule in place and they have characteristics that distinguish them from the types of structures contemplated and included in the 1940 Act. After such an extended period operating without a specific rule set and only under exemptive relief, Rule 6c–11 is designed to provide a consistent, transparent, and efficient regulatory framework for ETFs.[7] Exchange listing standards applicable to ETFs have been similarly adopted and tweaked over the years and the Exchange believes that, just as the Commission has undertaken a review of the 1940 Act as it is applicable to ETFs, it is appropriate to perform a similar holistic review and overhaul of Exchange listing rules. With this in mind, the Exchange submits this proposal to add new Rule 14.11(l) and certain corresponding rule changes because it believes that this proposal similarly promotes consistency, transparency, and efficiency surrounding the exchange listing process for ETF Shares in a manner that is consistent with the Act, as further described below.

Consistent with Index Fund Shares and Managed Fund Shares listed under the generic listing standards in Rules 14.11(c) and 14.11(i), respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 would be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.[8]

Proposed Listing Rules

Proposed Rule 14.11(l)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Exchange-Traded Funds (''ETF Shares'') that meet the criteria of this Rule.

Proposed Rule 14.11(l)(2) provides that the proposed rule would be applicable only to ETF Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. ETF Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(l)(2) further provides that: (A) Transactions in ETF Shares will occur throughout the Exchange's trading hours; (B) the minimum price variation for quoting and entry of orders in ETF Shares is $0.01; and (C) the Exchange will implement and maintain written surveillance procedures for ETF Shares.

Proposed Rule 14.11(l)(3)(A) provides that the term ''ETF Shares'' shall mean the shares issued by a registered open-end management investment company that: (i) Is eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; [9] (ii) issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount (if any); and (iii) issues shares that it intends to list or are listed on a national securities exchange and traded at market-determined prices.[10]

Proposed Rule 14.11(l)(3)(B) provides that the term ''Reporting Authority'' in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for

[3] The Exchange notes that it is proposing new Rule 14.11(l) because it has also proposed a new Rule 14.11(k) as part of another proposal. *See* Securities Exchange Act Release No. 87062 (September 23, 2019), 84 FR 51193 (September 27, 2019) (SR–CboeBZX–2019–047).

[4] As provided below, proposed Rule 14.11(l)(3)(A) provides that the term ''ETF Shares'' shall mean the shares issued by a registered open-end management investment company that: (i) Is eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (ii) issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount (if any); and (iii) issues shares that it intends to list or are listed on a national securities exchange and traded at market-determined prices.

[5] 15 U.S.C. 80a–1.

[6] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release'').

[7] In approving the rule, the Commission stated that the ''rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' Rule 6c–11 Release, at 57163. The Commission also stated the following regarding the rule's impact: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' Rule 6c–11 Release, at 57204.

[8] Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by this Rule, the Exchange proposes new Rule 14.11(l) to establish generic listing standards for ETFs that are permitted to operate in reliance on Rule 6c–11. An ETF listed under proposed Rule 14.11(l) would therefore not need a separate proposed rule change pursuant to Rule 19b–4 before it can be listed and traded on the Exchange.

[9] The Exchange notes that certain types of ETFs, such as leveraged ETFs, are not eligible to operate in reliance on Rule 6c–11 and therefore would not be eligible to list under this proposed Rule 14.11(l). Such ETFs could, however, be listed pursuant to Rule 14.11(c) or 14.11(i).

[10] The Exchange notes that this definition is substantially similar to the definition under Rule 6c–11 except that the proposed definition includes in the definition of ETF Shares those shares that it intends to list on a national securities exchange.

calculating and reporting information relating to such series, including, but not limited to, the amount of any cash distribution to holders of ETF Shares, net asset value, or other information relating to the issuance, redemption or trading of ETF Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(l)(4) provides that the Exchange may approve ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Act so long as such series of ETF Shares is eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940 and meets all applicable requirements under such Rule 6c–11 upon initial listing and on a continuing basis. ETF Shares will be listed and traded on the Exchange subject to application of the following criteria.

Proposed Rule 14.11(l)(4)(A) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; and (ii) the Exchange will obtain a representation from the issuer of each series of ETF Shares stating that the disclosures required under Rule 6c–11 of the Investment Company Act of 1940 will be made available on a daily basis in compliance with Rule 6c–11 and that the issuer will notify the Exchange of any failure to do so.

Proposed Rule 14.11(l)(4)(B) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria.

Proposed Rule 14.11(l)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances: (a) If the issuer of the ETF Shares has failed to file any filings required by the Commission or if the Exchange is aware that the issuer is not in compliance with the requirements of Rule 6c–11 of the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; or (c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(l)(4)(B)(ii) provides that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of ETF Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which certain information about the ETF Shares that is required to be disclosed under Rule 6c–11 of the Investment Company Act of 1940 is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Rule 14.11(l)(4)(B)(iii) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(l)(5) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(l)(6) provides that the provisions of this subparagraph apply only to series of ETF Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of ETF Shares by means of an information circular prior to commencement of trading in such series. The Exchange requires that members provide to all purchasers of a series of ETF Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of ETF Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of ETF Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of (the series of ETF Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of ETF Shares).'' A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of ETF Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule. Upon request of a customer, a member shall also provide a prospectus for the particular series of ETF Shares.

The Exchange is also proposing to make two non-substantive amendments to include ETF Shares in other Exchange rules. Specifically, the Exchange is also proposing: (i) To amend Rule 14.10(e)(1)(E) in order to add ETF Shares to a list of product types listed on the Exchange, including Index Fund Shares and Managed Fund Shares, that are exempted from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A–3; and (ii) to amend Rule 14.11(c)(3)(A)(i)(a) in order to include ETF Shares in the definition of Derivative Securities Products.

Discussion

Proposed Rule 14.11(l) is based in large part on Rules 14.11(c) and (i) related to the listing and trading of Index Fund Shares and Managed Fund

Shares on the Exchange, respectively, both of which are issued under the 1940 Act and would qualify as ETF Shares after Rule 6c–11 is effective. Rule 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an index. As such, the Exchange believes that using Rules 14.11(c) and (i) (collectively, the ''Current ETF Standards'') as the basis for proposed Rule 14.11(l) is appropriate because they are generally designed to address the issues associated with ETF Shares. The only substantial differences between proposed Rule 14.11(l) and the Current ETF Standards that are not otherwise required under Rule 6c–11 are as follows: (i) Proposed Rule 14.11(l) does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards; (ii) proposed Rule 14.11(l) does not include any requirements related to the dissemination of a fund's Intraday Indicative Value; [11] (iii) and proposed Rule 14.11(l) does not include any specific requirements related to ''firewalls'' that need to be in place between certain parties associated with a fund and their affiliates. These differences are discussed below.

Quantitative Standards

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis. While proposed Rule 14.11(l) does not include the quantitative requirements applicable to an ETF or an ETF's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),[12] the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(l)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 14.11(l)(4)(B)(i). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional Disclosure Obligations.[13] The Exchange believes that the combination of these factors will act to keep ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of ETF Shares on the Exchange without the inclusion of quantitative standards.[14] The Exchange will monitor for compliance with the 1940 Act generally as well as Rule 6c–11 specifically in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of series of ETF Shares in order to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of ETF Shares listed on the Exchange in order to ensure that certain investment requirements and limitations under the 1940 Act are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) and proposed Rule 14.11(l)(4)(A)(ii) would require an issuer of ETF Shares to notify the Exchange of any failure to comply with Rule 6c–11 or the 1940 Act.

To the extent that any of the requirements under Rule 6c–11 or the 1940 Act are not being met, the Exchange may halt trading in a series of ETF Shares as provided in proposed Rule 14.11(l)(4)(B)(ii).[15] Further, the Exchange may also suspend trading in and commence delisting proceedings for a series of ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.[16]

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain

[11] For purposes of this filing, the term ''Intraday Indicative Value'' or ''IIV'' shall mean an intraday estimate of the value of a share of each series of either Index Fund Shares or Managed Fund Shares.

[12] The Exchange notes that Rules 14.11(c) and (i) include certain quantitative standards related to the size, trading volume, concentration, and diversity of the holdings of a series of Index Fund Shares or Managed Fund Shares (the ''Holdings Standards'') as well as related to the minimum number of beneficial holders of a fund (the ''Distribution Standards''). The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

[13] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Rule 6c–11 Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

[14] The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of ETF Shares or the distribution of the ETF Shares.

[15] Specifically, proposed Rule 14.11(l)(4)(B)(ii) states that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of ETF Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which certain information about the ETF Shares that is required to be disclosed under Rule 6c–11 of the Investment Company Act of 1940 is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[16] Specifically, proposed Rule 14.11(l)(4)(B)(i), provides that if a series of ETF Shares is not in compliance with the applicable listing requirements, including: (a) If the issuer of the ETF Shares has failed to file any filings required by the Commission or if the Exchange is aware that the issuer is not in compliance with the requirements of Rule 6c–11 of the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; or (c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable, the Exchange will commence delisting procedures under Rule 14.12.

fixed income securities that may be held by a series of ETF Shares reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's (''MSRB'') Electronic Municipal Market Access (''EMMA'') system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of ETF Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 14.10(e)(1)(E).

Intraday Indicative Value

As described above, proposed Rule 14.11(l) does not include any requirements related to the dissemination of an Intraday Indicative Value. Both Rule 14.11(c) and Rule 14.11(i) include the requirement that a series of Index Fund Shares and Managed Fund Shares, respectively, disseminate and update an Intraday Indicative Value at least every 15 seconds.[17] Historically (and theoretically), the IIV could provide valuable information about an ETF that would not otherwise be available or easily calculable. However, as consistently highlighted in the Rule 6c–11 Release, that is not reflective of the current marketplace and the Commission has expressed concerns regarding the accuracy of IIV estimates for certain ETFs. Specifically, the Commission noted that an IIV may not accurately reflect the value of an ETF that holds securities that trade less frequently as such IIV can be stale or inaccurate.[18] Additionally, the Commission indicated that even in circumstances when an IIV may be reliable, retail investors do not have easy access to free, publicly available IIV information.[19] Further, in instances when IIV may be free and publicly available, it can be delayed by up to 45 minutes.[20]

Aside from the fact that the disseminated IIV may provide investors with stale or misleading data, the Commission also stated that market makers and authorized participants typically calculate their own intraday value of an ETF's portfolio with proprietary algorithms that use an ETF's daily portfolio disclosure and available pricing information.[21] Such information allows those market participants to support the arbitrage mechanism for ETFs. Therefore, as market participants who engage in arbitrage typically calculate their own intraday value of an ETF's portfolio based on the ETF's daily portfolio disclosure and pricing information and use an IIV only as a secondary check to their own calculation,[22] the Commission noted that IIV was not necessary to support the arbitrage mechanism.[23] Given this, combined with potential shortcomings of the IIV noted above, the Commission concluded that ETFs will not be required to disseminate an IIV under Rule 6c–11.[24]

The Exchange generally agrees with the limitations and shortcomings of IIV described in the Rule 6c–11 Release. The Exchange further agrees with the conclusion of the Adopting Release that the ''IIV is not necessary to support the arbitrage mechanism for ETFs that provide daily portfolio holdings disclosure.'' The transparency that comes from daily portfolio holdings disclosure as required under Rule 6c–11 provides market participants with sufficient information to facilitate the intraday valuation of ETF Shares. The Exchange notes that it is not proposing to prohibit the dissemination of an IIV for a series of ETF Shares and believes that there are certain instances in which the dissemination of an IIV could provide valuable information to the investing public. The Exchange is simply not proposing to require the dissemination of such information.

As such, the Exchange believes that it is appropriate and consistent with the Act to not include a requirement for the dissemination of an IIV for a series of ETF Shares to be listed on the Exchange.

Firewalls

Both Rule 14.11(c) and Rule 14.11(i) require under certain circumstances the implementation of firewalls between certain affiliates and related employees as well as policies and procedures designed to prevent the dissemination of material non-public information.[25] The Exchange fully supports the rationale underlying these rules, but generally agrees with the sentiment expressed by the Commission in the Rule 6c–11 Release that existing federal securities laws adequately address concerns about dissemination and misuse of material non-public information.[26] The Exchange also further agrees that issuers of ETF Shares are likely to be in a position to best understand the circumstances and relationships that could give rise to misuse of material non-public information and can develop appropriate measures to address them.[27] As such, the Exchange is not proposing to include firewall or material non-public information policies and procedures requirements in the generic listing standards for ETF Shares because it believes that such issues are sufficiently addressed by existing federal securities laws.

Discontinuing Quarterly Reporting for Managed Fund Shares

Finally, the Exchange is proposing to eliminate certain quarterly reporting obligations related to the listing and trading of Managed Fund Shares on the Exchange. In the order approving the Exchange's proposal to adopt generic listing standards for Managed Fund Shares,[28] the Commission noted that the Exchange had represented that ''on a quarterly basis, the Exchange will provide a report to the Commission staff that contains, for each ETF whose shares are generically listed and traded under BATS Rule 14.11(i): (a) Symbol and date of listing; (b) the number of active authorized participants (''APs'') and a description of any failure by either a fund or an AP to deliver promised baskets of shares, cash, or

[17] *See* Rules 14.11(c)(3)(C), 14.11(c)(6)(A), and 14.11(c)(9)(B)(e) related to Index Fund Shares and Rules 14.11(i)(3)(C), 14.11(i)(4)(B)(i), 14.11(i)(4)(B)(iii)(b), and 14.11(i)(4)(B)(iv) related to Managed Fund Shares.

[18] *See* Rule 6c–11 Release at 62.

[19] *See* Id., at 66.

[20] *See* Id.

[21] *See* Id., at 63.

[22] *See* Id., at 63.

[23] *See* Id., at 65.

[24] *See* Id., at 61.

[25] *See* Rules 14.11(c)(3)(B)(i) and (iii), Rules 14.11(c)(4)(C)(i) and (iii), Rules 14.11(c)(5)(A)(i) and (iii), and Rule 14.11(7).

[26] *See* 17 CFR 270.38a–1 (Rule 38a–1 under the 1940 Act) (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); 17 CFR 270.17j–1(c)(1) (Rule 17j–1(c)(1) under the 1940 Act) (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel (''access persons'') from misusing information regarding fund transactions); Section 204A of the Investment Advisers Act of 1940 (''Advisers Act'') (15 U.S.C. 80b–204A) (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person, in violation of the Advisers Act or the Act, or the rules or regulations thereunder); Section 15(g) of the Act (15 U.S.C. 78o(f)) (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer, in violation of the Exchange Act or the rules or regulations thereunder).

[27] *See* Rule 6c–11 Release at 25.

[28] *See* Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100) (the ''MFS Approval Order'').

cash and instruments in connection with creation or redemption orders; and (c) a description of any failure by an ETF to comply with BATS Rule 14.11(i).'' [29] This reporting requirement is not specifically enumerated in Rule 14.11(i).

The Exchange has provided such information to the Commission on a quarterly basis since the MFS Approval Order was issued in 2016. The type of information provided in the reports was created to provide a window into the creation and redemption process for Managed Fund Shares in order to ensure that the arbitrage mechanism would work as expected for products that were listed pursuant to the newly approved generic listing standards. In the Rule 6c–11 Release, the Commission concluded that ''the arbitrage mechanism for existing actively managed ETFs has worked effectively with small deviations between market price and NAV per share.'' [30] The Exchange generally agrees with this conclusion and, while such quarterly reports were useful when Managed Fund Shares were first able to be listed pursuant to generic listing standards, the Exchange believes that such a window into the creation and redemption process for Managed Fund Shares no longer provides useful information related to the prevention of manipulation or protection of investors which it was originally designed to provide. Further, because the same general types of information provided in those reports will be made available under Rule 6c–11 directly from the issuers of such securities the Exchange also believes that it is consistent with the Act to remove this reporting obligation because it will be duplicative and no longer necessary.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [31] in general and Section 6(b)(5) of the Act [32] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11(l) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(l)(4) sets forth initial and continued listing criteria applicable to ETF Shares, specifically providing that the Exchange may approve ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Act so long as such series of ETF Shares is eligible to operate in reliance on Rule 6c–11 and meets all applicable requirements under such Rule 6c–11 upon initial listing and on a continuing basis. Proposed Rule 14.11(l)(4)(A)(i) provides that the Exchange will establish for each series of ETF Shares a minimum number of shares required to be outstanding at the time of commencement of trading on the Exchange. Proposed Rule 14.11(l)(4)(A)(i) provides that the Exchange will obtain a representation from the issuer of each series of ETF Shares stating that the disclosures required under Rule 6c–11 of the Investment Company Act of 1940 will be made available on a daily basis in compliance with Rule 6c–11 and that the issuer will notify the Exchange of any failure to do so.

Proposed Rule 14.11(l)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances: (a) If the issuer of the ETF Shares has failed to file any filings required by the Commission or if the Exchange is aware that the issuer is not in compliance with the requirements of Rule 6c–11 of the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; or (c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(l)(4)(B)(ii) provides that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of ETF Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which certain information about the ETF Shares that is required to be disclosed under Rule 6c–11 is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Finally, proposed Rule 14.11(l)(4)(B)(iii) provides that, upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

The Exchange further believes that proposed Rule 14.11(l) is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 14.11(l)(2)(C) along with the similarities of proposed Rule 14.11(l) to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as ETF Shares. Proposed Rule 14.11(l) is based in large part on Rules 14.11(c) and (i) related to the listing and trading of Index Fund Shares and Managed Fund Shares on the Exchange, respectively, both of which are issued under the 1940 Act and would qualify as ETF Shares after Rule 6c–11 is effective. Rule 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an index. As such, the Exchange believes that using the Current ETF Standards as the basis for proposed Rule 14.11(l) is appropriate because they are generally designed to address the issues associated with ETF Shares. The only substantial differences between proposed Rule 14.11(l) and the Current ETF Standards that are not otherwise required under Rule 6c–11 are as follows: (i) proposed Rule 14.11(l) does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards; (ii) proposed Rule 14.11(l) does not include any requirements related to the dissemination of a fund's Intraday Indicative Value; [33] (iii) and proposed Rule 14.11(l) does not include any specific requirements related to ''firewalls'' that need to be in place between certain parties associated with a fund and their affiliates.

Quantitative Standards

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of ETF

[29] *See* MFS Approval Order at footnote 14.

[30] *See* Rule 6c–11 Release at 23.

[31] 15 U.S.C. 78f.

[32] 15 U.S.C. 78f(b)(5).

[33] For purposes of this filing, the term ''Intraday Indicative Value'' or ''IIV'' shall mean an intraday estimate of the value of a share of each series of either Index Fund Shares or Managed Fund Shares.

Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis. While proposed Rule 14.11(l) does not include the quantitative requirements applicable to a fund and a fund's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),[34] the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(l)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 14.11(l)(4)(B)(i). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional Disclosure Obligations.[35] The Exchange believes that the combination of these factors will act to keep ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of ETF Shares on the Exchange without the inclusion of quantitative standards.[36] The Exchange will monitor for compliance with the 1940 Act generally as well as Rule 6c–11 specifically in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of series of ETF Shares in order to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of ETF Shares listed on the Exchange in order to ensure that certain investment requirements and limitations under the 1940 Act are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) and proposed Rule 14.11(l)(4)(A)(ii) would require an issuer of ETF Shares to notify the Exchange of any failure to comply with Rule 6c–11 or the 1940 Act.

To the extent that any of the requirements under Rule 6c–11 or the 1940 Act are not being met, the Exchange may halt trading in a series of ETF Shares as provided in proposed Rule 14.11(l)(4)(B)(ii).[37] Further, the Exchange may also suspend trading in and commence delisting proceedings for a series of ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.[38]

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of ETF Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 14.10(e)(1)(E).

Intraday Indicative Value

As described above, proposed Rule 14.11(l) does not include any requirements related to the dissemination of an Intraday Indicative Value. Both Rule 14.11(c) and Rule 14.11(i) include the requirement that a series of Index Fund Shares and Managed Fund Shares, respectively, disseminate and update an Intraday Indicative Value at least every 15 seconds.[39] Historically (and theoretically), the IIV could provide valuable information about an ETF that would not otherwise be available or easily calculable. However, as consistently highlighted in the Rule 6c–11 Release, that is not reflective of the current marketplace and the Commission has expressed concerns regarding the accuracy of IIV estimates for certain ETFs. Specifically, the Commission noted that an IIV may not accurately reflect the value of an ETF that holds securities that trade less frequently as such IIV can be stale or

[34] The Exchange notes that Rules 14.11(c) and (i) include certain quantitative standards related to the size, trading volume, concentration, and diversity of the holdings of a series of Index Fund Shares or Managed Fund Shares (the ''Holdings Standards'') as well as related to the minimum number of beneficial holders of a fund (the ''Distribution Standards''). The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

[35] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Rule 6c–11 Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

[36] The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of ETF Shares or the distribution of the ETF Shares.

[37] Specifically, proposed Rule 14.11(l)(4)(B)(ii) states that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of ETF Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which certain information about the ETF Shares that is required to be disclosed under Rule 6c–11 of the Investment Company Act of 1940 is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[38] Specifically, proposed Rule 14.11(l)(4)(B)(i), provides that if a series of ETF Shares is not in compliance with the applicable listing requirements, including: (a) If the issuer of the ETF Shares has failed to file any filings required by the Commission or if the Exchange is aware that the issuer is not in compliance with the requirements of Rule 6c–11 of the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; or (c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable, the Exchange will commence delisting procedures under Rule 14.12.

[39] *See* Rules 14.11(c)(3)(C), 14.11(c)(6)(A), and 14.11(c)(9)(B)(e) related to Index Fund Shares and Rules 14.11(i)(3)(C), 14.11(i)(4)(B)(i), 14.11(i)(4)(B)(iii)(b), and 14.11(i)(4)(B)(iv) related to Managed Fund Shares.

inaccurate.[40] Additionally, the Commission indicated that even in circumstances when an IIV may be reliable, retail investors do not have easy access to free, publicly available IIV information.[41] Further, in instances when IIV may be free and publicly available, it can be delayed by up to 45 minutes.[42]

Aside from the fact that the disseminated IIV may provide investors with stale or misleading data, the Commission also stated that market makers and authorized participants typically calculate their own intraday value of an ETF's portfolio with proprietary algorithms that use an ETF's daily portfolio disclosure and available pricing information.[43] Such information allows those market participants to support the arbitrage mechanism for ETFs. Therefore, as market participants who engage in arbitrage typically calculate their own intraday value of an ETF's portfolio based on the ETF's daily portfolio disclosure and pricing information and use an IIV only as a secondary check to their own calculation,[44] the Commission noted that IIV was not necessary to support the arbitrage mechanism.[45] Given this, combined with potential shortcomings of the IIV noted above, the Commission concluded that ETFs will not be required to disseminate an IIV under Rule 6c–11.[46]

The Exchange generally agrees with the limitations and shortcomings of IIV described in the Rule 6c–11 Release. The Exchange further agrees with the conclusion of the Adopting Release that the ''IIV is not necessary to support the arbitrage mechanism for ETFs that provide daily portfolio holdings disclosure.'' The transparency that comes from daily portfolio holdings disclosure as required under Rule 6c–11 provides market participants with sufficient information to facilitate the intraday valuation of ETF Shares. The Exchange notes that it is not proposing to prohibit the dissemination of an IIV for a series of ETF Shares and believes that there are certain instances in which the dissemination of an IIV could provide valuable information to the investing public. The Exchange is simply not proposing to require the dissemination of such information.

As such, the Exchange believes that it is appropriate and consistent with the Act to not include a requirement for the dissemination of an IIV for a series of ETF Shares to be listed on the Exchange.

Firewalls

Both Rule 14.11(c) and Rule 14.11(i) require under certain circumstances the implementation of firewalls between certain affiliates and related employees as well as policies and procedures designed to prevent the dissemination of material non-public information.[47] The Exchange fully supports the rationale underlying these rules, but generally agrees with the sentiment expressed by the Commission in the Rule 6c–11 Release that existing federal securities laws adequately address concerns about dissemination and misuse of material non-public information.[48] The Exchange also further agrees that issuers of ETF Shares are likely to be in a position to best understand the circumstances and relationships that could give rise to misuse of material non-public information and can develop appropriate measures to address them.[49] As such, the Exchange is not proposing to include firewall or material non-public information policies and procedures requirements in the generic listing standards for ETF Shares because it believes that such issues are sufficiently addressed by existing federal securities laws. With this in mind, the Exchange further believes that proposed Rule 14.11(l) is consistent with the Act and is designed to prevent fraudulent and manipulative acts and practices.

The Exchange also believes that the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of each series of ETF Shares stating that the Disclosure Requirements under Rule 6c–11 of the Investment Company Act of 1940 will be made available on a daily basis in compliance with Rule 6c–11 and that the issuer will notify the Exchange of any failure to do so. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for ETF Shares will be available via the CTA high-speed line. The website for each series of ETF Shares will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in a circular of the special characteristics and risks associated with trading in the series of ETF Shares. As noted above, series of ETF Shares will not be required to publicly disseminate an IIV. The Exchange continues to believe that this proposal is consistent with the Act and is designed to promote just and equitable principles of trade and to protect investors and the public interest because the transparency that comes from daily portfolio holdings disclosure as required under Rule 6c–11 provides market participants with sufficient information to facilitate the intraday valuation of ETF Shares, rendering the dissemination of the IIV unnecessary.

The Exchange notes that it is not proposing to prohibit the dissemination of an IIV for a series of ETF Shares and believes that there could be certain instances in which the dissemination of an IIV could provide valuable information to the investing public. The Exchange proposes to leave that decision to an issuer of ETF Shares and is simply not proposing to require the dissemination of an IIV.

Based on the foregoing discussion regarding proposed Rule 14.11(l) and its similarities to and differences between the Current ETF Standards, the Exchange believes that the proposal is consistent with the Act and is designed to prevent fraudulent and manipulative transactions and that the manipulation concerns that the quantitative standards, the IIV, and the firewall requirements are designed to address are otherwise mitigated by the proposal and the new Disclosure Obligations and flexibility under Rule 6c–11.

[40] *See* Rule 6c–11 Release at 62.

[41] *See* Id., at 66.

[42] *See* Id.

[43] *See* Id., at 63.

[44] *See* Id., at 63.

[45] *See* Id., at 65.

[46] *See* Id., at 61.

[47] *See* Rules 14.11(c)(3)(B)(i) and (iii), Rules 14.11(c)(4)(C)(i) and (iii), Rules 14.11(c)(5)(A)(i) and (iii), and Rule 14.11(7).

[48] *See* 17 CFR 270.38a–1 (Rule 38a–1 under the 1940 Act) (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); 17 CFR 270.17j–1(c)(1) (Rule 17j–1(c)(1) under the 1940 Act) (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel (''access persons'') from misusing information regarding fund transactions); Section 204A of the Investment Advisers Act of 1940 (''Advisers Act'') (15 U.S.C. 80b–204A) (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person, in violation of the Advisers Act or the Act, or the rules or regulations thereunder); Section 15(g) of the Act (15 U.S.C. 78o(f)) (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer, in violation of the Exchange Act or the rules or regulations thereunder).

[49] *See* Rule 6c–11 Release at 25.

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 in that it will facilitate the listing and trading of ETF Shares in a manner that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that approval of this proposal will streamline current procedures, reduce the costs and timeline associated with bringing ETFs to market, and provide significantly greater regulatory certainty to potential issuers considering bringing ETF Shares to market, thereby enhancing competition among ETF issuers and reducing costs for investors.[50]

The Exchange also believes that the non-substantive change to amend Rule 14.10(e)(1)(E) in order to add ETF Shares to a list of product types listed on the Exchange, including Index Fund Shares and Managed Fund Shares, that are exempted from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A–3 because it is a non-substantive change meant only to subject ETF Shares to the same corporate governance requirements currently applicable to Index Fund Shares and Managed Fund Shares. The Exchange also believes that the non-substantive change to amend Rule 14.11(c)(3)(A)(i)(a) in order to include ETF Shares in the definition of Derivative Securities Products is also a non-substantive change because it is just intended to add ETF Shares to a definition that includes Index Fund Shares and Managed Fund Shares in order to make sure that ETF Shares are treated consistently with Index Fund Shares and Managed Fund Shares throughout the Exchange's rules.

Finally, the Exchange believes that eliminating the quarterly reporting requirement for Managed Fund Shares is designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest because the report no longer serves the purpose for which it was originally intended. The type of information provided in the reports was created to provide a window into the creation and redemption process for Managed Fund Shares in order to ensure that the arbitrage mechanism would work as expected for products that were listed pursuant to the newly approved generic listing standards. In the Rule 6c–11 Release, the Commission concluded that ''the arbitrage mechanism for existing actively managed ETFs has worked effectively with small deviations between market price and NAV per share.'' [51] The Exchange generally agrees with this conclusion and, while such quarterly reports were useful when Managed Fund Shares were first able to be listed pursuant to generic listing standards, the Exchange believes that such a window into the creation and redemption process for Managed Fund Shares no longer provides useful information related to the prevention of manipulation or protection of investors which it was originally designed to provide. Further, because the same general types of information provided in those reports will be made available under Rule 6c–11 directly from the issuers of such securities the Exchange also believes that it is consistent with the Act to remove this reporting obligation because it will be duplicative and no longer necessary.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. To the contrary, the Exchange believes that the proposed rule change would enhance competition by streamlining current procedures, reducing the costs and timeline associated with bringing ETFs to market, and providing significantly greater regulatory certainty to potential issuers considering bringing ETF Shares to market, all of which the Exchange believes would enhance competition among ETF issuers and reduce costs for investors. The Exchange also believes that the proposed change would make enhance competition among ETF Shares by ensuring the application of uniform listing standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–097 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–CboeBZX–2019–097. 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

[50] In approving the rule, the Commission stated that the ''rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' Rule 6c–11 Release, at 57163. The Commission also stated the following regarding the rule's impact: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' Rule 6c–11 Release, at 57204.

[51] *See* Rule 6c–11 Release at 23.

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–CboeBZX–2019–097, and should be submitted on or before December 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25317 Filed 11–21–19; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36346]

Wisconsin Central Ltd.—Operation Exemption—Hallett Dock No. 5 in Duluth, Minn.

Wisconsin Central Ltd. (WCL), a rail carrier,[1] filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to operate a rail/water dock facility in Duluth, Minn., known as Hallett Dock No. 5 (the Dock), after WCL acquires the Dock from its current noncarrier owner, Hallett Dock Company. The Dock is an approximately 100-acre, ground-level rail/water bulk commodity transfer and storage dock facility that includes a 2,400-foot vessel berth, two ship loaders, a railcar unloader, dry storage building, approximately 9,000 feet of rail trackage on the dock, and approximately 6,300 feet of adjacent railcar holding tracks along the shore line.

In an accompanying petition to set a procedural schedule, WCL requests that replies to the petition for exemption be due by December 13, 2019, and WCL's response by January 2, 2020.

The Board will institute an exemption proceeding pursuant to 49 U.S.C. 10502(b). A procedural schedule will be set as noted below, consistent with the reply and response deadlines WCL requested.

All pleadings, referring to Docket No. FD 36346, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on WCL's representative: Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

Board decisions and notices are available at *www.stb.gov.*

It is ordered:

1. An exemption proceeding is instituted under 49 U.S.C. 10502(b).

2. Replies to WCL's petition are due by December 13, 2019.

3. WCL's response to any replies is due by January 2, 2020.

4. Notice of this decision will be published in the **Federal Register**.

5. This decision is effective on its date of service.

Decided: November 18, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–25334 Filed 11–21–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36365]

3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR LLC, Regional Rail Holdings, LLC, and Regional Rail, LLC—Control Exemption—Florida Central Railroad Company, Inc., Florida Midland Railroad Company, Inc., and Florida Northern Railroad Company, Inc.

3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR LLC, and Regional Rail Holdings, LLC (collectively, 3i RR), and Regional Rail, LLC (Regional Rail), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire from Pinsly Railroad Company control of Florida Central Railroad Company, Inc. (Central), Florida Midland Railroad Company, Inc. (Midland), and Florida Northern Railroad Company, Inc. (Northern) (collectively, the Florida Railroads), all Class III rail carriers operating in Florida.[1] According to the verified notice, the proposed transaction will allow Regional Rail to acquire direct control, and 3i RR to acquire indirect control, of the Florida Railroads.

The earliest this transaction may be consummated is December 6, 2019, the effective date of the exemption (30 days after the verified notice was filed). The verified notice states that the parties intend to consummate the transaction on or after January 3, 2020.[2]

According to the verified notice, 3i RR Holdings GP LLC controls 3i Holdings Partnership L.P., which controls 3i RR LLC, which controls Regional Rail Holdings, LLC, which controls Regional Rail. Regional Rail Holdings, LLC, is a holding company that directly controls the following three Class III rail carriers: (1) East Penn Railroad, LLC, which operates in Delaware and Pennsylvania; (2) Middletown & New Jersey Railroad, LLC, which operates in New York; and (3) Tyburn Railroad LLC, which operates in Pennsylvania (collectively, the Subsidiary Railroads).[3]

The verified notice states that: (1) The Florida Railroads do not connect with each other or with the Subsidiary Railroads; (2) the acquisition of control of the Florida Railroads is not intended to connect them to any other railroads in 3i RR's corporate family; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

[52] 17 CFR 200.30–3(a)(12).

[1] WCL is an indirect subsidiary of Canadian National Railway Company.

[1] The verified notice states that Central operates between Umatilla and Orlando, with branch lines between Toronto and Winter Garden and between Tavares and Sorrento; Midland operates between Frostproof and West Lake Wales and between Gordonville and Winter Haven; and Northern operates between Red Level Jct. and north of Newberry and between Candler and Lowell.

[2] On November 6, 2019, 3i RR and Regional Rail filed a motion for protective order under 49 CFR 1104.14(b), which will be addressed in a separate decision.

[3] In *Regional Rail Holdings, LLC—Acquisition of Control Exemption—Regional Rail, LLC,* FD 35945 (STB served Aug. 7, 2015), Regional Rail Holdings, LLC, acquired control of the Subsidiary Railroads. In *3i RR Holdings GP LLC—Control Exemption—Regional Rail Holdings, LLC,* FD 36289 (STB served Apr. 19, 2019), 3i RR Holdings GP LLC, 3i Holdings Partnership L.P., and 3i RR LLC, acquired direct control of Regional Rail Holdings, LLC, and indirect control of the Subsidiary Railroads.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 29, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36365, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicants' representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 18, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2019–25331 Filed 11–21–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0748]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 19, 2019. No comments were received from the comment period. The collection involves the collection of information related to rules governing Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations. The information to be collected supports the Department of Transportation's strategic goal of safety. Specifically, the goal is to promote the public health and safety by working toward the elimination of transportation-related deaths and injuries.

DATES: Written comments should be submitted by December 23, 2019.

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. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Thomas Luipersbeck by email at: *Thomas.A.Luipersbeck@faa.gov;* phone: 615–202–9683.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0756.

Title: Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations.

Form Numbers: 2170–0761, Helicopter Air Ambulance Mandatory Flight Information Report.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 19, 2019 (84 FR 48989). These requirements in part 135 are addressed specifically to helicopter air ambulances, often referred to as emergency medical services (EMS), and to on-demand operations including overwater operations. The National Transportation Safety Board recommended several changes following accident investigations. The FAA aims to improve the safety record of helicopter air ambulances through better oversight of their operations. The FAA will use the information it collects and reviews to ensure compliance and adherence with regulations and, if necessary, to take enforcement action on violators of the regulations.

Under the authority of Title 49 CFR, Section 44701, Title 14 CFR prescribes the terms, conditions, and limitations as are necessary to ensure safety in air transportation. Title 14 CFR parts 91 and 135 prescribes the requirements governing helicopter air ambulance, commercial helicopter, and Part 91 helicopter operations. The information collected is used to determine air operators' compliance with the minimum safety standards and the applicants' eligibility for air operations certification. Each operator which seeks to obtain, or is in possession of an operating certificate, must comply with the requirements of part 91 or 135, as applicable, which include maintaining data which is used to determine if the air carrier is operating in accordance with minimum safety standards.

Respondents: Part 135 Helicopter Air Ambulance Operators, Part 135 Helicopter Commercial Operators, or Part 91 Helicopter Operators.

Frequency: On Occasion.

Estimated Average Burden per Response: Varies by Response Type.

Estimated Total Annual Burden: 132,639 Hours.

Issued in Washington DC, on November 19, 2019.

Sandra L. Ray,

Aviation Safety Inspector, FAA, Policy Integration Branch, AFS–270.

[FR Doc. 2019–25349 Filed 11–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Agency Information Collection Activity: Certificate of Delivery of Advance Payment and Enrollment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 21, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0325'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3034, 3241, 3531, 3680(d), 3684; 38 CFR 21.4138a, 21.4203(a) and (d), 21.5135, 21.5200(d), and 21.5292(e)(2), 21.7151(b), and 21.7640(d); 10 U.S.C. 16136(b), 16166(b).

Title: Certificate of Delivery of Advance Payment and Enrollment (VA Form 22–1999v).

OMB Control Number: 2900–0325.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses information from the current collection at the beginning of the school term to ensure that advance payments have been delivered and to determine whether the student has increased, reduced, or terminated training.

Affected Public: Individuals or households.

Estimated Annual Burden: 58 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 475.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2019–25348 Filed 11–21–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,
No. 226 November 22, 2019

Part II

Environmental Protection Agency

40 CFR Part 423
Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA–HQ–OW–2009–0819; FRL–10002–04–OW]

RIN 2040–AF77

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (the EPA or the Agency) is proposing a regulation to revise the technology-based effluent limitations guidelines and standards (ELGs) for the steam electric power generating point source category applicable to flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water. This proposal is estimated to save approximately $175 million dollars annually in pre-tax compliance costs and $137 million dollars annually in social costs as a result of less costly FGD wastewater technologies that could be used with the proposed relaxation of the Steam Electric Power Generating Effluent Guidelines 2015 rule (the 2015 rule) selenium limitation; less costly BA transport water technologies made possible by the proposed relaxation of the 2015 rule's zero discharge limitations; a two-year extension of compliance timeframes for meeting FGD wastewater limits, and additional proposed subcategories for both FGD wastewater and BA transport water. EPA also believes that participation in the voluntary incentive program would further reduce the pollutants that these steam electric facilities discharge in FGD wastewater by approximately 105 million pounds per year.

DATES:

Comments. Comments on this proposed rule must be received on or before January 21, 2020.

Public Hearing. The EPA will conduct an online public hearing about today's proposed rule on December 19, 2019. Following a brief presentation by EPA personnel, the Agency will accept oral comments that will be limited to three (3) minutes per commenter. The hearing will be recorded and transcribed, and the EPA will consider all of the oral comments provided, along with the written public comments submitted via the docket for this rulemaking. To register for the hearing, please visit the EPA's website at *https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2019-proposed-revisions.*

ADDRESSES: Submit your comments on the proposed rule, identified by Docket No. EPA–HQ–OW–2009–0819, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OW–2009–0819 (specify the applicable docket number) in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OW–2009–0819 (specify the applicable docket number).
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OW–2009–0819, Office of Science and Technology Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, *see* the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Richard Benware, Engineering and Analysis Division, Telephone: 202–566–1369; Email: *benware.richard@epa.gov.* For economic information, contact James Covington, Engineering and Analysis Division, Telephone: 202–566–1034; Email: *covington.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines terms and acronyms used in Appendix A.

Supporting Documentation. The rule proposed today is supported by a number of documents including:

- *Supplemental Technical Development Document for Proposed Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (Supplemental TDD), Document No. EPA–821–R–19–009. This report summarizes the technical and engineering analyses supporting the proposed rule. The Supplemental TDD presents the EPA's updated analyses supporting the proposed revisions to FGD wastewater and BA transport water. These updates include additional data collection that has occurred since the publication of the 2015 rule, updates to the industry (*e.g.,* retirements, updates to FGD treatment and BA handling), cost methodologies, pollutant removal estimates, corresponding nonwater quality environmental impacts associated with updated FGD and BA methodologies, and calculation of the proposed effluent limitations. Except for the updates described in the Supplemental TDD, the *Technical Development Document for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (2015 TDD, Document No. EPA–821–R–15–007) is still applicable and provides a more complete summary the EPA's data collection, description of the industry, and underlying analyses supporting the 2015 rule.
- *Supplemental Environmental Assessment for Proposed Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (Supplemental EA), Document No. EPA–821–R–19–010. This report summarizes the potential environmental and human health impacts that are estimated to result from implementation of the proposed revisions to the 2015 rule.
- *Benefit and Cost Analysis for Proposed Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (BCA Report), Document No. EPA–821–R–19–011. This report summarizes estimated societal benefits and costs that are estimated to result from implementation of the proposed revisions to the 2015 rule.
- *Regulatory Impact Analysis for Proposed Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (RIA), Document No. EPA–821–R–19–012. This report presents a profile of the steam electric power generating industry, a summary of estimated costs and impacts associated with the proposed revisions to the 2015 rule, and an assessment of

the potential impacts on employment and small businesses.

• *Docket Index for the Proposed Revisions to the Steam Electric ELGs.* This document provides a list of the additional memoranda, references, and other information relied upon by the EPA for the proposed revisions to the ELGs.

Organization of this Document. The information in this preamble is organized as follows:

I. Executive Summary

A. Purpose of Rule

Coal-fired facilities are impacted by several environmental regulations. One of these regulations, the Steam Electric Power Generating ELGs was promulgated in 2015 (80 FR 67838; November 3, 2015) and applies to the subset of the electric power industry where ''generation of electricity is the predominant source of revenue or principal reason for operation, and whose generation of electricity results primarily from a process utilizing fossil-type fuel (coal, oil, gas), fuel derived from fossil fuel (*e.g.,* petroleum coke, synthesis gas), or nuclear fuel in

conjunction with a thermal cycle employing the steam-water system as the thermodynamic medium.'' (40 CFR 423.10). The 2015 rule addressed discharges from flue gas desulfurization (FGD) wastewater, fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, gasification wastewater, combustion residual leachate, and non-chemical metal cleaning wastes.

In the few years since the steam electric ELGs were revised in 2015, steam electric facilities have installed more affordable technologies which are capable of removing a similar amount of pollution as those which existed in 2015. This proposal would revise requirements for two of the waste streams addressed in the 2015 rule: Bottom ash (BA) transport water and flue gas desulfurization (FGD) wastewater—two of the facilities' largest sources of wastewater—while reducing industry costs as compared to the costs of the 2015 rule's controls. This proposal does not seek to revise the other waste streams covered by the 2015 rule.

B. Summary of Proposed Rule

For existing sources that discharge directly to surface water, with the exception of the subcategories discussed below, the proposed rule would establish the following effluent limitations based on Best Available Technology Economically Achievable (BAT):

- For flue gas desulfurization wastewater, there are two sets of proposed BAT limitations. The first set of limitations is a numeric effluent limitation on Total Suspended Solids (TSS) in the discharge of FGD wastewater. The second set of BAT limitations comprises numeric effluent limitations on mercury, arsenic, selenium, and nitrate/nitrite as nitrogen in the discharge of FGD wastewater.
- For bottom ash transport water, there are two sets of proposed BAT limitations. The first set of BAT limitations is a numeric effluent limitation on TSS in the discharge of these wastewaters. The second set of BAT limitations is a not-too-exceed 10 percent volumetric purge limitation.

The proposed rule includes separate requirements for the following subcategories: High flow facilities, low utilization boilers, and boilers retiring by 2028. The proposed rule does not seek to change the existing subcategories for oil-fired boilers and small generating units (50 MW or less) from the 2015 rule. For high flow facilities (FGD wastewater flows over four million gallons per day after accounting for that facility's ability to recycle the wastewater to the maximum limits for the FGD system materials of construction) or low utilization boilers (876,000 MWh per year or less), the proposed rule would establish the second set of BAT limitations in the discharge of FGD wastewater as numeric effluent limitations only on mercury and arsenic (and not on selenium and nitrate/nitrite as nitrogen). For low utilization boilers, the proposed rule would establish BAT limitations for BA transport water for TSS, and would also include standards for implementation of a best management practices (BMP) plan. For oil-fired boilers, small boilers (50 MW or less), and boilers retiring by 2028, the proposed rule would establish BAT limitations for TSS in FGD wastewater and bottom ash transport water.

The proposed rule would establish a voluntary incentives program that provides the certainty of more time (until December 31, 2028) for facilities to implement new standards and limitations, if they adopt additional process changes and controls that achieve more stringent limitations on mercury, arsenic, selenium, nitrate/nitrite, bromide, and total dissolved solids in FGD wastewater. The optional program offers environmental protections beyond those achieved by the proposed BAT limitations, while providing facilities that opt into the program more flexibility (such as additional time) than the current voluntary incentives program.

For indirect discharges (*i.e.,* discharges to publicly owned treatment works), the proposed rule establishes pretreatment standards for existing sources that are the same as the BAT limitations, except for TSS, where there is no pass through of pollutants at POTWs.

Where BAT limitations in this rule are more stringent than previously established BPT limitations, the EPA proposes that those limitations do not apply until a date determined by the permitting authority that is as soon as possible on or after November 1, 2020, but that is no later than December 31, 2023 (for BA transport water) or December 31, 2025 (for FGD wastewater).

C. Summary of Costs and Benefits

The EPA has estimated costs and benefits of four different regulatory options. The EPA estimates that its proposed option (*i.e.,* Option 2) will save $136.3 million per year in social costs and result in between $14.8 million and $68.5 million in benefits, using a three percent discount, and will save $166.2 million per year in social costs and between $28.4 million and $74.4 million in benefits, using a seven percent discount. Table XV–1 summarizes the benefits and social costs for the four regulatory options at a three percent discount rates. The EPA's analysis reflects the Agency's understanding of the actions steam electric facilities will take to meet the limitations and standards in the final rule. The EPA based its analysis on a baseline that reflects the expected impacts of announced retirements and fuel conversions, impacts of relevant rules such as the Coal Combustion Residuals (CCR) rule that the Agency promulgated in April 2015 and the Affordable Clean Energy Rule (ACE) that the Agency promulgated in 2019, and the full implementation of the 2015 rule. The EPA understands that these modeled results have uncertainty and that the actual costs could be higher or lower than estimated. The current estimate reflects the best data and analysis available at this time. For additional information, see Sections V and VIII.

II. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0819, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

III. General Information

A. Does this action apply to me?

Entities potentially regulated by any final rule following this action include:

Category	Example of regulated entity	North American Industry Classification System (NAICS) code
Industry	Electric Power Generation Facilities—Electric Power Generation	22111
	Electric Power Generation Facilities—Fossil Fuel Electric Power Generation	221112

This section is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by any final rule following this action. Other types of entities that do not meet the above criteria could also be regulated. To determine whether your facility is regulated by any final rule following this action, you should carefully examine the applicability criteria listed in 40 CFR 423.10 and the definitions in 40 CFR 423.11 of the 2015 rule. If you still have questions regarding the applicability of any final rule following this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

The agency is proposing to revise certain Best Available Technology Economically Achievable (BAT) effluent limitations guidelines and pretreatment standards for existing sources in the steam electric power generating point source category that apply to FGD wastewater and BA transport water.

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

The EPA is proposing to promulgate this rule under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

D. What are the monetized incremental costs and benefits of this action?

This action is estimated to save $136.3 million per year in social costs and result in between $14.8 million and $68.5 million in benefits, using a 3 percent discount rate. Using a 7 percent discount rate, the estimated savings are $166.2 million per year and benefits are between $28.4 million and $74.4 million.

IV. Background

A. Clean Water Act

Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized under the CWA. Under section 402 of the CWA, 33 U.S.C. 1342, discharges may be authorized through a National Pollutant Discharge Elimination System (NPDES) permit. The CWA establishes a dual approach for these permits: (1) Technology-based controls that establish a floor of performance for all dischargers, and (2) water quality-based effluent limitations, where the technology-based effluent limitations are insufficient to meet applicable water quality standards (WQS). As the basis for the technology-based controls, the CWA authorizes the EPA to establish national technology-based effluent limitations guidelines and new source performance standards for discharges into waters of the United States from categories of point sources (such as industrial, commercial, and public sources).

The CWA also authorizes the EPA to promulgate nationally applicable pretreatment standards that control pollutant discharges from sources that discharge wastewater indirectly to waters of the U.S., through sewers flowing to POTWs, as outlined in sections 307(b) and (c) of the CWA, 33 U.S.C. 1317(b) and (c). The EPA establishes national pretreatment standards for those pollutants in wastewater from indirect dischargers that pass through, interfere with, or are otherwise incompatible with POTW operations. Pretreatment standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. *See* CWA section 301(b), 33 U.S.C. 1311(b). In addition, POTWs are required to implement local treatment limitations applicable to their industrial indirect dischargers to satisfy any local requirements. *See* 40 CFR 403.5.

Direct dischargers (those discharging to waters of the U.S. rather than to a POTW) must comply with effluent limitations in NPDES permits. Indirect dischargers, who discharge through POTWs, must comply with pretreatment standards. Technology-based effluent limitations and standards in NPDES permits are derived from effluent limitations guidelines (CWA sections 301 and 304, 33 U.S.C. 1311 and 1314) and new source performance standards (CWA section 306, 33 U.S.C. 1316) promulgated by the EPA, or are based on best professional judgment (BPJ) where EPA has not promulgated an applicable effluent limitation guideline or new source performance standard (CWA section 402(a)(1)(B), 33 U.S.C. 1342(a)(1)(B)). Additional limitations are also required in the permit where necessary to meet WQS. CWA section 301(b)(1)(C), 33 U.S.C. 1311(b)(1)(C). The ELGs are established by EPA regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology, as specified in the Act (*e.g.,* BPT, BCT, BAT; *see* below).

EPA promulgates national ELGs for industrial categories for three classes of pollutants: (1) Conventional pollutants (total suspended solids (TSS), oil and grease, biochemical oxygen demand (BOD5), fecal coliform, and pH), as outlined in CWA section 304(a)(4), 33 U.S.C. 1314(a)(4), and 40 CFR 401.16; (2) toxic pollutants (*e.g.,* toxic metals such as arsenic, mercury, selenium, and chromium; toxic organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene), as outlined in CWA section 307(a), 33 U.S.C. 1317(a); 40 CFR 401.15 and 40 CFR part 423, appendix A; and (3) nonconventional pollutants, which are those pollutants that are not categorized as conventional or toxic (*e.g.,* ammonia-N, phosphorus, and total dissolved solids (TDS)).

B. Relevant Effluent Guidelines

The EPA establishes ELGs based on the performance of well-designed and well-operated control and treatment technologies. The legislative history also supports that the EPA need not consider water quality impacts on individual water bodies as the guidelines are developed; *see* Statement of Senator Muskie (principal author) (October 4, 1972), reprinted in Legislative History of the Water Pollution Control Act Amendments of 1972, at 170. (U.S. Senate, Committee on Public Works, Serial No. 93–1, January 1973).

There are four types of standards applicable to direct dischargers and two types of standards applicable to indirect dischargers. The three standards relevant to this rulemaking are described in detail below.

1. Best Practicable Control Technology Currently Available (BPT)

Traditionally, the EPA establishes effluent limitations based on BPT by reference to the average of the best performances of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. The EPA promulgates BPT effluent limitations for conventional, toxic, and nonconventional pollutants. In specifying BPT, the EPA looks at a number of factors. The EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of equipment and facilities, the processes employed, engineering aspects of the control technologies, any required process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. *See* CWA section 304(b)(1)(B), 33 U.S.C. 1314(b)(1)(B). If, however, existing performance is uniformly inadequate, the EPA may establish limitations based on higher levels of control than those currently in place in an industrial category, when based on an Agency determination that the technology is available in another category or subcategory and can be practically applied.

2. Best Available Technology Economically Achievable (BAT)

BAT represents the second level of control for direct discharges of toxic and nonconventional pollutants. As the statutory phrase intends, the EPA considers the technological availability and the economic achievability in determining what level of control represents BAT. CWA section 301(b)(2)(A), 33 U.S.C. 1311(b)(2)(A). Other statutory factors that the EPA must consider in assessing BAT are the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(2)(B), 33 U.S.C. 1314(b)(2)(B); *Texas Oil & Gas Ass'n* v. *EPA,* 161 F.3d 923, 928 (5th Cir. 1998). The Agency retains considerable discretion in assigning the weight to be accorded each of these required consideration factors. *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (D.C. Cir. 1978). Generally, the EPA determines economic achievability based on the effect of the cost of compliance with BAT limitations on overall industry and subcategory (if applicable) financial conditions. BAT is intended to reflect the highest performance in the industry, and it may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category, bench scale or pilot studies, or foreign facilities. *Am. Paper Inst.* v. *Train,* 543 F.2d 328, 353 (D.C. Cir. 1976); *Am. Frozen Food Inst.* v. *Train,* 539 F.2d 107, 132 (D.C. Cir. 1976). BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice. *See Am. Frozen Food Inst.,* 539 F.2d at 132, 140; *Reynolds Metals Co.* v. *EPA,* 760 F.2d 549, 562 (4th Cir. 1985); *Cal. & Hawaiian Sugar Co.* v. *EPA,* 553 F.2d 280, 285–88 (2nd Cir. 1977).

One way that EPA may take into account differences within an industry when establishing BAT limitations is through subcategorization. The Supreme Court has recognized that the substantive test for subcategorizing an industry is the same as that which applies to establishing fundamentally different factor variances—*i.e.,* whether the plants are different with respect to relevant statutory factors. *See Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d 177, 214 n.134 (5th Cir. 1989) (citing *Chem. Mfrs. Ass'n* v. *NRDC,* 470 U.S. 116, 119–22, 129–34 (1985)). Courts have stated that there need only be a rough basis for subcategorization. See *Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d at 215 n.137 (summarizing cases).

3. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the CWA, 33 U.S.C. 1317(b), authorizes the EPA to promulgate pretreatment standards for discharges of pollutants to POTWs. PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Categorical pretreatment standards are technology-based and are analogous to BPT and BAT effluent limitations guidelines, and thus the Agency typically considers the same factors in promulgating PSES as it considers in promulgating BPT and BAT. Legislative history indicates that Congress intended for the combination of pretreatment and treatment by the POTW to achieve the level of treatment that would be required if the industrial source were discharging to a water of the U.S. Conf. Rep. No. 95–830, at 87 (1977), reprinted in U.S. Congress. Senate Committee on Public Works (1978), A Legislative History of the CWA of 1977, Serial No. 95–14 at 271 (1978). The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR 403. These regulations establish pretreatment standards that apply to all non-domestic dischargers. *See* 52 FR 1586 (January 14, 1987).

C. 2015 Rule

The EPA, on September 30, 2015, finalized a rule revising the regulations for the Steam Electric Power Generating point source category (40 CFR part 423) (hereinafter the ''2015 rule''). The rule set the first federal limitations on the levels of toxic metals in wastewater that can be discharged from steam electric facilities, based on technology improvements in the steam electric power industry over the preceding three decades. Prior to the 2015 rule, regulations for the industry had been last updated in 1982.

New technologies for generating electric power and the widespread implementation of air pollution controls over the last 30 years have altered existing wastewater streams or created new wastewater streams at many steam electric facilities, particularly coal-fired facilities. Discharges of these wastestreams include arsenic, lead, mercury, selenium, chromium, and cadmium. Many of these toxic pollutants, once in the environment, remain there for years, and continue to cause impacts.

The 2015 rule addressed effluent limitations and standards for multiple wastestreams generated by new and existing steam electric facilities: BA transport water, combustion residual leachate, FGD wastewater, flue gas mercury control wastewater, fly ash (FA) transport water, and gasification wastewater. The rule required most steam electric facilities to comply with the effluent limitations ''as soon as possible'' after November 1, 2018, and no later than December 31, 2023. Within that range, except for indirect dischargers, the particular compliance date(s) for each facility would be determined by the facility's National Pollutant Discharge Elimination System permit, which is typically issued by a state environmental agency.

On an annual basis, the 2015 rule was projected to reduce the amount of metals defined in the Act as toxic pollutants, nutrients, and other pollutants that steam electric facilities are allowed to discharge by 1.4 billion pounds and reduce water withdrawal by 57 billion gallons. At the time, the EPA estimated annual compliance costs for the final rule to be $480 million (in 2013

dollars) and estimated benefits associated with the rule to be $451 to $566 million (in 2013 dollars).

D. Legal Challenges, Administrative Petitions, Section 705 Action, Postponement Rule, and Reconsideration of Certain Limitations and Standards

Seven petitions for review of the 2015 rule were filed in various circuit courts by the electric utility industry, environmental groups, and drinking water utilities. These petitions were consolidated in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al.* v. *EPA*.[1] On March 24, 2017, the Utility Water Act Group (UWAG) submitted to the EPA an administrative petition for reconsideration of the 2015 rule. Also, on April 5, 2017, the Small Business Administration (SBA) submitted an administrative petition for reconsideration of the final rule.

On April 25, 2017, the EPA responded to these petitions by publishing a postponement of the 2015 rule compliance deadlines that had not yet passed, under Section 705 of the Administrative Procedure Act (APA). This Section 705 Action drew multiple legal challenges.[2] The Administrator then signed a letter on August 11, 2017, announcing his decision to conduct a rulemaking to potentially revise the new, more stringent BAT effluent limitations and pretreatment standards for existing sources in the 2015 rule that apply to FGD wastewater and BA transport water. The Fifth Circuit subsequently granted EPA's request to sever and hold in abeyance aspects of the litigation related to those limitations and standards. With respect to the remaining claims related to limitations applicable to legacy wastewater and leachate, which are not at issue in this proposed rulemaking, the Fifth Circuit issued a decision on April 12, 2019, vacating those limitations as arbitrary and capricious under the Administrative Procedure Act and unlawful under the CWA, respectively. The EPA plans to address this vacatur in a subsequent action.

In September 2017, the EPA finalized a rule, using notice-and-comment procedures, postponing the earliest compliance dates for the new, more stringent BAT effluent limitations and PSES for FGD wastewater and BA transport water in the 2015 rule, from November 1, 2018 to November 1, 2020. The EPA also withdrew its prior action taken pursuant to Section 705 of the APA. The rule received multiple legal challenges, but EPA prevailed, and the courts did not sustain any of them.[3]

E. Other Ongoing Rules Impacting the Steam Electric Sector

1. Clean Power Plan (CPP) and Affordable Clean Energy (ACE)

The final 2015 CPP established carbon dioxide (CO_2) emission guidelines for fossil-fuel fired facilities based in part on shifting generation at the fleet-wide level from one type of energy source to another. On February 9, 2016, the U.S. Supreme Court stayed implementation of the CPP pending judicial review. *West Virginia* v. *EPA,* No. 15A773 (S.Ct. Feb. 9, 2016).

On June 19, 2019, the EPA issued the ACE rule, an effort to provide existing coal-fired electric utility generating units (EGUs) with achievable and realistic standards for reducing greenhouse gas emissions. This action was finalized in conjunction with two related, but separate and distinct rulemakings: (1) The repeal of the CPP, and (2) revised implementing regulations for ACE, ongoing emission guidelines, and all future emission guidelines for existing sources issued under the authority of Clean Air Act section 111(d). ACE provides states with new emission guidelines that will inform the state's development of standards of performance to reduce CO_2 emissions from existing coal-fired EGUs consistent with the EPA's role as defined in the CAA.

ACE establishes heat rate improvement (HRI), or efficiency improvement, as the best system of emissions reduction (BSER) for CO_2 from coal-fired EGUs.[4] By employing a broad range of HRI technologies and techniques, EGUs can more efficiently generate electricity with less carbon intensity.[5] The BSER is the best technology or other measure that has been adequately demonstrated to improve emissions performance for a specific industry or process (a ''source category''). In determining the BSER, the EPA considers technical feasibility, cost, non-air quality health and environmental impacts, and energy requirements. The BSER must be applicable to, at, and on the premises of an affected facility. ACE lists six HRI ''candidate technologies,'' as well as additional operating and maintenance (O&M) practices.[6] For each candidate technology, the EPA has provided information regarding the degree of emission limitation achievable through application of the BSER as ranges of expected improvement and costs.

The 2015 rule analyses incorporated compliance costs associated with the 2015 CPP, resulting in, among other things, baseline retirements associated with that rule in the Integrated Planning Model (IPM). As noted in the ACE RIA, while the final repeal of the CPP has been promulgated, the business-as-usual economic conditions achieved the carbon reductions laid out in the final CPP. The EPA used the IPM version 6 to analyze today's proposal to be consistent with the base case analyses done for the ACE final rule. The Agency also performed a sensitivity analysis on the proposed Option 2, following promulgation of the ACE final rule, that estimates the impacts of the proposed option relative to a baseline that includes the ACE rule. A similar sensitivity analysis was not conducted for Option 4. The EPA intends to perform IPM runs with the most up-to-date version of the model available for the final rule. *See* additional discussion of IPM in Section VIII of this preamble.

2. Coal Combustion Residuals (CCR)

On April 17, 2015, the Agency published the Disposal of Coal Combustion Residuals from Electric Utilities final rule. This rule finalized national regulations to provide a comprehensive set of requirements for the safe disposal of CCRs, commonly known as coal ash, from coal-fired facilities. The final CCR rule was the culmination of extensive study on the effects of coal ash on the environment and public health. The rule established technical requirements for CCR landfills and surface impoundments under subtitle D of the Resource Conservation and Recovery Act (RCRA), the nation's primary law for regulating solid waste.

These regulations addressed coal ash disposal, including regulations designed to prevent leaking of contaminants into ground water, blowing of contaminants into the air as dust, and the catastrophic failure of coal ash surface

[1] Case No. 15–60821.

[2] *See Clean Water Action.* v. *EPA,* No. 17–0817 (D.D.C.), appeal docketed, No. 18–5149 (D.C. Cir.); *see also Clean Water Action.* v. *EPA,* No. 18–60619 (5th Cir.) (case dismissed for lack of jurisdiction on October 18, 2018).

[3] *See Center for Biological Diversity* v. *EPA,* No. 18–cv–00050 (D. Ariz. filed Jan. 20, 2018); *see also Clean Water Action.* v. *EPA,* No. 18–60079 (5th Cir.). On October 29, 2018, the District of Arizona case was dismissed upon EPA's motion to dismiss for lack of jurisdiction, and on August 28, 2019, the Fifth Circuit denied the petition for review of the postponement rule.

[4] Heat rate is a measure of the amount of energy required to generate a unit of electricity.

[5] An improvement to heat rate results in a reduction in the emission rate of an EGU (in terms of CO_2 emissions per unit of electricity produced).

[6] These six technologies are: (1) Neural Network/Intelligent Sootblowers, (2) Boiler Feed Pumps, (3) Air Heater and Duct Leakage Control, (4) Variable Frequency Drives, (5) Blade Path Upgrade (Steam Turbine), and (6) Redesign/Replace Economizer.

impoundments. Additionally, the CCR rule set out recordkeeping and reporting requirements as well as the requirement for each facility to establish and post specific information to a publicly-accessible website. This final CCR rule also supported the responsible recycling of CCRs by distinguishing safe, beneficial use from disposal.

As explained in the 2015 rule, the ELGs and CCR rules may affect the same boiler or activity at a facility. That being the case, when the EPA finalized both rules in 2015, the Agency coordinated them to facilitate and minimize the complexity of implementing engineering, financial, and permitting activities. The coordination of the two rules continues to be a consideration in the development of today's proposal. The EPA's analysis of this proposal incorporates the same approach used in the 2015 rule to estimate how the CCR rule may affect surface impoundments and the ash handling systems and FGD treatment systems that send wastes to those impoundments. However, as a result of the D.C. Circuit Court rulings in *USWAG* v. *EPA,* No. 15–1219 (D.C. Cir. 2018) and *Waterkeeper Alliance Inc, et al.* v. *EPA,* No. 18–1289 (D.C. Cir. 2019), amendments to the CCR rule are being proposed which would establish a deadline of August 2020 by which all unlined surface impoundments [7] must cease receiving waste, subject to certain exceptions. This would not impact the ability of facilities to install new, composite lined surface impoundments. This CCR proposal and accompanying background documents are available at *www.regulations.gov* Docket EPA–HQ–OLEM–2019–0172, and comments on that proposal should be submitted to that docket.

In order to account for the CCR rule proposed amendments in this proposed rule, the EPA conducted a sensitivity analysis to determine how the closure of unlined surfaced impoundments would impact the compliance cost and pollutant loading estimates for today's proposal. After conducting this sensitivity analysis, the EPA found that the capital and operation and maintenance compliance cost estimates decrease by 50 to 60 percent and the total industry pollutant loadings decrease by five percent (*see* DCN SE07233).

The EPA solicits comment on the overlap between these two rules, including whether the Agency's cost benefit and regulatory impact analyses appropriately capture the overlap of the two rules, and ways that the Agency could harmonize the timelines for regulatory requirements. The Agency also solicits comment on the extent to which facilities have chosen to construct new composite lined surface impoundments for the treatment of bottom ash transport water or FGD wastewater. Comments on the intersection of the two rules should be submitted to both dockets.

F. Scope of This Proposed Rulemaking

This proposal, if finalized, would revise the new, more stringent BAT effluent limitations guidelines and pretreatment standards for existing sources in the 2015 rule that apply to FGD wastewater and BA transport water. It does not propose otherwise to amend (nor is the EPA requesting comment on) the effluent limitations guidelines and standards for other wastes discharged by the steam electric power generating point source category. The EPA plans to address the Court's remand in *Southwestern Elec. Power Co.* v. *EPA* with respect to the limitations for leachate and legacy wastewater in a subsequent action.

V. Steam Electric Power Generating Industry Description

A. General Description of Industry

The EPA provided a general description of the steam electric power generating industry in the 2013 proposed rule and the 2015 rule, and has continued to collect information and update that profile. The previous descriptions reflected the known information about the universe of steam electric facilities and incorporated applicable final environmental regulations at that time. For this proposal, as described in the Supplemental TDD Section 3, the EPA has revised its description of the steam electric power generating industry (and its supporting analyses) to incorporate major changes such as additional retirements, fuel conversions, ash handling conversions, wastewater treatment updates, and updated information on capacity utilization.[8] The analyses supporting this proposal use an updated baseline that incorporates these changes in the industry. The analyses then compare the effect of today's proposed rules for FGD wastewater and bottom ash transport water to the effect of the 2015 rule's limitations for FGD wastewater and BA transport water on the industry as it exists today.

B. Current Market Conditions in the Electricity Generation Sector

Market conditions in the electricity generation sector have changed significantly and rapidly in the past decade. These changes include availability of abundant and inexpensive natural gas, emergence of alternative fuel technologies, and continued aging of coal-fired facilities. These changes have resulted in coal-fired unit and facility retirements and switching of fuels. The lower cost of natural gas and technological advances in solar and wind power have had a depressive effect on both coal-fired and nuclear-powered generation. (This proposal, if finalized, would have no effect on the nuclear-powered sector, except as it might affect relative prices through its impacts on coal-fired generation.) In the coal-fired sector, the market forces are manifest as scaling back coal-fired power generation (including unit and facility closures) at an accelerated rate. The rate of coal capacity retirement is affected by regulation affecting coal-fired electricity generation as there have been regulations adopted, particularly in the last decade (*e.g.,* CCR, CPP and 2015 Steam Electric ELG), that are cited by some power companies when they announce unit or facility closures, fuel switching, or other operational changes. Among some utilities, there is also a general trend of supplementing or replacing traditional generation with alternative sources. As these changes happen in the industry, the electric power infrastructure adjusts and generally trends toward the optimal infrastructure and operations that deliver the country's power demand, with negative effects for some communities and positive effects for others. The negative distributional effects can be particularly difficult for communities affected by company decisions to scale back or retire a facility. Also *see* Section 2.3 of the RIA.

C. Control and Treatment Technologies

In general, control and treatment technologies for some wastestreams have continued to advance since the 2015 rule. Often, these advancements provide facilities with additional ways of meeting effluent limitations, in some instances at a lower cost. For this proposal, the EPA incorporated updated information and evaluated several technologies available to control and treat FGD wastewater and BA transport water produced by the steam electric

[7] Due to the Court vacatur of 40 CFR part 257.71(a)(1)(i) (provision for clay-lined surface impoundments) clay-lined surface impoundments are currently also considered unlined.

[8] The data presented in the general description continues to rely on some 2009 conditions, as the industry survey remains the EPA's best available source of information for characterizing operations across the industry.

power generating industry. *See* Section VIII of this preamble for details on updated cost information.

1. FGD Wastewater

FGD scrubber systems, either dry or wet, are used to remove sulfur dioxide from flue gas so that sulfur dioxide is not emitted into the air. Dry FGD systems generally do not discharge wastewater, as the water they use is evaporated during operation; wet FGD systems do produce a wastewater stream.

As part of this proposed rule, the EPA is including two additional FGD wastewater treatment technologies among the suite of regulatory options that were not evaluated as main regulatory options in the 2015 rule: Low Hydraulic Residence Time Biological Reduction (LRTR) and membrane filtration, which are further described below.

• LRTR System. A biological treatment system that targets removal of selenium and nitrate/nitrite using fixed-film bioreactors in smaller, more compact reaction vessels than those used in the biological treatment system evaluated in the 2015 rule (referred to in this proposal as HRTR—high residence time biological reduction). The LRTR system is designed to operate with a shorter residence time (on the order of 1 to 4 hours, as compared to a residence time of 10–16 hours for HRTR), while still achieving significant removal of selenium and nitrate/nitrite. The LRTR technology option considered as part of this proposed rule includes chemical precipitation as a pretreatment stage prior to the bioreactor and ultrafiltration as a polishing step following the bioreactor.

• Membrane Filtration. A membrane filtration system designed specifically for high TDS and TSS wastestreams. These systems are designed to eliminate fouling and scaling associated with industrial wastewater. These systems typically combine pretreatment for potential scaling agents such as calcium, magnesium, and sulfates, and one or more types of membrane technology (*e.g.,* nanofiltration, or reverse osmosis) to remove a broad array of particulate and dissolved pollutants from FGD wastewater. The membrane filtration units may also employ advanced techniques, such as vibration or creation of vortexes to mitigate fouling or scaling of the membrane surfaces.

Steam electric facilities discharging FGD wastewater currently employ a variety of wastewater treatment technologies and operating/management practices to reduce the pollutants associated with FGD wastewater discharges. As part of the 2015 rule, the EPA identified the following types of treatment and handling practices for FGD wastewater:

• Chemical precipitation systems that use tanks to treat FGD wastewater. Chemicals are added to help remove suspended solids and dissolved solids, particularly metals. The precipitated solids are then removed from solution by coagulation/flocculation, followed by clarification and/or filtration. The 2015 rule focused on a specific design that employs hydroxide precipitation, sulfide precipitation (organosulfide), and iron coprecipitation to remove suspended solids and to convert soluble metal ions to insoluble metal hydroxides or sulfides.

• Biological treatment systems that use microorganisms to treat FGD wastewater. The EPA identified three types of biological treatment systems used to treat FGD wastewater: (1) Anoxic/anaerobic fixed-film bioreactors, which target removals of nitrogen compounds and selenium, as well as other metals; (2) anoxic/anaerobic suspended growth systems, which target removals of selenium and other metals; and (3) aerobic/anaerobic sequencing batch reactors, which target removals of organics and nutrients. The 2015 rule focused on a specific design of anoxic/anaerobic fixed-film bioreactors that employs a relatively long residence time for the microbial processes. The bioreactor design used as the basis for the 2015 rule, with typical hydraulic residence time on the order of approximately 10 to 16 hours, is referred to in this rulemaking as high residence time reduction (HRTR). The BAT technology basis for the 2015 rule also included chemical precipitation as a pretreatment stage prior to the bioreactor and a sand filter as a polishing step following the bioreactor (*i.e.,* CP+HRTR).

• Thermal evaporation systems that use a falling-film evaporator (or brine concentrator), following a softening pretreatment step, to produce a concentrated wastewater stream and a distillate stream to reduce the volume of wastewater by 80 to 90 percent and also reduce the discharge of pollutants. The concentrated wastewater is usually further processed in a crystallizer that produces a solid residue for landfill disposal and additional distillate that can be reused within the facility or discharged. These systems are designed to remove the broad spectrum of pollutants present in FGD wastewater to very low effluent concentrations.

• Constructed wetland systems using natural biological processes involving wetland vegetation, soils, and microbial activity to reduce the concentrations of metals, nutrients, and TSS in wastewater. High temperature, chemical oxygen demand (COD), nitrates, sulfates, boron, and chlorides in the wastewater can adversely affect constructed wetlands' performance. To avoid this, facilities typically find it necessary to dilute the FGD wastewater with service water before it enters the wetland.

• Some facilities operate their wet FGD systems using approaches that eliminate the discharge of FGD wastewater. These facilities use a variety of operating and management practices to achieve this.

—Complete recycle. Facilities that operate in this manner do not produce a saleable solid product from the FGD system (*e.g.,* wallboard-grade gypsum). Because the facilities are not selling the FGD gypsum, they are able to allow the landfilled material to contain elevated levels of chlorides, and as a result do not need a separate wastewater purge stream.

—Evaporation impoundments. Some facilities in warm, dry climates have been able to use surface impoundments as holding basins from which the FGD wastewater evaporates. The evaporation rate from the impoundments at these facilities is greater than or equal to the flow rate of the FGD wastewater and amount of precipitation entering the impoundments; therefore, there is no discharge to surface water.

—Fly ash (FA) conditioning. Many facilities that operate dry FA handling systems will add water to the FA to suppress dust or improve handling and/or compaction characteristics in an on-site landfill. The EPA is not aware of any plants using FGD wastewater to condition ash that will be marketed.

—Combination of wet and dry FGD systems. The dry FGD process involves atomizing and injecting wet lime slurry, which ranges from approximately 18 to 25 percent solids, into a spray dryer. The water in the slurry evaporates from the heat of the flue gas within the system, leaving a dry residue that is removed from the flue gas by a fabric filter (*i.e.,* a baghouse) or electrostatic precipitator (ESP).

—Underground injection. These systems dispose of wastes by injecting them into an underground well as an alternative to discharging wastewater to surface waters.

The EPA also collected new information on other FGD wastewater treatment technologies, including spray

dryer evaporators, direct contact thermal evaporators, zero valent iron treatment, forward osmosis, absorption or adsorption media, ion exchange, electrocoagulation, and electrodialysis reversal. These treatment technologies have been evaluated at fullscale or pilotscale, or are being developed to treat FGD wastewater. *See* Section 4.1 of the Supplemental TDD for more information on these technologies.

2. BA Transport Water

BA consists of heavier ash particles that are not entrained in the flue gas and fall to the bottom of the furnace. In most furnaces, the hot BA is quenched in a water-filled hopper.[9] Many facilities use water to transport (sluice) the BA from the hopper to an impoundment system or a dewatering bin system. In both the impoundment and dewatering bin systems, the BA transport water is usually discharged to surface water as overflow from the system, after the BA has settled to the bottom. In addition to wet sluicing to an impoundment or dewatering bin system, the industry also uses the following BA handling systems that generate BA transport water:

- Remote Mechanical Drag System. These systems use the same processes as wet-sluicing impoundment or dewatering bin systems to transport bottom ash to a remote mechanical drag system. A drag chain conveyor dewaters the bottom ash by pulling it out of the water bath on an incline. The system can either be operated as a closed-loop (evaluated during the 2015 rule) or a high recycle rate system. For this proposed rule, under the high recycle rate option, facilities would be permitted to purge a portion of the wastewater from the system to maintain a high recycle rate, as described in Section VII of this preamble.[10]
- Dense Slurry System. These systems use a dry vacuum or pressure system to convey the bottom ash to a silo (as described below for the ''Dry Vacuum or Pressure System''), but instead of using trucks to transport the bottom ash to a landfill, the facility mixes the bottom ash with water (a lower percentage of water compared to a wet-sluicing system) and pumps the mixture to the landfill.

As part of the 2015 rule and this reconsideration, the EPA identified the following BA handling systems that do not generate bottom ash transport water.

- Mechanical Drag System. These systems are located directly underneath the boiler. The bottom ash is collected in a water quench bath. A drag chain conveyor dewaters the bottom ash by pulling it out of the water bath on an incline.
- Dry Mechanical Conveyor. These systems are located directly underneath the boiler. The system uses ambient air to cool the bottom ash in the boiler and then transports the ash out of the boiler on a conveyor. No water is used in this process.
- Dry Vacuum or Pressure System. These systems transport bottom ash from the boiler to a dry hopper without using any water. Air is percolated through the ash to cool it and combust unburned carbon. Cooled ash then drops to a crusher and is conveyed via vacuum or pressure to an intermediate storage destination.
- Vibratory Belt System. These systems deposit bottom ash into a vibratory conveyor trough, where the ash is air-cooled and ultimately moved through the conveyor deck to an intermediate storage destination without using any water.
- Submerged Grind Conveyor. These systems are located directly underneath the boiler and are designed to reuse slag tanks, ash gates, clinker grinders, and transfer enclosures from the existing wet sluicing systems. The system collects bottom ash from the discharge of each clinker grinder. A series of submerged drag chain conveyors transport and dewater the bottom ash.

See Section 4.2 of the Supplemental TDD for more information on these technologies.

VI. Data Collection Since the 2015 Rule

A. Information From the Electric Utility Industry

1. Engineering Site Visits

During October and November 2017, the EPA conducted seven site visits to facilities in five states. The EPA selected facilities to visit using information gathered in support of the 2015 rule, information from industry outreach, and publicly available facility-specific information. The EPA visited four facilities that were previously visited in support of the 2015 rule because they had recently conducted, or were currently conducting, FGD wastewater treatment pilot studies. The EPA also revisited facilities that had implemented new FGD wastewater treatment technologies or BA handling systems (after the 2015 rule) to learn more about implementation timing, start-up and operation, and implementation costs.

The specific objectives of these site visits were to gather general information about each facility's operations; their pollution prevention and wastewater treatment system operations; their ongoing pilot or laboratory scale studies for FGD wastewater treatment; and BA handling system conversions.

2. Data Requests, Responses, and Meetings

Under the authority of Section 308 of the Clean Water Act (CWA) (33 U.S.C. 1318), in January 2018, the EPA requested the following information from nine steam electric power companies that own coal-fired facilities generating FGD wastewater:

- FGD wastewater characterization data associated with testing and implementation of treatment technologies, in 2013 or later.
- Information on halogen usage to reduce flue gas emissions, as well as halogen concentration data in FGD wastewater.
- Projected installations of FGD wastewater treatment technologies.
- Cost information for projected or installed FGD wastewater treatment systems, from bids received in 2013 or later.

After receiving each company's response, the EPA met with these companies to discuss the FGD-related data submitted, other FGD and BA data outside the scope of the request that the company believed to be relevant, and suggestions each company had for potential changes to the 2015 rule with respect to FGD wastewater and BA transport water. The EPA used this information to learn more about the performance of treatment systems, inform the development of FGD wastewater limitations, learn more about facility-specific halogen usage (such as bromide), and obtain information useful for updating cost estimates of installing candidate treatment technologies. As needed, the EPA conducted follow-up meetings and conference calls with industry representatives to discuss and clarify these data.

3. Voluntary BA Transport Water Sampling

In December 2017, the EPA invited seven steam electric facilities to participate in a voluntary BA transport water sampling program designed to obtain data to supplement the wastewater characterization data set for BA transport water included in the record for the 2015 rule. The EPA asked facilities to provide analytical data for

[9] Consistent with the 2015 rule, boiler slag is considered BA.

[10] In some cases, additional treatment may be necessary to maintain a closed-loop system. This additional treatment could include polymer addition to enhance removal of suspended solids, or membrane filtration of a slip stream to remove dissolved solids.

ash pond effluent and untreated BA transport water (*i.e.,* ash pond influent). The EPA selected the facilities based on their responses to its 2010 Questionnaire for the Steam Electric Power Generating Effluent Guidelines (*see* Section 3.2 of the 2015 TDD). Two facilities chose to participate in the voluntary BA sampling program. These data were incorporated into the analytical data set used to estimate pollutant removals for BA transport water.

4. Electric Power Research Institute (EPRI) Voluntary Submission

EPRI conducts studies—funded by the steam electric power generating industry—to evaluate and demonstrate technologies that can potentially remove pollutants from wastestreams or eliminate wastestreams using zero discharge technologies. Following the 2015 rule, the EPA reviewed 35 reports published between 2011 and 2018 that EPRI voluntarily provided regarding characteristics of FGD wastewater and BA transport water, FGD wastewater treatment pilot studies, BA handling practices, halogen addition rates, and the effect of halogen additives on FGD wastewater. The EPA used information presented in these reports to inform the development of numeric effluent limitations for FGD wastewater and to update methods for estimating the costs and pollutant removals associated with candidate treatment technologies.

5. Meetings With Trade Associations

In May and June of 2018, the EPA met with the Edison Electric Institute (EEI), the National Rural Electric Cooperatives Association (NRECA), and the American Public Power Association (APPA). These trade associations represent investor-owned utilities, electric cooperatives, and community-owned utilities, respectively. The EPA also met with the Utility Water Act Group (UWAG), an association comprising the trade associations above as well as individual electric utilities. The EPA met with each of these trade associations separately and together to discuss the technologies and the analyses presented in the 2015 rule and to hear suggestions for potential changes to the 2015 rule. The EPA also used information from these meetings to update industry profile data (*i.e.,* accounting for retirements, fuel conversions, and updated treatment technology installations).

B. Information From the Drinking Water Utility Industry and States

The EPA obtained additional information from the drinking water utility sector and states on the effects of bromide discharges from steam electric facilities on drinking water treatment processes. First, the EPA received letters from, and met with, the American Water Works Association (AWWA), the Association of Metropolitan Water Agencies (AMWA), the National Association of Water Companies (NAWC), the Association of Clean Water Administrators (ACWA), and the Association of State Drinking Water Administrators (ASDWA). Second, the EPA visited two drinking water treatment facilities in North Carolina that have modified their treatment processes to address an increase in disinfection byproduct levels due to bromide discharges from an upstream steam electric power facility. Finally, the EPA obtained data on surface water bromide concentrations and data from drinking water monitoring from the two drinking water treatment facilities. The EPA also obtained existing state data from other drinking water treatment facilities from the states of North Carolina and Virginia.

C. Information From Technology Vendors and Engineering, Procurement, and Construction (EPC) Firms

The EPA gathered data on availability and effectiveness from technology vendors and EPC firms through presentations, conferences, meetings, and email and phone contacts regarding FGD wastewater and BA handling technologies used in the industry. The data collected informed the development of the technology costs and pollutant removal estimates for FGD wastewater and BA transport water. The EPC firms also suggested potential changes to the 2015 rule.

D. Other Data Sources

The EPA gathered information on steam electric generating facilities from the Department of Energy's (DOE's) Energy Information Administration (EIA) Forms EIA–860 (Annual Electric Generator Report) and EIA–923 (Power Plant Operations Report). The EPA used the 2015 through 2017 data to update the industry profile prepared for the 2015 rule, including commissioning dates, energy sources, capacity, net generation, operating statuses, planned retirement dates, ownership, and pollution controls of the boilers.

The EPA conducted literature and internet searches to gather information on FGD wastewater treatment technologies, including information on pilot studies, applications in the steam electric power generating industry, and implementation costs and timelines. The EPA also used the internet searches to identify or confirm reports of planned facility and boiler retirements, and reports of planned unit conversions to dry or closed-loop recycle ash handling systems. The EPA used this information to inform the industry profile and identify process modifications occurring in the industry.

The EPA received information from several environmental groups and other stakeholders following the 2015 rule. In general, these groups voiced concerns about extending the period that facilities could continue to discharge FGD wastewater and BA transport water pollutants subject to BPT limitations, as well as steam electric bromide discharges, their interaction with drinking water treatment facilities, and the associated human health effects. They also noted the improved availability of technological controls for reducing or eliminating pollutant discharges from FGD and BA handling systems. Finally, they provided examples where they believed that states had not properly considered the ''as soon as possible date'' for the new, more stringent BAT requirements in the 2015 rule when issuing permits.

VII. Proposed Regulation

A. Description of the BAT/PSES Options

The proposal evaluates four regulatory options and identifies one proposed option, as shown in Table VII–1. All options include similar technology bases for BA transport water, except that Option 2 allows surface impoundments and a BMP plan for low utilization boilers. In general, each successive option from Option 1 to 4 would achieve a greater reduction in FGD wastewater pollutant discharges. Each subcategorization is described further in Section VII.C below. In addition to some specific requests for comment included throughout this proposal, the EPA solicits comment on all aspects of this proposal, including the information, data and assumptions EPA relied upon to develop the proposed regulatory options, as well as the proposed BAT, effluent limitations, and alternate approaches included in this proposal.

TABLE VII–1—MAIN REGULATORY OPTIONS

Wastestream	Subcategory	Technology basis for the BAT/PSES regulatory options			
		1	2	3	4
FGD Wastewater	N/A	Chemical precipitation	Chemical precipitation + low hydraulic residence time biological treatment.	Chemical precipitation + low hydraulic residence time biological treatment.	Membrane filtration.
	High FGD flow facilities.	NS	Chemical precipitation	Chemical precipitation	Chemical precipitation.
	Low utilization boilers	NS	Chemical precipitation	NS	NS.
	Boilers retiring by 2028.	Surface impoundments.	Surface impoundments.	Surface impoundments.	Surface impoundments.
FGD Wastewater Voluntary Incentives Program (Direct Dischargers Only).		Membrane filtration ...	Membrane filtration ...	Membrane filtration ...	N/A.
BA Transport Water ...	N/A	Dry handling or High recycle rate systems.	Dry handling or High recycle rate systems.	Dry handling or High recycle rate systems.	Dry handling or High recycle rate systems.
	Low utilization boilers	NS	Surface impoundments +BMP plan.	NS	NS.
	Boilers retiring by 2028.	Surface impoundments.	Surface impoundments.	Surface impoundments.	Surface impoundments.

NS = Not Subcategorized.
Note: The table above does not present existing subcategories included in the 2015 rule as the EPA is not proposing any changes to the existing subcategorization of oil-fired units or units with a nameplate capacity of 50 MW or less.

1. FGD Wastewater

Under Option 1, the EPA would establish BAT limitations and PSES for mercury and arsenic based on chemical precipitation. For Options 2 and 3, the EPA would establish BAT limitations and PSES for mercury, arsenic, selenium, and nitrate/nitrate based on chemical precipitation followed by LRTR and ultrafiltration. Option 2 subcategorizes boilers producing less than 876,000 MWh per year [11] and for those boilers would require mercury and arsenic limitations and pretreatment standards based on chemical precipitation.[12] Finally, for Option 4, the EPA would establish BAT limitations and PSES for mercury, arsenic, selenium, nitrate-nitrite, bromide, and TDS based on membrane filtration. Options 2, 3, and 4 would subcategorize facilities with high FGD flows, and for this subcategory would establish limitations and standards for mercury and arsenic based on chemical precipitation. Under all four options, boilers retiring by December 31, 2028, would be subcategorized, and for this subcategory BAT limitations would be set equal to BPT limitations for TSS based on the use of surface impoundments. Finally, the EPA would establish voluntary incentives program limitations for mercury, arsenic, selenium, nitrate-nitrite, bromide, and TDS based on membranes.

2. BA Transport Water

Under all options described above, the EPA proposes to control discharge of pollutants from BA transport water by establishing daily BAT limitations and PSES on the volume of BA transport water that can be discharged based on high recycle rate systems. A high recycle rate system is a recirculating wet ash handling system operated such that it periodically discharges (purges) a small portion of the process wastewater from the system. Under all options, boilers retiring by December 31, 2028, would be subcategorized, and for this subcategory, BAT limitations would be set equal to BPT limitations for TSS, based on gravity settling in surface impoundments. Under Option 2, for boilers producing less than 876,000 MWh per year, BAT effluent limitations for BA transport water would be set equal to the BPT effluent limitations based on gravity settling in surface impoundments to remove TSS.[13] Such facilities would also be required to develop and implement a BMP plan to minimize the discharge of pollutants from BA transport water. Because POTWs are designed to treat conventional pollutants such as TSS, TSS is not considered to pass through and EPA would establish PSES based on the inclusion of a BMP plan only. For additional information on pass through analysis, *see* Section VII(C) of the 2015 rule preamble. Finally, the EPA proposes a slight modification of the definition of BA transport water to exclude water remaining in a tank-based high recycle rate system at the end of the useful life of the facility.[14] The EPA proposes not to characterize a technology basis for BAT/PSES applicable to such wastewater at this time.[15]

B. Rationale for the Proposed BAT

In light of the criteria and factors specified in CWA sections 304(b)(2)(B) and 301(b)(2)(A) (*see* Section IV of this preamble), the EPA proposes to

[11] The equivalent of a 100 MW boiler operating at 100% capacity or a 400 MW boiler operating at 25% capacity.

[12] As explained above, EPA is not proposing to revise BAT limitations or PSES for oil-fired boilers and/or small boilers (50 MW or smaller).

[13] Although TSS is a conventional pollutant, as it did in the 2015 rule, whenever EPA would be regulating TSS in any final rule following this proposal, it would be regulating it as an indicator pollutant for the particulate form of toxic metals.

[14] Under this modified definition, the water at the end of the useful life of the facility would be at most the volume of a full system. Since the high recycle rate system being selected as BAT allows for a 10 percent purge of the system volume each day, this would be the equivalent of 10 days discharge, a marginal, one-time increase in pollution.

[15] As illustrated above, there is a wide range of technologies currently in use for pollutant discharges associated with BA transport water, and new approaches continue to emerge. For the exclusion proposed today, permitting authorities would establish BAT limitations for such discharges on a site-specific, best professional judgement (BPJ) basis. 33 U.S.C. 1342 (a)(1)(B); 40 CFR 124.3. Pretreatment program control authorities would need to develop local limitations to address the introduction of pollutants from this wastewater to POTWs that cause pass through or interference, as specified in 40 CFR 403.5(c)(2).

establish BAT effluent limitations based on the technologies described in Option 2.

1. FGD Wastewater

This proposal identifies treatment using chemical precipitation followed by a low hydraulic residence time biological treatment including ultrafiltration as the BAT technology basis for control of pollutants discharged in FGD wastewater because after considering the factors specified in CWA section 304(b)(2)(B), the EPA proposes to find that this technology is available and economically achievable. More specifically, the technology basis for BAT would include the same chemical precipitation system described in the 2015 rule. Thus, it would employ equalization, hydroxide and sulfide (organosulfide) precipitation, iron coprecipitation, and removal of suspended and precipitated solids. This chemical precipitation system would be followed by a low hydraulic residence time, anoxic/anaerobic biological treatment system designed to remove heavy metals, selenium, and nitrate-nitrite.[16] The LRTR bioreactor stage would be followed by an ultrafilter to remove suspended solids exiting the bioreactor, including colloidal particles.

Both chemical precipitation and biological treatment are well-demonstrated technologies that are available to steam electric facilities for use in treating FGD wastewater. In addition to the 39 facilities mentioned as using chemical precipitation in the 2015 rule preamble, facilities have installed, or begun installation of such systems, because they have taken steps to cease using surface impoundments to treat their FGD wastewater. In addition, chemical precipitation has been used at thousands of industrial facilities nationwide for the last several decades as described in the 2015 rule record. Ultrafilters downstream of the biological treatment stage are designed for the removal of suspended solids exiting the bioreactor, such as any reduced, insoluble selenium, mercury, and other particulates. Ultrafiltration uses a membrane with pore size small enough to remove these smaller suspended particulates after the biological treatment stage, but still much larger than the pore size of the membrane technology (*i.e.,* nanofiltration or reverse osmosis) that is the basis for option 4 and the VIP which is designed to remove dissolved metals and inorganics (*e.g.,* nutrients, bromides, etc.). Unlike the nanofiltration and reverse osmosis technologies, ultrafilters do not generate a brine that would require encapsulation with fly ash or other disposal techniques. The types and amount of solids removed by the ultrafilter in the CP+LRTR treatment system are identical to the solids removed by the sand filter in the CP+HRTR treatment technology and do not result in the same non-water quality environmental impacts that are associated with the brine generated by the membrane technology of Option 4 and proposed for the VIP program.

After accounting for the changes in the industry described in Section V of this preamble, fifteen steam electric facilities with wet scrubbers have technologies in place able to meet the proposed BAT effluent limitations for FGD wastewater.[17] Of these fifteen facilities, nine are currently operating anoxic/anaerobic biological treatment designed to substantially reduce nitrogen compounds and selenium in their FGD wastewater. These biological treatment systems are a mix of low and high hydraulic residence time.[18] The EPA identified a tenth facility that previously operated an anoxic/anaerobic biological treatment system; however, more recently installed a thermal system for the treatment of FGD wastewater. Another five steam electric facilities are also operating thermal treatment systems for FGD wastewater.

In the 2015 rule, the EPA rejected three availability arguments made against biological treatment generally. The EPA is not proposing to change these findings based on record information received since the 2015 rule but solicits comment on whether, and to what extent, these findings should be retained for the final rule. First, the EPA rejected the argument that maintaining a biological system over the long run was infeasible. Of the ten full-scale systems discussed above, four facilities have used the biological technology to treat FGD wastewater for more than a decade under varying operating conditions, climate conditions, and coal sources. Many pilot tests of the biological technology have been conducted at various facilities, and data from these tests demonstrate that even in the face of major upsets within the chemical precipitation stage of treatment, the biological stage continues to reduce selenium and nitrogen.

In the 2015 rule, the EPA also rejected the argument that selenium removal efficacy was subject to the type of coal burned (specifically subbituminous coal) and coal-switching. Facilities have continued to operate biological treatment systems while switching coals and, in those cases, have maintained a consistent level of selenium removal. Furthermore, at least three pilot and two full-scale systems have now been successfully run or installed to treat FGD wastewater at facilities burning sub-bituminous coals or blends of bituminous and sub-bituminous coals, encompassing both HRTR and LRTR technologies.

Finally, in the 2015 rule the EPA rejected arguments that cycling of facilities up and down in production, and even out of service for various periods of time, would affect the ability of facilities to meet the effluent limitations. Industry provided data for two facilities showing that they successfully operated biological systems while cycling operations and undergoing shutdowns in the years since the 2015 rule.

While the rationale above applies to both HRTR and LRTR technologies, the EPA proposes to establish BAT based on the LRTR technologies. LRTR reductions are comparable to HRTR reductions,[19] are less costly, and require significantly less process or facility footprint modifications than the HRTR option. As explained in Section XIII of this preamble, the long-term averages forming the basis of the selenium limitations for LRTR and HRTR are similar, and the higher selenium

[16] Similar to the 2015 rule and consistent with discussions with engineering firms and facility staff, EPA assumed that in order to meet the limitations and standards, facilities would take steps to optimize wastewater flows as part of their operating practices (by reducing the FGD purge rate or recycling a portion of their FGD wastewater back to the FGD system), where the FGD system metallurgy can accommodate an increase in chlorides. *See* Section 5 of the Supplemental TDD.

[17] These fifteen facilities represent 11 percent of steam electric facilities with wet scrubbers. The EPA notes that a further 40 percent of all steam electric facilities with wet scrubbers use FGD wastewater management approaches that eliminate the discharge of FGD wastewater altogether. But, although these technologies (which are described above in Section V.C.1) may be available for some facilities, none of them are available nationwide, and thus do not form the basis for the proposed BAT. For example, evaporation ponds are only available in certain climates. Similarly, complete recycle FGD systems are only available at facilities with appropriate FGD metallurgy. Facility conditions and availability of these technologies have not materially changed since the 2015 rule, and the EPA thus reaffirms that these technologies are not individually available nationwide and are not a basis for the proposed BAT.

[18] In addition to these nine facilities, some facilities employ other types of biological treatment. Some of these systems are sequencing batch reactors (SBR), which treat nitrogen, and that technology can be operated to remove selenium. The SBR systems currently operating at power facilities, however, would likely not be able to meet the limitations discussed in today's proposal without reconfiguration.

[19] For example, while the effluent from LRTR is more variable than HRTR, both technologies achieve long-term average effluent concentrations for selenium lower than 20 mg/L.

limitations for the LRTR systems are largely driven by increased short-term variability around that average, rather than a meaningful difference in long-term pollutant removals.[20]

LRTR is less costly than HRTR. Compared to the baseline of the 2015 rule, LRTR is estimated to save approximately $72 million per year in after-tax costs to industry.

LRTR requires fewer process changes than HRTR. Compared to HRTR, LRTR installations are less complex and require fewer modifications to a facility's footprint. The HRTR systems selected in the 2015 rule were large, concrete tanks which, along with their associated piping and pumping and control equipment, would be fabricated on site. By contrast, new LRTR systems have smaller footprints, and in many cases come prefabricated as modular components, including the ultrafilter polishing stage, requiring little more than a concrete foundation, electricity supply, and piping connections.

The EPA is not proposing to establish BAT limitations or PSES based on chemical precipitation alone (Option 1). As the EPA noted during the development of the 2015 rule, chemical precipitation is effective at removing mercury, arsenic, and certain other heavy metals. While basing BAT limitations and PSES on this technology alone could save industry $103 million per year in after-tax costs relative to the 2015 rule, this technology alone does not remove nitrogen, nor does it remove the majority of selenium. Furthermore, the data in the EPA's record demonstrate that both LRTR and HRTR remove approximately 90 percent of the mercury remaining in the effluent from chemical precipitation treatment.[21] Because the combination of chemical precipitation with LRTR provides substantial further reductions in the discharge of pollutants, the EPA proposes chemical precipitation followed by LRTR for BAT.

The EPA is not proposing to establish BAT limitations based on membrane filtration (Option 4). Based on the EPA's record, the EPA could not conclude that membrane filtration is technologically available nationwide at this time, as the term is used in the CWA, but may become ''available'' on a nationwide basis by 2028 (this is reflected in the date of compliance for the VIP program under Options 2 and 3). Furthermore, membrane filtration entails non-water-quality environmental impacts (associated with management of the brine) that the EPA proposes to find unacceptable.

At the time of the 2015 rule, the EPA had no record of information about membrane filtration technologies being used to treat FGD wastewater. Since that time, the EPA collected information on several types of membrane filtration technologies. Microfiltration and ultrafiltration membranes are used primarily for removing suspended solids, including colloids. Nanofiltration, reverse osmosis, forward osmosis, and electrodialysis reversal (EDR) membranes are used to remove a broad range of dissolved pollutants. Each of these membrane filtration technologies generate both a treated effluent and a residual requiring further treatment or disposal. Microfiltration and ultrafiltration generate a solid waste residual which is disposed. Similarly, nanofiltration, reverse osmosis, forward osmosis, and EDR all produce a concentrated brine residual which must be disposed.

The EPA's current record includes information on seven pilot studies of FGD wastewater treatment at domestic facilities using four different membrane filtration technologies.[22] All of these technologies first employed some form of suspended solids removal such as microfiltration or chemical precipitation. This pretreated FGD wastewater was then fed into either nanofiltration or reverse osmosis membrane filtration systems.[23] For several of the pilot studies, the resultant brines were mixed with FA and/or lime to test the potential for encapsulation of the concentrated brine wastestream.[24]

The EPA is not aware of any domestic facilities which have to date installed nanofiltration or reverse osmosis membrane filtration systems to remove dissolved pollutants in FGD wastewater, although EPA is aware of three facilities in China which have installed such membrane filtration systems.[25] The record contains limited information about these facilities. Two of the facilities employ pretreatment and a combination of reverse osmosis and forward osmosis. The EPA does not have detailed information about the specific configurations or the long-term performance of these two systems, nor is the EPA aware of how the resultant brine is being disposed.[26] Furthermore, the company that sold these two systems has since ceased commercial operations.[27] The third facility operating in China employs pretreatment followed by nanofiltration and reverse osmosis. At this facility, the brine is crystallized and the resulting salt is sold for industrial uses. The EPA does not have information on the long-term performance of this system.

While the EPA does have some information about the use of membrane filtration on FGD wastewater from pilot studies, uncertainty remains regarding operation of the suite of membrane filtration technologies evaluated by the EPA as the basis for Option 4. With respect to data from the pilot studies, these studies focused on membrane technologies that would remove dissolved pollutants. For the technologies designed to remove dissolved pollutants, several studies either did not include a second stage of membrane filtration (*i.e.,* a reverse osmosis polishing stage which electric utilities and vendors indicated would need to be part of any potential future membrane filtration system they would install and operate with a discharge) or provided only summaries of effluent data because of nondisclosure agreements between EPRI, treatment technology vendors, and/or the plant operators. In both cases, this prevented the EPA from fully analyzing the pollutant removal efficacy and effluent variability associated with the treatment systems used in those studies. The pilot tests that omitted the second stage of membrane filtration do not provide sufficient insight into the performance capabilities of the membrane technology because the initial membrane filtration step (*e.g.,* a nanofilter unit) does not by

[20] Courts have recognized that while Section 301 of the CWA is intended to help achieve the national goal of eliminating the discharge of all pollutants, at some point the technology-based approach has its limitations. *See Am. Petroleum Inst.* v. *EPA*, 787 F.2d 965, 972 (5th Cir. 1986) (''EPA would disserve its mandate were it to tilt at windmills by imposing BAT limitations which removed de minimis amounts of polluting agents from our nation's waters [. . .]'').

[21] Recall that the FGD mercury and arsenic limitations in the 2015 rule were based on chemical precipitation data alone because the facilities operating biological systems were not using all of the chemical precipitation additives in the technology basis.

[22] Two of these pilot studies were completed in 2014, but information about these tests was not provided to EPA prior to the 2015 rule.

[23] The EPA has also learned of an eighth pilot on an EDR system, but no data have yet been provided (*https://www.filtsep.com/water-and-wastewater/news/saltworks-completes-fgd-pilot-in-us/*).

[24] The record includes additional encapsulation studies and data not explicitly linked to these seven pilots.

[25] Ultrafiltration has been installed as part of FGD wastewater treatment systems in the U.S.; however, these membranes are intended to remove suspended solids, not dissolved pollutants.

[26] This is in contrast to biological treatment systems for which EPA has long-term performance data. Although LRTR and HRTR systems differ in their configuration (*e.g.,* residence time), the underlying performance has been well demonstrated on this wastewater.

[27] The following story summarizes the forward osmosis company Oasys ceasing commercial operations: *https://www.bluetechresearch.com/news-blog/comment-oasys-hits-funding-drought/*.

itself remove the broad range of pollutants as effectively as would be achieved by the two-stage configuration. The pilot tests for which the EPA has only summary-level data provide summary statistics, such as the observed range of pollutant concentrations, average influent and effluent pollutant concentrations, and duration of the testing periods. However, the EPA lacks the individual daily sample results that are needed to fully evaluate treatment system operation and calculate effluent limitations. Complete data sets were only available from three pilot facilities using a single vendor's reverse osmosis technology.[28]

In addition, while the EPA does have information about membrane filtration application to FGD wastewater from bids and engineering documents, those sources express concerns about operating a technology on this wastewater that would be the first of its kind in the U.S. With respect to information from bids for full-scale installations and related documents, the EPA obtained copies of bids that represented a single vendor's reverse osmosis-based technology and that incorporated performance guarantees. Such guarantees, which are standard within the steam electric power generating industry, act to transfer the costs of specific performance issues from the purchaser of the equipment to the vendor. While the willingness of this vendor to take on these risks might suggest confidence in the long-term performance of its technology, third-party EPC firms with no vested interest in the technology are hesitant to recommend that a client be the first site in the U.S. to adopt membrane filtration for the treatment of FGD wastewater because of uncertainty related to system performance and the ability to operate successfully without frequent, if not excessive, chemical cleaning. This further supports EPA's proposal to find, at this time, that membrane filtration is not, technologically available or an appropriate basis for mandatory requirements for the entire industry. The EPA solicits comment on this availability finding, and whether membrane filtration may become nationally available sooner or later than 2028.

The EPA also rejects membranes as the technology basis for BAT for all existing facilities because it could discourage more valuable forms of beneficial reuse of FA (such as replacing Portland cement in concrete) potentially causing more FA to be incorporated in wastes being disposed.[29] While there are several alternative ways to treat or dispose of the brine generated by membrane filtration, the method most likely to be employed (based on bids, engineering documents, and discussions with electric utilities) is encapsulation with FA and lime for disposal of the resulting solid in a landfill.[30]

Landfilling an encapsulated material raises challenges. For instance, comingling might result in a leachate blowout. The King County Landfill in Virginia experienced a leachate blow out when compact CCR materials with a low infiltration rate were layered with normal municipal solid waste having a higher infiltration rate. Similarly, in the case of encapsulated brine paste, the paste would set and thereafter achieve a very low infiltration rate. When comingled with CCRs having a higher infiltration rate, this would lead to layers with disparate infiltration rates akin to those experienced in the King County scenario. Thus, segregation of low infiltration rate encapsulated brine in a landfill cell separate from other, higher infiltration wastes could be necessary to prevent this layering, and a potential leachate blowout. Such dedicated landfill cells do not exist today, and would require time to permit and construct.

Moreover, instead of disposing of their FA, facilities can sell it for beneficial use. As stated in the 2015 CCR rule:

> The beneficial use of CCR is a primary alternative to current disposal methods. And as EPA has repeatedly concluded, it is a method that, when performed correctly, can offer significant environmental benefits, including greenhouse gas (GHG) reduction, energy conservation, reduction in land disposal (along with the corresponding avoidance of potential CCR disposal impacts), and reduction in the need to mine and process virgin materials and the associated environmental impacts.[31]

According to 2016 EIA data, the median percent of FA sold for beneficial use by the facilities with wet FGD systems is approximately fifty percent, with a range of zero to one hundred percent. The fact that encapsulation with FA and lime is the most likely, and least cost, brine management method that facilities could employ nationally, combined with the high percent of FA currently being beneficially used, indicates that selection of membrane filtration as BAT could discourage environmentally preferable beneficial uses of FA, such as replacement of Portland cement in concrete.[32] Specifically, the Agency estimated in U.S. EPA (2011) that each ton of fly ash used as a substitute for Portland cement would avoid 5,400 megajoules of nonrenewable energy use, 690 liters of water use, 1,000,000 grams (g) of CO_2 emissions, 840 g of methane emissions, 1,400 g of CO emissions, 2,700 g of NO_X emissions, 2,500 g of SO_X emissions, 2,400 g of PM, 0.08 g of Hg, 490 g of TSS discharge, 23 g of BOD discharge, and 46 g of COD discharge.[33] After considering these cross-program environmental impacts, the EPA proposes to find that discouraging this beneficial use of FA would result in unacceptable non-water-quality environmental impacts.

Finally, while the EPA views the foregoing reasoning as sufficient to find that membrane filtration is not BAT for all existing sources, the EPA notes that membrane filtration is projected to cost industry more than the proposed BAT option for FGD wastewater, *i.e.,* chemical precipitation plus LRTR. Added to these costs are the costs to facilities of disposing of the resulting brine. Some facilities that otherwise sell their FA may choose to use their FA to encapsulate the brine, thereby foregoing revenue from FA sales. Other facilities that choose to continue to sell their FA must dispose of the brine using another disposal alternative, such as crystallization, at an additional cost. Costs are a separate statutory factor that the EPA considers in selecting BAT (see, for example, *BP Exploration & Oil, Inc.* v. *EPA,* 66 F.3d 784, 796 (6th Cir. 1996).

[28] These three data sets served as the basis of the proposed revisions to the VIP limitations, described further in Section XIII of this preamble. These limited data sets do not provide sufficient information to evaluate the performance of nanofiltration and reverse osmosis membrane filtration technology as the primary treatment for dissolved pollutants FGD wastewater. The EPA anticipates that additional pilots, tests and data collection could result in these technologies becoming available by the VIP compliance date of 2028. By contrast and for the reasons explained in section VII.2.B., the EPA proposes to conclude that ultrafiltration technology is available for use in the polishing stage for systems using LRTR biological systems as the primary treatment technology for FGD wastewater.

[29] While the EPA considers FA use for waste solidification and stabilization as beneficial use, the CCR waste being solidified or stabilized must still be disposed of in accordance with 40 CFR 257.

[30] Bids also indicate that this would be the least-cost brine management alternative.

[31] 80 FR 21329 (April 17, 2015).

[32] Although the EPA evaluated FA and lime encapsulation as the least-cost nationally available brine disposal alternative, other alternatives may have higher costs and non-water quality environmental impacts. For example, if a facility chose to crystallize the resulting brine to continue selling its FA, this thermal crystallization process could have a higher cost and parasitic energy load.

[33] U.S. EPA (Environmental Protection Agency). 2011. *Waste and Materials—Flow Benchmark Sector Report: Beneficial Use of Secondary Materials—Coal Combustion Products.* Office of Solid Waste and Emergency Response. Washington, DC 20460. April.

Here, while these costs do not make the membrane filtration option economically unachievable, the additional costs associated with membrane filtration provide additional support for the EPA's proposal that membrane filtration is not BAT for all existing sources.

Although the EPA is proposing to reject membranes as the national technology basis for BAT, the EPA proposes to establish a VIP based on membrane technology, as discussed later in this section. The EPA solicits comment on this conclusion. Furthermore, the EPA solicits comment on whether there are early adopters who have already contracted for, purchased, or installed biological technology for compliance with the 2015 rule, and whether these facilities should be included as a subcategory not subject to the final BAT of Option 4, if finalized. The EPA solicits comment on whether such a subcategory could be based on the age of the new pollution control equipment that had not yet lived out its useful life, the disparate costs of purchasing two sets of equipment, or other statutory factors.

As described further below, the EPA is also not proposing to establish BAT limitations based on other technologies also evaluated in the 2015 rule.

First, except for the end of life boiler and low-utilization subcategories discussed below, the EPA is not proposing to establish BAT limitations based on surface impoundments. Surface impoundments are not as effective at controlling pollutants like dissolved metals and nutrients as available and achievable technologies like CP and LRTR. EPA drew a similar conclusion in the 2015 rule, and nothing in the record developed by the Agency since the 2015 rule would change this determination.

Second, the EPA is not proposing to establish BAT limitations based on thermal technologies, such as chemical precipitation (including softening) followed by a falling film evaporator, on the basis of high costs to industry. In the 2015 rule, the EPA rejected this technology as a basis for BAT limitations due to high costs to industry. Since the 2015 rule, the EPA has collected additional information on full-scale installations and pilots of thermal technologies to treat FGD wastewater. The EPA's record includes information about approximately 10 pilot studies conducted in the U.S., providing performance data for five different thermal technologies. In addition, full scale installations are operating at six facilities,[34] and a seventh purchased thermal equipment, but elected not to install it.[35] While new thermal technologies have been pilot tested and used at full-scale since the 2015 rule, and related cost information demonstrates that thermal technologies are less costly than estimated for the 2015 rule, the thermal costs evaluated in the EPA's memorandum *FGD Thermal Evaporation Cost Methodology* (DCN SE07098) are still three to five times higher than any other option presented in Table VIII–1. As authorized by section 304(b) of the CWA, which allows the EPA to consider costs, the Agency is not proposing that thermal technologies are BAT due to the unacceptable costs to industry. Given the high costs associated with the technology, and the fact that the steam electric power generating industry continues to face costs associated with several other rules, in addition to this rule, the EPA is not proposing to establish BAT limitations for FGD wastewater based on evaporation for all steam electric facilities. The EPA solicits comment on this finding, as well as the accuracy of the revised costs estimates.

Furthermore, since membrane filtration technologies included in Option 4 appear to achieve similar pollutant removals for lower costs than thermal, the EPA is proposing to revise the basis for the VIP limitations adopted in the 2015 rule to membrane filtration, instead of thermal technologies, as discussed later in this section.[36] The EPA solicits comment on the extent to which membrane filtration technologies could be used in lieu of, or in combination with, thermal technologies.

Finally, the EPA is not proposing to decline to establish BAT and leave BAT effluent limitations for FGD wastewater to be established by the permitting authority using BPJ. The EPA explained in the 2015 rule why BPJ determinations would not be appropriate for FGD wastewater, particularly given the availability of several other technologies, and nothing in EPA's record would alter its previous conclusion.

2. BA Transport Water

This proposal identifies treatment using high recycle rate systems as the BAT technology basis for control of pollutants discharged in BA transport water because, after evaluating the factors specified in CWA section 304(b)(2)(B), the EPA proposes to find that this technology is available and economically achievable. In the 2015 rule, the EPA selected dry BA handling or closed-loop wet ash handling systems as the technology basis for the ''zero discharge'' BAT requirements for BA transport water. The EPA established zero pollutant discharge limitations based on these technologies and included a limited allowance for pollutant discharges associated with certain maintenance activities.[37]

At the time of the 2015 rule, the EPA estimated that more than 50 percent of facilities already employed dry handling systems or wet sluicing systems designed to operate closed-loop, or had announced plans to switch to such systems in the near future. Based on new information collected since the 2015 rule, that value is now over 75 percent, nearly evenly split between dry and wet systems. However, since the 2015 rule, the EPA's understanding of the types of available dry systems, and the ability of wet systems to achieve complete recycle has changed, as discussed below.

There have been advances in dry BA handling systems since the 2015 rule.[38] For example, in addition to under-boiler mechanical drag chain systems (described in the 2015 rule), pneumatic systems and submerged grinder conveyors are now available and in use at some facilities. Such systems often can be installed at facilities that are constrained from retrofitting a mechanical drag system due to insufficient vertical space under the boiler.

With respect to wet BA handling systems, in their petitions for reconsideration and in recent meetings with the EPA, utilities and trade associations informed the EPA that many existing remote wet systems are, in reality, ''partially closed'' rather than closed-loop, as indicated by the EPA in

[34] One of these facilities successfully ran three different thermal systems to treat its wastewater, transitioning from a falling film evaporator to a direct-contact evaporator that mixes hot gases in a high turbulence evaporation chamber, and finally to a spray dryer evaporator.

[35] This facility purchased a falling film evaporator for the purpose of meeting water quality-based effluent limitations for boron, but then elected to instead pay approximately $1 million per year to send its wastewater to a local POTW.

[36] The EPA notes that thermal technologies could continue to be used to meet the voluntary incentives program limitations based on membrane filtration.

[37] *See* 40 CFR part 423.11(p).

[38] The term ''dry handling'' is used to refer to ash handling systems that do not use water as the transport medium for conveying ash away from the boiler. Such systems include pneumatic and mechanical processes (some mechanical processes use water to cool the BA or create a water seal between the boiler and ash hoppers, but the water does not act as the transport medium).

the 2015 rule. Utilities and trade associations informed the EPA that these systems operate partially closed, rather than closed, due to small discharges associated with additional maintenance and repair activities not accounted for in the 2015 maintenance allowances,[39] water imbalances within the system such as those associated with stormwater,[40] and water chemistry imbalances including acidity and corrosiveness, scaling, and fines build-up. While some facilities have controlled or eliminated these challenges with relatively straightforward steps (*See* DCNs SE08179 and SE06963), others require more extensive process changes and associated increased costs or find them difficult to resolve (*See* DCNs SE08188, SE08180, and SE06920).

The EPA agrees that the new information indicates that some facilities with wet ash removal systems generally operate as zero discharge systems, but in many cases must operate as high recycle rate systems. While some facilities currently handle the challenges discussed above by discharging some portion of their BA transport water (as the zero discharge limitations in the 2015 rule are not yet applicable), the record demonstrates that facilities can likely eliminate such discharges with additional process changes and expenditures. Just as the EPA estimated costs of chemical additions in the 2015 rule to manage scaling, companies could add additional treatment chemicals (caustic) to manage acidity or other chemicals to control alkalinity, make use of reverse osmosis filters to treat a slip stream of the recycled water to remove dissolved solids, add polymer to enhance settling and removal of fine particulates (''fines''), and build storage tanks to hold water during infrequent maintenance or precipitation events. Industry-wide, the EPA estimates the costs of fully closing the loop to be $43 million per year in after-tax costs, above and beyond the costs of the systems themselves.[41] These additional costs and process changes were not accounted for in the 2015 rule; however, as discussed in Section 5.3 of the Supplemental TDD, in estimating the baseline costs of the BA limitations in the 2015 rule, the EPA now accounts for these costs. The EPA solicits comment on whether these assumptions and costs are appropriate and requests commenters identify and include available data or information to support their recommended approach.

The EPA also recognizes the need for facilities to consider the standards of multiple environmental regulations simultaneously. As discussed in Section IV above, the EPA is separately proposing changes to the CCR rule that, if finalized, would allow facilities to cease receiving waste in unlined surface impoundments by August 2020.[42] The challenges of operating a truly closed-loop system discussed above are compounded when considered in conjunction with the requirements of the CCR rule. Facilities often send various CCR and non-CCR wastestreams, such as coal mill rejects, economizer ash, etc., with BA transport water into their surface impoundments. According to reports provided to the EPA and conversations with electric utilities, several facilities have already begun the transition away from impoundments, and also use the BA treatment system for some of their non-CCR wastewaters.[43] This reportedly can lead to or exacerbate problems with scaling, corrosion, or plugging of equipment that complicate achievement of a closed-loop system and require additional process changes and expense to address. All of which problems could be avoided by purging the system from time to time, as necessary. While those facilities that have not yet installed a BA transport water technology (less than 25 percent) could potentially employ a dry system, and those facilities with existing wet systems could potentially segregate their BA transport water from their non-CCR wastewaters, short compliance timeframes under the CCR rule may limit the availability of such options.

In light of the foregoing process changes (and associated engineering challenges) that facilities would need to make to implement a true zero discharge BA transport water limitation in combination with the CCR rule, and to give facilities flexibilities that will facilitate orderly compliance with the fast-approaching CCR rule deadlines, the EPA proposes to base the BA transport water BAT limitations on the use of dry handling or high recycle rate systems rather than dry handling or closed-loop systems, the technologies on which the zero discharge BAT limitation adopted in the 2015 rule were based. The EPA's proposal is based on its discretion to give particular weight to the CWA Section 304(b) statutory factor of ''process changes.'' Process changes to existing high recycle rate systems that do not currently operate as closed loop, or that will be installed in the near-future, to comply with this rule in conjunction with the CCR rule as discussed above could be more challenging without a further discharge allowance, and in some cases could also result in the prolonged use of unlined surface impoundments.

The EPA considers that the factors discussed above are sufficient to support the Agency's decision not to select closed-loop systems as BAT for BA transport water. The EPA also notes that cost is a statutory factor that it must consider when establishing BAT, and that closed-loop systems cost more than high recycle rate systems for treatment of BA transport water. While the EPA does not find this higher cost to be economically unachievable, the higher cost of closed loop systems is an additional reason for the EPA to not select closed loop systems as BAT for treating BA transport water.

Under the proposed option, the EPA would allow facilities with a wet transport system, on an ''as needed'' basis, to discharge up to 10 percent of the system volume per day on a 30-day rolling average to account for the challenges identified above, including infrequent large precipitation and maintenance events. The EPA proposes that the term ''30-day rolling average'' means the series of averages using the measured values of the preceding 30 days for each average in the series. This does not mean that the EPA expects all facilities to discharge up to 10 percent on a regular basis, rather this option is designed to provide flexibility if and when needed to address site-specific challenges of operating the recirculating

[39] The 2015 rule maintenance discharges were characterized as not a significant portion of the system volume, compared to, for example, potential discharges resulting from maintenance of the remote MDS tank or the conveyor itself. Such maintenance could require draining the entire system, which would not be permissible under the 2015 rule maintenance discharge allowance.

[40] The 2015 rule provided no exemption or allowance for discharges due to precipitation events. While systems are often engineered with extra capacity to handle rainfall/runoff from a certain size precipitation event, these events may occur back-to-back, or facilities may receive events with higher rates of accumulation beyond what the facility was designed to handle.

[41] Utilities and EPC firms have discussed the availability of new dry systems, such as the submerged grinder conveyor or pressure systems, which at some facilities would have costs similar to recirculating wet systems that would require a purge. Because the EPA did not have cost information to determine the subset of facilities for which new dry systems might be least costly, some portion of the costs estimated for this proposal may be based on selecting recirculating wet systems at facilities which could ultimately go dry. Thus, the EPA may overestimate costs or underestimate pollutant removals at the subset of facilities where such a dry system would be selected.

[42] As discussed in Section IV of this preamble, further information about this proposal is available at *http://www.regulations.gov,* Docket EPA–HQ–OLEM–2019–0172.

[43] In some cases, the treatment system predated even the proposed CCR rule.

ash system (for more on implementation, *see* Section XIV of this preamble).[44] The EPA also solicits comment on a facility-specific recycle rate alternative to the 10 percent 30-day rolling average option. Under such an alternative, each facility operating a high recycle rate system would take proactive measures (*e.g.,* acid or caustic addition for pH control, chemical addition to control alkalinity, polymer addition to remove fines) to maintain system water chemistry within control limitations established by the facility in a BMP plan similar to that proposed for low utilization units in Section VII.C.2 below. Under this approach, when reasonable active measures are insufficient to maintain system water chemistry or water balance within acceptable limitations, or to facilitate maintenance and repairs of the BA system, the facility would be authorized to purge a portion of the system volume. The purge volume would be determined based on plant-specific information and would be minimized to the extent feasible and limited to a maximum of 10 percent of the total system volume. The EPA solicits comment on whether these two options provide sufficient notice and regulatory certainty for facilities to understand potential obligations under the proposed rule and associated costs. The EPA solicits comment on an alternate approach that establishes a standard purge rate of 10 percent that can be adjusted upward or downward based on site-specific operating data. Finally, the EPA solicits comment on whether these discharges should be capped at a specific flow. The EPA requests commenters identify and include available data or information to support their recommended approach.

Under either option discussed above for determining discharge allowances (10 percent 30-day rolling average or site-specific), there may be wastewater from whatever is purged by the high recycle rate system, and plants may wish to discharge this wastewater. Two considerations make determining a nationwide BAT for these discharges challenging and fact-specific. First, in the case of precipitation or maintenance-related purges, such purges would be potentially large volumes at infrequent intervals.[45] Each facility necessarily has different climates and maintenance needs that could make selecting a uniform treatment system more difficult. Second, utilities have stated that discharges of wastewater associated with high rate recycle systems are sent to low volume wastewater treatment systems, which are typically dewatering basins or surface impoundments. Many of these systems are in transition as a result of the CCR rule. New wastewater treatment systems installed for low volume wastewater and other wastestreams (which could be used to treat the wastewater purged from a high recycle rate system), as well as the types of wastestreams combined in such systems, are likely to vary across facilities.

In light of the information discussed above, and the EPA's authority under section 304(b) to consider both the process employed (for maintenance needs) and process changes (for new treatment systems installed to comply with the CCR rule), the EPA proposes that BAT limitations for any wastewater that is purged from a high recycle rate system and then discharged be established by the permitting authority on a case-by-case basis using BPJ. The EPA assumes permitting authorities will be in a better position than the EPA to examine site-specific climate and maintenance factors for infrequent events. Permitting authorities will also be in a better position than the EPA to account for site-specific treatment technologies and their configurations already installed or being installed to comply with the CCR rule and other regulations which could accommodate the volumes of, and successfully treat, any discharges of wastewater from a high recycle rate system associated with the proposed allowance. The EPA also solicits comment on technologies that could serve as the basis for BAT for this discharge and what technologies state permitting authorities may consider as BPJ. For example, the EPA solicits comment on whether surface impoundments could be selected as BAT based on high costs to control the purge with other technologies. The EPA further solicits comment on whether delaying the selection of appropriate treatment technology though the BPJ process masks the true cost of this proposed rule for both the regulated entity and the regulatory agency that must undertake the evaluation and ultimately establish BPJ. The EPA also solicits comment on whether the EPA should constrain BPJ by precluding the consideration of some technologies (*e.g.,* zero discharge) using nationwide application of the statutory factors. The EPA solicits any data, information or methodologies that may be useful in evaluating the potential costs of establishing and complying with as yet undetermined BPJ requirements.

The EPA is not proposing to identify surface impoundments as BAT for BA transport water except for BATW purge water because surface impoundments are not as effective at removing dissolved metals as available and achievable technologies, such as high recycle rate systems. Furthermore, the record since the 2015 rule shows that facilities have continued to convert away from surface impoundments to the types of technologies described above, either voluntarily or due to the CCR rule, and in 2018, the U.S. Court of Appeals for the District of Columbia vacated that portion of the 2015 CCR rule that allowed both unlined and clay-lined surface impoundments to continue operating. *USWAG* v. *EPA,* No. 15–1219 (D.C. Cir. 2018). Since very few CCR surface impoundments are composite-lined, the practical effect of this ruling is that the majority of facilities with operating ponds likely will cease sluicing waste to their ponds in the near future. In the 2015 CCR rule, the EPA estimated that it would be less costly for facilities to install under-boiler or remote drag chain systems and send BA to landfills rather than continue to wet sluice BA and replace unlined ponds with composite lined ponds. This supports the suggestion that surface impoundments are not BAT for all facilities. However, the EPA proposes to identify surface impoundments as BAT for two subcategories, as discussed later in this section.

3. Rationale for Voluntary Incentives Program (VIP)

As part of the BAT for existing sources, the 2015 rule established a VIP that provided the certainty of more time (until December 31, 2023 instead of a date determined by the permitting authority that is as soon as possible beginning November 1, 2018) for facilities to implement new BAT limitations if they adopted additional process changes and controls that achieve limitations on mercury, arsenic, selenium and TDS in FGD wastewater, based on thermal evaporation technology. *See* Section VIII(C)(13) of the 2015 rule preamble for a more complete description of the selection of the thermal technology basis, chemical precipitation (with softening) followed by a falling film evaporator. The EPA expected this additional time, combined with other factors (such as the possibility that a facility's NPDES

[44] The EPA's pollutant loading analyses provided in Section IX.B of this preamble and described in detail in the BCA Report and Supplemental TDD were based on an assumed 10 percent purge at each affected facility.

[45] In the case of precipitation, rainfall exceeding a 25 year, 24-hour event may only happen once during the 20-year lifetime of the equipment, if at all.

permit may need more stringent limitations to meet applicable water quality standards), would lead some facilities to choose this option for future implementation by incorporating the VIP limits into their permit during the permit application process. New information in several utilities' internal analyses and contractor reports provided to the EPA since the 2015 rule, as well as meetings with utilities, EPC firms, and vendors indicates that facility decisions to install the more expensive thermal systems were driven by water quality-based effluent limitations imposed by the NPDES permitting authority. Furthermore, such documents and meetings also show that several facilities considered installing membrane filtration technologies under the 2015 rule VIP as well, and thus the EPA evaluated membrane filtration as an alternative basis for VIP.

The EPA proposes to revise the VIP limitations established in the 2015 rule using membrane filtration as the technology basis because it costs less than half the cost of thermal technology and has comparable pollutant removal performance. Membrane filtration achieves pollutant removals comparable to thermal systems in situations where the thermal system would discharge. Engineering documents for some individual facilities evaluated this technology as a zero liquid discharge system which would recycle permeate into the plant. Due to the higher costs of thermal systems compared to chemical precipitation followed by LRTR, the EPA does not expect that any facility would install a new thermal system under the 2015 rule VIP as the least cost technology. As authorized by section 304(b) of the CWA, which allows the EPA to consider costs, the EPA proposes membrane filtration as the technology basis for the VIP BAT limitations, with limitations for mercury, arsenic, selenium, nitrate-nitrite, bromide, and TDS.[46]

Second, as authorized by section 304(b) of the CWA, which allows the EPA to consider process changes and non-water quality environmental impacts, the EPA proposes to revise the compliance date for the VIP limitations to December 31, 2028. That is the date the EPA has determined that the membrane filtration technology will be available nationwide, as that term is used in the CWA, for those facilities who choose to adopt it. This timeframe is based on the amount of time necessary to pilot, design, procure, and install both the membrane filtration systems and the brine management systems. The EPA notes that this is similar to the eight-year period between promulgation of the 2015 rule and the 2023 deadline for the current voluntary incentives program. The EPA proposes to find that forthcoming changes in membrane filtration brine disposal options may significantly reduce the non-water quality environmental impacts associated with encapsulation, discussed in Section VII(b)(i) above. Through discussions with several utilities and EPRI, the EPA learned that a forthcoming paste technology may allow facilities to mix the brine with lower quantities of FA and lime and pump the resulting paste via pipes to an onsite landfill where the paste would self-level prior to setting as an encapsulated material. According to these discussions, such a process may be less costly than existing brine disposal alternatives. This process could also reduce non-water quality environmental impacts by reducing the amount of FA used, decreasing air emissions and fuel use associated with trucking and spreading, and, where FA is already being disposed of, could reduce the volumes and pollutant concentrations in leachate.[47] [48] A compliance date of December 31, 2028, would have the advantage of allowing this forthcoming paste technology potentially enough time to become available, allow facilities more time to permit landfill cells for brine encapsulated with FA and lime if needed, and conduct pilot testing, demonstrations, and further analyses to fully understand and incorporate the process changes associated with membrane filtration operation, and understand the long term performance of the technology for treatment of FGD waste.

One remaining challenge identified for this paste technology is developing approaches to manage wastes (*e.g.,* flush water) from periodic cleaning of the paste transportation piping, where such piping is used.[49] As authorized by section 304(b) of the CWA, which allows the EPA to consider the process employed, the EPA is proposing a modification of the definition of FGD wastewater and ash transport water to explicitly exclude water used to clean FGD paste piping so that facilities using paste piping for brine encapsulation and disposal in an on-site landfill can more easily clean residual paste from pipes.

Taken together, the EPA's proposed changes to the VIP would give facilities greater flexibility when choosing a technology, while continuing to achieve pollutant reductions beyond the BAT limitations that are generally applicable to the industry and currently available nationwide. Under Option 2, the EPA estimated that 18 plants (27 percent of plants estimated to incur FGD compliance costs) may opt into the VIP program and under Option 3 the number rises to 23 plants (34 percent of plants estimated to incur FGD compliance costs). The EPA solicits comment on the accuracy of the cost estimates indicating that these plants would opt into the revised VIP program, including data identifying costs that may be potentially excluded from this analysis. Specifically, the EPA solicits data and information on any potential technology limitations, commercial availability, and other limitations that may affect plants' ability to adopt the VIP limits by the proposed VIP compliance date of 2028.

C. Additional Proposed Subcategories

In the 2015 rule, the EPA established subcategories for small boilers (<50 MW nameplate capacity) and oil-fired units. The EPA subcategorized small boilers due to disproportionate costs when compared to the rest of the industry and subcategorized oil-fired boilers both because they generated substantially fewer pollutants and are generally older[50] (and more susceptible to early retirement). In the 2015 rule, the EPA stated:

> If these units shut down, EPA is concerned about resulting reductions in the flexibility that grid operators have during peak demand due to less reserve generating capacity to draw upon. But, more importantly, maintaining a diverse fleet of generating units that includes a variety of fuel sources is important to the nation's energy security. Because the supply/delivery network for oil is different from other fuel sources, maintaining the existence of oil-fired generating units helps ensure reliable electric

[46] Note that the 2015 rule did not include limitations for nitrate/nitrite or bromide.

[47] Sniderman, Debbie. 2017. *From Power Plant to Landfill: Encapsulation. Innovative Technology Offers Elegant Solution for Disposing of Multiple Types of Waste. EPRI Journal.* September 19. Available online at: *http://eprijournal.com/from-power-plant-to-landfill-encapsulation/.*

[48] Although the EPA is not establishing BAT for leachate in the current rulemaking, the vacatur and remand of BAT for leachate in *Southwestern Electric Power Co., et al.* v. *EPA* means that decreasing volumes of leachate and the concentration of pollutants in that leachate might make more technologies available in a future BAT rulemaking.

[49] Utilities described this process as water pushing a ball through the paste piping when not in use, based on cleaning done of concrete pipes at construction sites. While the ball would clean out the majority of the paste, water would still contact incidental amounts of ash and FGD materials, thus potentially subjecting it to regulations for those wastewaters.

[50] Age is a statutory factor for BAT. CWA section 304(b), 233 U.S.C. 1304(b).

power generation, as commenters confirmed. [51]

For these subcategorized units, in the 2015 rule the EPA established differentiated limitations based on surface impoundments (i.e, setting BAT equal to BPT limitations for TSS).

As part of this proposal, the EPA is not proposing a change to the 2015 rule subcategorization of small and oil-fired boilers; therefore, these boilers have limitations for TSS. The EPA is incorporating and expanding on its previous analysis of characteristics and possible differences within the industry. The EPA proposes further subcategorization for FGD wastewater and BA transport water for boilers with low utilization and boilers with limited remaining useful life. In addition, for FGD wastewater, the EPA proposes to subcategorize units with high FGD flows. These proposed subcategories are discussed below.

1. Subcategory for Facilities With High FGD Flows

The EPA is proposing to establish a new subcategory for facilities with high FGD flows based on the statutory factor of cost. The 2015 rule discussed the ability of high-flow facilities to recycle FGD wastewater back into the air pollution control system to decrease FGD wastewater flows and treatment costs. After the 2015 rule, the Tennessee Valley Authority (TVA) submitted a request seeking a fundamentally different factors (FDF) variance for its Cumberland power facility.[52] This variance request relied primarily on two facts. First, TVA stated that Cumberland's FGD wastewater flow volumes are several million gallons per day,[53] approximately an order of magnitude higher than many other units with comparable generation capacity, and millions of gallons per day higher than the next highest flow rate in the entire industry.[54] TVA further stated that the FGD system at Cumberland is constructed of a steel alloy that is susceptible to chloride corrosion. Based on the typical chloride concentrations in the FGD scrubber, the facility would be able to recycle little, if any, of the wastewater back to the scrubber as a means for reducing the flow volume sent to a treatment system.[55] Second, as a result of the inability to recycle these high flows, TVA stated that the cost of a biological treatment system would be high.

The EPA proposes to subcategorize facilities with FGD purge flows greater than four million gallons per day, after accounting for that facility's ability to recycle the wastewater to the maximum limits for the FGD system materials of construction to avoid placing a disproportionate cost on such facilities.[56] Such a flow reflects the reasonably predictable flow associated with actual and expected FGD operations.

According to TVA's analysis, chemical precipitation plus biological treatment would result in a capital cost of $171 million, and an O&M cost of approximately $20 million per year.[57] The EPA's cost estimates are even higher than TVA's (a $256 million dollar capital cost plus $21 million per year in O&M). These costs are five to six times higher than comparable costs at facilities selling similar numbers of MWh per year.[58] Passing these disparately higher costs on to consumers would likely put the facility at a competitive disadvantage with other coal-fired facilities not subject to the same capital and operating costs. As authorized by section 304(b) of the CWA, which allows the EPA to consider costs, the EPA proposes a new subcategory for FGD wastewater based on unacceptable disparate costs. For such facilities, the EPA proposes to establish BAT based on chemical precipitation alone, with effluent limitations for mercury and arsenic.

2. Subcategory for Boilers With Low Utilization

The EPA is proposing to establish a new subcategory for boilers with low utilization based on the statutory factors of cost and non-water quality environmental impacts (including energy requirements). Low natural gas prices and other factors have led to a decline in capacity utilization for the majority of coal-fired boilers. According to EIA 923 data,[59] overall coal-fired production for 2017 decreased by approximately one-third from 2009 levels, with the majority of boilers decreasing utilization, sometimes significantly. While the majority of boilers in 2009 were base load, making nameplate capacity a good indicator of electricity production, coal-fired boilers today often operate as cycling or peaking boilers, responding to changes in load demand.[60]

In light of these industry changes, the EPA examined the costs of the proposed BAT limitations and pretreatment standards for FGD wastewater and BA transport water on the basis of MWh produced, rather than the nameplate capacity used to subcategorize boilers less than or equal to 50 MW in the 2015 rule. Due to changed utilization, nameplate capacity has become less representative of electricity production. Nevertheless, the EPA is not proposing any changes to the 50 MW nameplate capacity subcategory of the 2015 rule as that subcategory applied to additional wastestreams not part of this proposal (*e.g.,* fly ash), and has already been implemented in some permits. Thus, the EPA focused on MWh production for boilers greater than 50 MW nameplate capacity, as discussed below.

Similar to the EPA's finding regarding small boilers in the 2015 rule, the record indicates that disparate costs to meet the proposed FGD wastewater and BA transport water BAT limitations and pretreatment standards are imposed on boilers with low capacity utilization. Figure VIII–1 below presents costs per MWh produced as measured against the status quo, rather than against the 2015 rule baseline. As can be seen in this figure, there is a significant difference between boilers above and below 876,000 MWh per year.[61] As a result of

[51] 80 FR 67856.

[52] Tennessee Valley Authority (TVA) — *Cumberland Fossil Plant—NPDES Permit No. TN0005789—TVA Request for Alternative Effluent Limitations for Wet FGD System Discharges Based on Fundamentally Different Factors Pursuant to 33 U.S.C. 1311(n).* April 28, 2016.

[53] In the FDF variance, TVA cites to a hypothetical maximum flow of 9 MGD; however, based on survey responses and discussions with TVA staff, the company has never approached this flow rate and does not expect to.

[54] Cumberland accounts for approximately one-sixth to one-seventh of all industry FGD wastewater flows.

[55] Reducing the volume purged from the FGD system or recycling FGD wastewater back to the FGD system can be used to reduce the volume of wastewater requiring treatment, and thus reduce the cost of treating the wastes. However, reducing the flow sent to treatment also has the effect of increasing the concentration of chlorides in the wastewater, and FGD system metallurgy can impose constraints on the degree of recycle that is possible.

[56] Although it is theoretically possible that another coal facility could be built, or an FGD system installed, that resulted in flows of this volume, in practice, all FGD systems in the past decade have been built with materials that allow for recycling of the FGD wastewater. While facilities with these characteristics could potentially apply for an FDF variance, the EPA is proposing to subcategorize them instead because it currently has sufficient information to do so and because FDF variances are governed by strict timelines and procedural requirements set forth in 33 U.S.C. 1311(n).

[57] Email to Anna Wildeman. November 13, 2018.

[58] This would generally also hold true for the costs of other FGD technology options at comparable facilities.

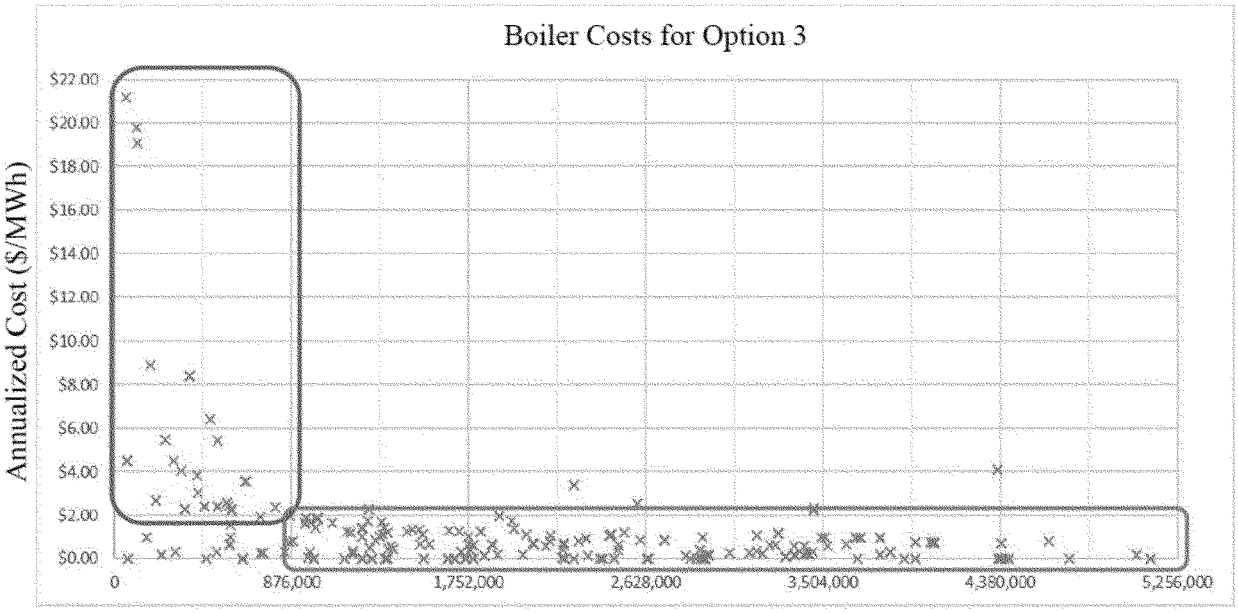
[59] *https://www.eia.gov/electricity/data/eia923/.*

[60] In conversations with electric utilities, several examples were given of former base load facilities which have since modified operations to be load-following, or which no longer produce except for peak days in summer or winter. These discussions tracked closely with changes in production reported in the EIA 923 data.

[61] This is the equivalent of a 100 MW boiler running at 100 percent capacity or a 400 MW boiler running at 25 percent capacity.

these disparate costs, the EPA proposes an additional subcategory for low capacity utilization boilers producing less than 876,000 MWh per year. Many of these boilers are either close to the 50 MW nameplate capacity of the 2015 rule (*e.g.,* a 100 MW boiler running at 100% capacity), or somewhat larger units that have continued to reduce electricity generation due to market forces (*e.g.,* a 400 MW boiler running at 25% capacity). The latter group are expected to produce fewer and fewer MWh per year, moving those boilers further toward the high $/MWh costs over time. Attempting to pass on the higher costs per MWh produced would make these boilers increasingly uncompetitive, exacerbating the disparate cost impacts.

Figure VIII-1 – Costs per MWh Produced vs. MWh Produced[62]



In addition to disparate costs, the EPA considered non-water quality environmental impacts (including energy requirements). Low utilization boilers tend to operate only during peak loading. Thus, their continued operation is useful, if not necessary, for ensuring electricity reliability in the near term.

In light of the information discussed above, the EPA proposes to establish a subcategory for low utilization units producing less than 876,000 MWh per year. The EPA solicits comment on whether this subcategory should be based on alternative utilization thresholds. For this subcategory, the EPA proposes to select chemical precipitation as the technology basis for BAT for FGD wastewater, with effluent limitations for mercury and arsenic. The EPA solicits comment on whether chemical precipitation is appropriate and economical or if other approaches would be appropriate. The EPA requests commenters identify and include available data or information to support their recommended approach. Also, for this subcategory, as it did for the subcategories established in the 2015 rule, the EPA proposes to select surface impoundments as the BAT technology basis for BA transport water and establish limitations for TSS based on surface impoundments in combination with a BMP plan under section 304(e) of the Act. Although facilities are likely to meet these TSS limits using technologies other than surface impoundments once they have closed any unlined surface impoundments under the CCR rule, facilities may choose to retrofit a surface impoundment or construct a new surface impoundment. As authorized by section 304(b) of the CWA, which allows the EPA to consider costs, the EPA proposes to find that additional technologies are not BAT for this subcategory due to the unacceptable disproportionate costs per MWh those technologies would impose. Chemical precipitation for FGD wastewater and surface impoundments for BA transport water, along with a requirement to prepare and implement a BMP plan under section 304(e) of the Act to reduce pollutant discharges, are the only technologies the EPA proposes to find would not impose such disproportionate costs on this subcategory of boilers. While the Fifth Circuit in *Southwestern Electric Power Company* v. *EPA,* 920 F.3d 999, 1018 n.20 (5th Cir. 2019), found EPA's use of surface impoundments as the technology basis for effluent limitations on legacy wastewater to be arbitrary and capricious, the Court left open the possibility that surface impoundments could be used as the basis for BAT effluent limitations so long as the Agency identifies a statutory factor, such as cost, in its rationale for selecting surface impoundments. Finally, the EPA proposes to find that allowing permitting authorities to set BAT limitations for BA transport water on a case-by-case basis using BPJ for this subcategory would be equally problematic. The technologies a permitting authority would necessarily consider are the same dry handling and high recycle rate systems that result in unacceptable disproportionate costs per MWh, according to the EPA's analysis above. The EPA solicits comment on whether the impacts of the proposed revisions to the CCR rule could result in a different analysis from the disparate

[62] While the EPA only presents the disparate costs of one technology in this figure, a similar comparison could be made for the technologies comprising Options 1 or 4 for a final rule. No comparison is necessary for Option 2 as that option already incorporates the subcategorization that eliminates these disparate costs.

costs presented above. The EPA also solicits comment on other options to address the disproportionate impacts identified above.

3. Subcategory for Boilers Retiring by 2028

The EPA is proposing to establish a new subcategory for boilers retiring by 2028 based on the statutory factors of cost, the age of the equipment and facilities involved, non-water quality environmental impacts (including energy requirements), and other factors as the Administrator deems appropriate. The EPA has continued to gather information about facility and boiler retirements, deactivations, and fuel conversions since the 2015 rule. Of the 107 facilities that the EPA identified in Section 3 of the Supplemental TDD that have announced, commenced or completed such actions, the most frequently stated reason was market forces, such as the continued low price of natural gas (49 facilities).[63] This was followed by environmental regulations (33),[64] consent decrees (10), and other reasons (46).[65] [66] The fact that environmental regulations were cited by approximately one-third of these facilities and that ELGs were specifically mentioned by some respondents suggests that additional flexibility may help to avoid premature closures for some facilities and/or boilers.

To further explore this, the EPA examined the cost implications of complying with the proposed limitations and standards on a dollar-per-MWh-produced basis under hypothetical boiler retirement scenarios. Cost estimates for this proposal assume that facilities will amortize capital and O&M costs across the 20-year life of the technologies (*see* Section 5 of the Supplemental TDD), so the EPA only examined retirement scenarios within the next 20 years. Furthermore, since O&M costs are already spread out over time, the EPA focused on capital costs, which also tended to make up a sizeable portion of costs in the EPA's estimates. Finally, the EPA looked at both three and seven percent discount rates. The analysis showed that a facility could be forced to pass on capital costs per MWh 10 to 15 times higher than those passed on with the assumed 20-year amortization in the EPA's cost estimates, and the costs per MWh remain more than double the EPA's estimates until amortization of six to eight years, depending on the discount rate.

In meetings with the EPA, utilities expressed two other concerns related to retiring units. First, several utilities discussed the potential for stranded assets where equipment would be purchased near the end of a facility's useful life and the public utility commission (PUC) would not allow cost recovery. Although the utilities indicated that PUCs have historically allowed for cost recovery even after the retirement of a boiler, they provided recent examples of PUCs rejecting cost recovery, which make the prospect of continued recovery after retirement less certain. Second, the utilities expressed the need for sufficient time to plan, construct, and obtain necessary permits and approvals for replacement generating capacity. In discussions of example Integrated Resource Plans (IRPs) and the associated process, utilities suggested timelines that would extend for five to eight years or longer.[67]

Finally, the North American Electric Reliability Corporation (NERC) recently conducted an aggressive stress test scenario identifying the reliability risks if large baseload coal and nuclear facilities were to bring their projected retirement dates forward.[68] That report found that if these retirements happen faster than the system can respond (*e.g.,* construction of new base load), significant reliability problems could occur. NERC cautions that, though this stress test is not a predictive forecast,[69] the findings are consistent with the concern that electric utilities conveyed to the EPA: That the well-planned construction of new generation capacity and orderly retirement of older facilities are vital to ensuring electricity reliability.

In light of the information discussed above, and the EPA's authority under section 304(b) to consider cost, the age of equipment and facilities involved, non-water quality environmental impacts (including energy requirements), and other factors that the Administrator deems appropriate, the EPA proposes a new subcategory for boilers with a limited remaining useful life, *i.e.,* those intending to close no later than December 31, 2028, subject to a certification requirement (described in Section XIV). For this subcategory, the EPA proposes to identify surface impoundments as the technology basis for BAT, and establish BAT limitations for TSS for both FGD wastewater and BA transport water. As mentioned above, the Fifth Circuit's decision in *Southwestern Electric Power Company* v. *EPA* left open the possibility that surface impoundments could be used as the basis for BAT effluent limitations, so long as the Agency identifies a statutory factor, such as cost, in its rationale for selecting surface impoundments. The EPA proposes to find that additional technologies such as chemical precipitation with or without LRTR for FGD wastewater, and the high recycle rate BA transport water technologies are not BAT for this subcategory due to the unacceptable disproportionate costs they would impose; the potential of such costs to accelerate retirements of boilers at this age of their useful life; the resulting increase in the risk of electricity reliability problems due to those accelerated retirements; and the harmonization with the CCR rule. EPA proposes to find that surface impoundments are the only technology that would not impose such disproportionate costs on this subcategory of boilers. Establishing surface impoundments as BAT for this subcategory would alleviate the choice for these facilities to either pass on disparately high capital costs over a shorter useful life or risk the possibility that post-retirement rate recovery would be denied for the significant capital and operating costs associated with the BAT options in this proposal. Creation of this subcategory would also allow electric utilities to continue the organized phasing out of boilers that are no longer economical, in favor of more efficient, newly constructed generating stations, and would help prevent the scenario described in the NERC stress test.

[63] This is consistent with recent analyses of the costs of coal-fired electric generation versus other sources. Examples include: (1) *https://www.bloomberg.com/news/articles/2018-03-26/half-of-all-u-s-coal-plants-would-lose-money-without-regulation;*

(2) *https://insideclimatenews.org/news/25032019/coal-energy-costs-analysis-wind-solar-power-cheaper-ohio-valley-southeast-colorado.*

[64] Approximately 31 percent of the facilities identified specific environmental regulations affecting the decision-making process. When specific environmental regulations were stated, they included CPP, MATS, ELGs, CCR Rule, and Regional Haze Rules.

[65] Some announcements cited several rationales, hence the numbers do not add to 107.

[66] ''Other'' includes age, reliability of the facility, emission reductions goals, decreased local electricity demand, facility site limitations, and company goals to invest in clean/renewable energy.

[67] Utilities also shared instances of very quick turnaround in some cases.

[68] North American Electric Reliability Corporation (NERC). 2018. *Special Reliability Assessment: Generation Retirement Scenario.* Atlanta, GA 30326. December 18. Available online at: *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Retirements_Report_2018_Final.pdf.*

[69] ''NERC's stress-test scenario is not a prediction of future generation retirements nor does it evaluate how states, provinces, or market operators are managing this transition. Instead, the scenario constitutes an extreme stress-test to allow for the analysis and understanding of potential future reliability risks that could arise from an unmanaged or poorly managed transition.''

Additionally, it would ensure that facilities could make better use of the CCR rule's alternative closure provision, by which an unlined surface impoundment could continue to receive waste and complete closure by 2028.[70] The EPA notes that in order to complete closure by 2028, facilities may have to cease receiving waste well in advance of that date; however, a 2028 date ensures that the ELG will not restrict the use of this alternative closure provision regardless of when a facility ultimately ceases receipt of waste. Furthermore, the EPA proposes to find that allowing permitting authorities to set BAT limitations for either FGD wastewater or BA transport water on a case-by-case basis using BPJ would be problematic. The technologies a permitting authority would necessarily consider are the same systems that result in unacceptable disproportionate costs according to the EPA's analysis (described above). Since these boilers are already nearing the end of their useful life, and are susceptible to early retirement, losing the ability to use surface impoundments for any wastewater prior to currently planned closure dates would undermine the flexibility of the CCR alternative closure provisions and could hasten the retirement of units in a manner more closely resembling the reliability stress test discussed above, which resulted in unacceptable non-water quality environmental impacts (including energy requirements) of compromised electric reliability.

The EPA solicits comment on whether approaches to retirement in other rules have worked particularly well and might be adopted here. The EPA solicits comment on whether this subcategory would adversely incentivize coal-fired boilers planning to retire after 2028 to accelerate their retirement to 2028, as well as alternatives for addressing the disproportionate costs, energy requirements, and intersection with the CCR rule discussed above. The EPA also solicits comment on whether this subcategory should also be available for boilers that are planned to be repowered or replaced by 2028, not just those planned for retirement. For example, the EPA solicits comment on data and information demonstrating that boilers that are repowered with gas units are unable to finance both the repowering and the FGD and BA technology upgrades applicable to the rest of the industrial category, and whether BAT for such units should also be established based on surface impoundments as for retiring units described above. The EPA solicits comment on whether 2028 is the most appropriate target date for retirement or if a date earlier or later than 2028 would be more appropriate. The EPA also solicits comment on whether an additional subcategory for low utilization boilers retiring by a date certain that is after 2028 would be warranted, and what an appropriate retirement date might be. The EPA requests commenters identify and include available data or information to support their recommended approach.

D. Availability Timing of New Requirements

Where BAT limitations in the 2015 rule are more stringent than previously established BPT limitations for FGD wastewater and BA transport water, those limitations, under the compliance dates as amended by the 2017 postponement rule, do not apply until a date determined by the permitting authority that is ''as soon as possible'' beginning November 1, 2020.[71] The rule also specifies the factors that the permitting authority must consider in determining the ''as soon as possible'' date.[72] In addition, the 2017 postponement rule did not revise the 2015 rule's ''no later than'' date of December 31, 2023, for implementation because, as public commenters pointed out, without such a date, implementation could be substantially delayed, and a firm ''no later than'' date creates a more level playing field across the industry. As the EPA did in developing the 2015 rule, as part of the consideration of the technological availability and economic achievability of the BAT limitations in this proposal, the Agency considered the magnitude and complexity of process changes and new equipment installations that would be required at facilities to meet the proposed requirements. As discussed below, the EPA is considering availability of the technologies for FGD wastewater and BA transport water.

In the 2015 rule, and as amended by the 2017 postponement rule, the EPA selected the time frames described above to enable many facilities to raise needed capital, plan and design systems, procure equipment, and then construct and test systems. The time frames also allow for consideration of facility changes being made in response to other Agency rules affecting the steam electric power generating industry (*e.g.,* the CCR rule). The EPA understands that some facilities may have already installed, or are now installing, technologies that could comply with the proposed limitations. While these facilities could therefore potentially comply with the proposed rule by the earliest date on which the limitations may become applicable (November 1, 2020), the EPA solicits comment on whether the earliest date on which facilities may have to meet the proposed limitations should be later than November 1, 2020.[73]

As described previously, the industry continues to shift away from the use of surface impoundments for handling BA. Information collected since the 2015 rule, as well as conversations with electric utilities, EPA understands that facilities may be able to complete design, procurement, installation, and operation of BA transport water technologies by December 31, 2023.[74] The CCR rule proposal would require the majority of unlined surface impoundments to stop receiving waste by August 2020. This would necessarily require installation by August 2020 of an alternative system to meet those ELG standards. As described earlier, because the record for the 2015 CCR rule found that it would be less costly for facilities to install under-boiler or remote drag chain systems and send BA to landfills rather than continue to wet sluice BA and replace unlined ponds with composite lined ponds. Flexibility for facilities to comply with BAT limitations for BA transport water beyond 2023 is not necessary because the process changes should already have occurred due to CCR rule requirements. Therefore, for BA transport water, the EPA proposes to continue the current timing for implementation. The EPA solicits comment on whether these assumptions are appropriate. The EPA also solicits comment on whether it should modify the existing language

[70] 40 CFR part 257.103(b).

[71] 40 CFR 423.11(t).

[72] These factors are: (a) Time to expeditiously plan (including to raise capital), design, procure, and install equipment to comply with the requirements of the final rule; (b) changes being made or planned at the facility in response to greenhouse gas regulations for new or existing fossil fuel-fired power facilities under the Clean Air Act, as well as regulations for the disposal of coal combustion residuals under subtitle D of the Resource Conservation and Recovery Act; (c) for FGD wastewater requirements only, an initial commissioning period to optimize the installed equipment; and (d) other factors as appropriate. 40 CFR 423.11(t).

[73] The EPA received a request on behalf of two Maryland facilities that the EPA issue a rule postponing the earliest compliance date from November 1, 2020 to November 1, 2022. *See* Feb. 26, 2019 memorandum entitled *EPA's Ongoing Reconsideration of the Effluent Limitation Guidelines and Standards for the Steam Electric Generating Point Source Category (the* ''*ELG Rule*'' *or* ''*the ELGs*''*),* available on EPA's Docket at No. EPA–HQ–OW–2009–0819.

[74] Information in the record indicates a typical timeframe of 15–23 months to raise capital, plan and design systems, procure equipment, and construct a dry handling or closed-loop or high rate recycle BA system.

which explicitly allows permitting authorities to consider extensions granted under the CCR rule in establishing compliance dates for BA transport water. The EPA requests commenters identify and include available data or information to support their recommended approach.

For FGD wastewater, the EPA proposes to continue the existing ''beginning'' date, but proposes a different ''no later than'' date. The EPA collected updated information regarding the technical availability of the proposed FGD BAT technology basis, including the proposed VIP alternative. Based on the engineering dependency charts, bids, and other analytical documents in the current record, individual facilities may need two to three years from the effective date of any rule to install and begin operating a treatment system to achieve BAT.[75] While three years may be appropriate for a facility on an individual basis, several utilities and EPC firms pointed out difficulties in retrofitting on a company-wide or industry-wide basis. Moreover, the same engineers, vendors, and construction companies are often used across facilities. As was the case with BA transport water above, facilities with FGD wastewater have continued to convert away from surface impoundments, and the majority of facilities with unlined surface impoundments would have to stop receiving waste in those unlined surface impoundments by August 2020, under the CCR proposal. To stop receiving waste in an unlined surface impoundment, a facility would need to construct a treatment system to meet applicable ELGs, such as a tank-based system that meets the BPT limitations. However, biological treatment is not necessary to remove TSS, and therefore more time for implementation of the proposed BAT limitations will help to accommodate the process changes necessitated by combining chemical precipitation and LRTR, and alleviate competition for resources. Considering all the factors described above, the EPA proposes to extend the ''no later than'' date for compliance with BAT FGD wastewater limitations to December 31, 2025, based on the proposed technology basis. Thus, for FGD wastewater, where BAT limitations are more stringent than previously established BPT limitations, BAT limitations would not apply until a date determined by the permitting authority that is as soon as possible beginning November 1, 2020, but no later than December 31, 2025. The EPA solicits comment on whether these assumptions are appropriate and whether these compliance dates should be harmonized with the compliance dates for BA transport water. The EPA requests commenters identify and include available data or information to support their recommended approach.

In addition, as discussed earlier, the EPA is proposing to give facilities that elect to use the VIP until December 31, 2028, to meet the VIP limitations, which are based on membrane filtration technology. That is the date on which the EPA proposes to determine that the membrane filtration-based limitations are ''available'' (as that term is used in the CWA) to all plants that might choose to participate in the voluntary incentives program. The EPA is proposing to give facilities sufficient time to work out operational issues related to being the first facilities in the U.S. to treat FGD wastewater using membrane filtration at full scale, as well as having to dispose of the resulting brine. Both issues contribute to the EPA's proposed decision that membrane filtration is not BAT on a nationwide basis at this time. The EPA also wants to incentivize facilities to opt into a program that can achieve significant pollutant reductions.

E. Regulatory Sub-Options To Address Bromides

The 2015 rule rejected thermal evaporation technology as the basis for BAT and therefore did not establish limitations for bromides in FGD wastewater. Section XVI.D of the preamble noted that the VIP established in the 2015 rule would address bromide through the limitations for TDS. The newly proposed VIP includes limits for bromide. Because the EPA proposes to provide more flexible VIP limits on other pollutants and more flexible VIP timing, the EPA estimates that selecting the proposed VIP may be the least-cost option for some facilities. The facilities that the EPA estimates VIP may be the least-cost option range in FGD wastewater flows, nameplate capacity, capacity utilization, and location. The EPA cost estimates for the VIP tend to be lower at facilities where no treatment has been installed beyond surface impoundments, however even for this group of facilities biological systems are still often least-cost. Thus, while the EPA estimates that the proposed revisions to the VIP may address bromide at more facilities than the 2015 VIP, it is still a voluntary program, and concerns about costs, availability, and disposal of the resultant brine are still present.

The EPA suggested in the preamble to the 2015 rule that water-quality-based effluent limitations may be appropriate on a site-specific basis to address the potential impacts of bromides on downstream drinking water treatment facilities, as determined by state permitting authorities. Since that time, few states have begun to monitor bromide discharges and it is unclear how many have acted to address such discharges.[76]

On June 8, 2018, drinking water utilities sent a letter to the EPA requesting that the Agency consider three regulatory BAT/PSES technology options to reduce bromide discharges in FGD wastewater: (1) Zero liquid discharge technologies (ZLD), such as membrane filtration or thermal treatment; (2) treatment with reverse osmosis; or (3) a requirement that facilities provide data to the state permitting authority for use in calculating a site-specific discharge limitation. For the reasons explained earlier in this section, the EPA is not proposing to base BAT limitations or PSES for FGD wastewater at all existing units based on membrane filtration or thermal treatment. The EPA proposes a water quality-based approach as the most appropriate approach and solicits comment on that alternative, including ways that such an alternative could be strengthened. However, in light of the letter from the drinking water utilities and the limited state action since the 2015 rule to address this potential issue, the EPA is requesting comment on three bromide-specific regulatory sub-options in addition to the proposed approach of retaining the 2015 rule's approach of leaving bromides to be limited by permitting authorities where appropriate using water quality-based effluent limitations:[77] (1) A monitoring requirement under CWA section 308; (2) a bromide minimization plan using narrative or non-numeric limitations under CWA sections 301(b) and 304(b); or (3) a numeric limit under CWA sections 301(b) and 304(b) based on product substitution. Each of these are described in more detail below.

[75] Information in the record indicates a typical time frame of 26 to 34 months to raise capital, plan and design systems (including any necessary pilot testing), procure equipment, and construct and then test systems (including a commissioning period for FGD wastewater treatment systems). Many facilities have already completed initial steps of this process, having evaluated water balances and conducted pilot testing to prepare for implementing the 2015 rule.

[76] The EPA is aware that Pennsylvania, Alabama, and North Carolina conduct bromide monitoring at multiple facilities with FGD discharges.

[77] These sub-options would not be applicable to the VIP limitations as those limitations would control bromide (and other halogens) in FGD wastewater discharges.

In the case of FGD wastewater monitoring, the EPA solicits comment on two approaches suggested by electric utilities. Under the first approach, bromide would be monitored monthly for two years, and thereafter only after specific changes in facility operations that could alter bromide concentrations in FGD wastewater. Such operational changes could include changing to a brominated refined coal, a bromide addition process, a coal feedstock with higher bromide levels, or use of brominated powdered activated carbon (PAC). Under the second approach, bromide would be monitored monthly for five years in two locations to better capture bromide variability. The first monitoring location would be of intake water not affected by the site's discharge to capture what fraction of bromide is present from background surface water. The second would be of discharge water to capture the amount of bromide added by various wastewaters. The monitoring point for the FGD wastewater discharge could be at the final outfall. The EPA also solicits comment on whether monitoring should be longer or shorter duration than proposed and if additional monitoring locations may be appropriate to capture other operational changes that the EPA has not identified.

The EPA solicits comment on whether a facility should develop a plan to minimize its use of bromide on a site-specific basis. Such a plan could allow a facility to consider the costs of potential approaches to minimizing bromide use in conjunction with its efforts to meet other standards (*e.g.,* MATS). Otherwise, facilities would minimize the bromide in their discharges by switching to lower-bromide coals, reducing bromide addition, and/or cutting back on refined coal use. The EPA solicits comment on whether such a plan is appropriate for all steam electric generators and, if so, the elements that might be included in such a plan.

Regarding a bromide limitation based on product substitution, the EPA solicits comment on whether a limitation could be established that reflects the difference in concentrations naturally occurring in coal as opposed to levels found in refined coal or from other halogen applications. Alternatively, the EPA solicits comment on whether facilities could certify that they do not burn refined coal and/or use bromide addition processes. The EPA solicits data that supports development of a numerical bromide limitation, or that demonstrates a specific numerical bromide limitation to be inappropriate.

The Agency solicits input on the pros and cons of each of these bromide sub-option approaches. Finally, the Agency solicits comment on other pollutants, including other halides, discharged from steam electric facilities that may impact the formation of disinfection byproducts (DBPs).

F. Economic Achievability

As the EPA did for the 2015 rule, the Agency performed cost and economic impact assessments using the Integrated Planning Model (IPM) to determine the effect of the proposed ELGs, using a baseline that incorporates impacts from other relevant environmental regulations (*see* Chapter 5 in RIA). At the time of the 2015 rule, the IPM model showed a total incremental closure of 843 MW of coal-fired generation as a result of the ELGs, corresponding to a net effect of two boiler closures.[78] However, since that time, natural gas prices have remained low, additional coal facilities have retired or refueled, and changes that have been proposed to several environmental regulations have been included in those model runs. Due to these changes, the EPA ran an updated version of IPM. (*See* Section VIII.C.2 for additional discussion on these updates.) This update showed that the 2015 rule resulted in the closure of 1.8 GW of coal-fired generation, corresponding to a net effect of approximately four boiler closures, based on the average capacity of coal-fired electric boilers.

The EPA similarly ran the IPM model to determine the effect of the regulatory options presented in Table VII–1. Options 2 and 4 bound the costs to industry of these four options, IPM results from these options alone reflect the range of impacts associated with all four regulatory options.[79] The IPM models for these two options were run prior to finalization of the ACE rule (the impact of ACE is analyzed in a separate sensitivity scenario) and ranged from a total net increase of 0.7 GW to 1.1 GW in coal-fired generating capacity compared to the 2015 rule, reflecting full compliance by all facilities. This capacity increase corresponds to a net effect of one to two boiler closures avoided as a result of this reconsideration action. These IPM results indicate that the proposed Option 2 is economically achievable for the steam electric power generating industry as a whole, as required by CWA section 301(b)(2)(A). Following the promulgation of the ACE rule, the EPA also conducted a sensitivity analysis that includes the effects of that rule in the ELG analytic baseline. The results of this sensitivity analysis, which are detailed in Appendix C of the RIA, also indicate that the proposed Option 2 is economically achievable. The EPA will use the latest IPM baseline, including the ACE rule as part of existing regulations, when analyzing the ELG final rulemaking.

The EPA's economic achievability analysis for this and other options is described in Section VIII, below.

G. Non-Water Quality Environmental Impacts

For the 2015 rule, the EPA performed an assessment of non-water quality environmental impacts, including energy requirements, air impacts, solid waste impacts, and changes in water use and found them to be acceptable. The EPA has reevaluated these impacts in light of the changed industry profile, as well as the proposed changes to BAT. Based on the results of these analyses the EPA determined that Options 1, 2, and 3 have acceptable non-water quality impacts. Option 4, however, would result in unacceptable non-water quality environmental impacts where management of the brine could divert FA that might otherwise be sold for use in products (*e.g.,* replacing Portland cement in concrete) back toward placement in a landfill. *See* additional information in Section 7 of the Supplemental TDD, as well as Section X of this preamble.

H. Impacts on Residential Electricity Prices and Low-Income and Minority Populations

As the EPA did for the 2015 rule, the Agency examined the effects of today's regulatory options on consumers as an additional factor that might be appropriate when considering what level of control represents BAT. If all annualized compliance cost savings were passed on to residential consumers of electricity, instead of being borne by the operators and owners of facilities, the average monthly cost savings under any of the options would be between $0.01 and 0.04 per month as compared to the 2015 rule.

The EPA similarly evaluated the effect of today's regulatory options on minority and low-income populations. As explained in Section XII, the EPA used demographic data for populations potentially impacted by steam electric power plant discharges due to their proximity (*i.e.,* within 50 miles) to one

[78] In meetings with EPA since the 2015 rule, electric utilities have expressed concerns that IPM underpredicts closures by not accounting for the ability of facilities in regulated states to cost recover even if they would otherwise lose money or are not economical to operate.

[79] Although Option 1 includes the less stringent chemical precipitation technology, Option 2 has a greater savings due to subcategorization of low utilization boilers.

or more plants. For those populations, the EPA evaluated both recreational and subsistence fisher populations. The analysis described in Section XII indicates that absolute changes in human health impacts are smaller than the overall impacts resulting from the 2015 rule. However, low-income and minority populations are potentially affected to a greater degree than the general population by discharges from steam electric facilities and are expected to also accrue to a greater degree than the general population the benefits of the proposed rule, positive or negative.

I. Additional Rationale for the Proposed PSES

The EPA is continuing to rely on the pass-through analysis as the basis of the limitations and standards in the 2015 rule. With respect to FGD wastewater, as discussed above, the long-term averages for low residence time biological treatment are very similar to or lower than those achieved with high residence time biological systems. On this basis, the EPA proposes to conclude that mercury, arsenic, selenium, and nitrate/nitrite pass-through POTWs, as it concluded in the 2015 rule.

With respect to BA, the EPA notes that facilities converting to dry handling or recycling all of their BA transport water would continue to perform as the zero discharge systems the EPA used in its 2015 rule pass-through analysis. As explained in Section VII.b.ii, for those facilities using high rate recycle systems, the EPA proposes to allow a discharge up to 10 percent of the system volume per day on a 30-day rolling average and to subject such direct discharges to TSS limitations of BPT. Consistent with the 2015 rule pass through analysis, TSS is not considered to pass through and the EPA would not establish TSS limitations under PSES.

Thus, like BAT, the EPA proposes to establish PSES based on Option 2: PSES for FGD wastewater based on chemical precipitation plus low hydraulic residence time biological treatment, and PSES for BA transport water based on dry handling or high recycle rate systems.[80] The EPA proposes these technologies as the bases for PSES for the same reasons that the EPA proposes the technologies as the bases for BAT, and also proposes the same subcategories proposed for BAT.[81]

As with the final BAT effluent limitations, in considering the availability and achievability of the final PSES, the EPA concluded that existing indirect dischargers need some time to achieve the final standards, in part to avoid forced outages (see Section VIII.C.7). However, in contrast to the BAT limitations (which apply on a date determined by the permitting authority that is as soon as possible beginning November 1, 2020, but no later than December 31, 2023, for BA transport water, and no later than December 31, 2025, for FGD wastewater), facilities must meet the PSES no later than three years after the effective date of any final rule. Under CWA section 307(b)(1), pretreatment standards shall specify a time for compliance not to exceed three years from the date of promulgation, so the EPA cannot establish a longer implementation period. Moreover, unlike limitations on direct discharges, limitations on indirect discharges are not implemented through an NPDES permit and thus are specified clearly for the discharger without delay, without waiting some time for the next permit issuance. The EPA has determined that all current indirect dischargers can meet the standards within three years of the effective date of any final rule (which the EPA projects will be issued in the summer of 2020).

VIII. Costs, Economic Achievability, and Other Economic Impacts

The EPA evaluated the costs and associated impacts of the proposed regulatory options on existing boilers at steam electric facilities. These costs are analyzed within the context of compounding regulations and other industry trends that have affected steam electric facilities profitability and generation. These include the impacts of existing environmental regulations (*e.g.,* Cross-State Air Pollution Rule, Mercury and Air Toxics Standards, CWA section 316(b) rule, final CCR rule, final ACE rule), as well as other market conditions described in Section V.B.[82] This section provides an overview of the methodology the EPA used to assess the costs and the economic impacts and summarizes the results of these analyses. *See* the RIA in the docket for additional detail.

In developing ELGs, and as required by CWA section 301(b)(2)(A), the EPA evaluates the economic achievability of regulatory options to assess the impacts of applying the limitations and standards on the industry as a whole, which typically includes an assessment of incremental facility closures attributable to a regulatory option. As described in more detail below, this proposed ELG is expected to provide cost savings when compared to the baseline. Like the prior analysis of the 2015 rule, the cost and economic impact analysis for this proposed rulemaking focuses on understanding the magnitude and distribution of compliance cost savings across the industry, and the broader market impacts.

The EPA used certain indicators to assess the impacts of the proposed regulatory options on the steam electric power generating industry as a whole. These indicators are consistent with those used to assess the economic achievability of the 2015 rule (80 FR 67838); however, for this proposal, the EPA compared the values to a baseline that reflects implementation of existing environmental regulations (as of this proposal), including the 2015 rule. In the 2015 rule analysis, the costs of achieving the 2015 rule requirements were reflected in the policy cases analyzed rather than the baseline. Here, the baseline appropriately includes costs for achieving the 2015 rule limitations and standards, and the policy cases show the impacts resulting from changes to those existing 2015 limitations and standards. More specifically, the EPA considered the total cost to industry and change in the number and capacity of specific boilers and facilities expected to close under the options in this proposal (including proposed Option 2) compared to the estimated baseline costs. The EPA also analyzed the ratio of compliance costs to revenue to see how the proposed regulatory options change the number of facilities and their owning entities that exceed certain thresholds indicating potential financial strain.

In addition to the analyses supporting the economic achievability of the regulatory options, the EPA conducted other analyses to (1) characterize other potential impacts of the regulatory options (*e.g.,* on electricity rates), and (2) to meet the requirements of Executive Orders or other statutes (*e.g.,* Executive Order 12866, Regulatory Flexibility Act, Unfunded Mandates Reform Act).

A. Facility-Specific and Industry Total Costs

The EPA estimated facility-specific costs to control FGD wastewater and BA transport water discharges at existing boilers at steam electric facilities to

[80] Only two facilities currently discharge BA transport water to POTWs, and EPA believes that both facilities qualify for the proposed subcategorization for low utilization boilers. Thus, this PSES may ultimately not apply to any facilities.

[81] Where any of the subcategories would establish BAT based on surface impoundments, with a restriction on TSS, there would be no such parallel restriction for the analogous PSES subcategory because POTWs effectively treat TSS.

[82] As discussed above, impacts of the final ACE rule will be incorporated into this analysis after proposal, but were not included here as the analyses for these proposed ELGs were completed prior to the ACE rule being finalized.

which the ELGs apply.[83] The EPA assessed the operations and treatment system components currently in place at a given unit (or expected to be in place as a result of other existing environmental regulations), identified equipment and process changes that facilities would likely make to meet the 2015 rule (for baseline) and each of the four regulatory options presented in Table VII–1, and estimated the cost to implement those changes. As explained in the Supplemental TDD, the baseline also accounts for additional announced unit retirements, conversions, and relevant operational changes that have occurred since the EPA promulgated the 2015 rule. The EPA thus derived facility-level capital and O&M costs for controlling FGD wastewater and BA transport water using the technologies that form the bases of the 2015 rule, and for each regulatory option presented in Table VII–1 for existing sources. *See* Section 5 of the Supplemental TDD for a more detailed description of the methodology the EPA used to estimate facility-level costs for this proposal.

Following the same methodology used for the 2015 rule analysis, the EPA used a rate of seven percent to annualize one-time costs and costs recurring on other than on an annual basis over a specific useful life, implementation, and/or event recurrence period. For capital costs and initial one-time costs, the EPA used 20 years. For O&M costs incurred at intervals greater than one year, EPA used the interval as the annualization period (3 years, 5 years, 6 years, 10 years). The EPA added annualized capital, initial one-time costs, and the non-annual portion of O&M costs to annual O&M costs to derive total annualized facility costs. The EPA then calculated total industry costs by summing facility-specific annualized costs. For the assessment of industry costs, the EPA considered costs on both a pre-tax and after-tax basis. Pre-tax annualized costs provide insight on the total expenditure as incurred, while after-tax annualized costs are a more meaningful measure of impact on privately owned for-profit facilities and incorporate approximate capital depreciation and other relevant tax treatments in the analysis. The EPA uses pre- and/or after-tax costs in different analyses, depending on the concept appropriate to each analysis (*e.g.,* social costs are calculated using pre-tax costs whereas cost-to-revenue screening-level analyses are conducted using after-tax costs).

[83] The EPA did not estimate costs for other wastestreams not in this proposal.

Table VIII–1 summarizes estimates of incremental pre- and post-tax industry costs for the four regulatory options presented in Table VII–1 as compared to the baseline. All four options provide cost savings (negative incremental costs) as compared to the costs that the industry would incur under the 2015 rule. Under all four options, some savings are attributable to cheaper high recycle rate BA systems. Under Options 1, 2, and 3, additional savings are due to lower cost FGD wastewater treatment systems (chemical precipitation and LRTR). Under Option 2, further savings are attributable to the subcategorization of low utilization boilers. Finally, some cost savings are due to the changes in compliance timeframes discussed above in Section VII.D. The after-tax savings range from approximately $26 million under Option 4 to $147 million under Option 2.[84]

TABLE VIII–1—ESTIMATED TOTAL ANNUALIZED INDUSTRY COSTS

[Million of 2018$, seven percent discount rate]

Regulatory option	Pre-tax	After-tax
Option 1	−$165.6	−$136.6
Option 2	−175.6	−146.5
Option 3	−126.3	−105.9
Option 4	−25.5	−26.4

B. Social Costs

Social costs are the costs of the proposed rule from the viewpoint of society as a whole, rather than the viewpoint of regulated facilities (which are private costs). In calculating social costs, the EPA tabulated the pre-tax costs in the year when they are estimated to be incurred. As described in Section VII.D of this preamble, the proposed compliance deadlines and therefore the expected technology implementation years vary across the regulatory options. The EPA performed the social cost analysis over a 27-year analysis period of 2021–2047, which combines the length of the period during which facilities are anticipated to install the control technologies (which could be as late as 2028 under Option 4) and the useful life of the longest-lived technology installed at any facility (20 years). The EPA calculated the social cost of the proposed rule using both a three percent discount rate and an alternative discount rate of seven percent.

Social costs include costs incurred by both private entities and the government (*e.g.,* in implementing the regulation). As described further in Chapter 10 of the RIA, the EPA did not evaluate the incremental increase in the cost to state governments to evaluate and incorporate BPJ into NPDES permits. EPA solicits comments on whether these incremental costs are significant enough to be included. Consequently, the only category of costs used to calculate social costs are those pre-tax costs estimated for steam electric facilities. Note that the annualized social costs presented in Table VIII–2 for the seven percent discount rate differ from comparable pre-tax industry compliance costs shown in Table VIII–1. The costs in TableVIII–1 represent the annualized costs of each option if they were incurred in 2020, whereas the annualized costs in Table VIII–2 are estimated based on the stream of future costs starting in the year that individual facilities are projected to actually comply with the requirements of the proposed options under the availability timing proposed in Section VII.D.

Table VIII–2 presents the total annualized social costs of the four regulatory options presented in Table VII–1, compared to the baseline and calculated using three percent and seven percent discount rates. All four options provide cost savings (negative incremental costs) compared to the baseline using a seven percent discount rate, and Options 1, 2, and 3 also show cost savings using a three percent discount rate. Option 2 has estimated annualized cost savings of $166.2 million using a seven percent discount rate and $136.3 million using a three percent discount rate.

TABLE VIII–2—ESTIMATED TOTAL ANNUALIZED SOCIAL COSTS

[Million of 2018$, three and seven percent discount rate]

Regulatory option	3% Discount rate	7% Discount rate
Option 1	−$130.6	−$154.0
Option 2	−136.3	−166.2
Option 3	−90.1	−119.5
Option 4	11.9	−27.3

C. Economic Impacts

The EPA assessed the economic impacts of this proposed rule in two ways: (1) A screening-level assessment of the cost impacts on existing boilers at steam electric facilities and the entities

[84] In response to additional information the EPA received from a vendor showing installed costs of LRTR were lower than EPA's predicted costs, and to account for the small difference in cost between the sand filter and ultrafiltration polishing stage technologies, the EPA conducted a sensitivity analysis (DCN SE07120). Based on this analysis, the costs to install LRTR may be approximately five percent lower than the LRTR cost estimates used for developing the total costs presented in Table VIII–1.

that own those facilities, based on comparison of costs to revenue; and (2) an assessment of the impact of the regulatory options presented in Table VII–1 within the context of the broader electricity market, which includes an assessment of changes in predicted facility closures attributable to the options. The following sections summarize the results of these analyses. The RIA discusses the methods and results in greater detail.

The first set of cost and economic impact analyses—at both the facility and parent company levels—provide screening-level indicators of the impacts of costs for FGD wastewater and BA transport water controls relative to historical operating characteristics of steam electric facilities incurring those costs (*i.e.,* level of electricity generation and revenue). The EPA conducted these analyses for the baseline and for the four regulatory options presented in Table VII–1, and then compared these impacts to understand the incremental effects of the regulatory options in this proposal. The second set of analyses look at broader electricity market impacts considering the interconnection of regional and national electricity markets. It also looks at the distribution of impacts at the facility and boiler level. This second set of analyses provides insight on the impacts of the regulatory options in this proposal on steam electric facilities, as well as the electricity market as a whole, including changes in generation capacity, generation, and wholesale electricity prices. The market analysis compares model predictions for the options to a base case that includes the predicted and observed economic and market effects of the 2015 rule. The EPA used results from the screening analysis of facility- and entity-level impacts, together with changes in projected capacity closure from the market model, to understand the impacts of the regulatory options in this proposal relative to the baseline.

1. Screening-Level Assessment

The EPA conducted a screening-level analysis of each regulatory option's potential impact to existing boilers at steam electric facilities and parent entities based on cost-to-revenue ratios. For each of the two levels of analysis (facility and parent entity), the Agency assumed, for analytic convenience and as a worst-case scenario, that none of the compliance costs would be passed on to consumers through electricity rate increases and would instead be absorbed by the steam electric facilities and their parent entities. This assumption overstates the impacts of compliance expenditures since steam electric facilities that operate in a regulated market may be able to pass on changes in production costs to consumers through changes in electricity prices. It is, however, an appropriate assumption for a screening-level estimate of the potential cost impacts.

a. Facility-Level Cost-to-Revenue Analysis

The EPA developed revenue estimates for this analysis using EIA data. The EPA then calculated the change in the annualized after-tax costs of the four regulatory options presented in Table VII–1 as a percent of baseline annual revenues. *See* Chapter 4 of the RIA for a more detailed discussion of the methodology used for the facility-level cost-to-revenue analysis.

Cost-to-revenue ratios are used to describe impacts to entities because they provide screening-level indicators of potential economic impacts. Just as for the facilities owned by small entities under guidance in U.S. EPA (2006),[85] the full range of facilities incurring costs below one percent of revenue are unlikely to face economic impacts, while facilities with costs between one percent and three percent of revenue have a higher chance of facing economic impacts, and facilities incurring costs above three percent of revenue have a still higher probability of economic impacts.

As a result of the 2015 rule (baseline), the EPA estimated that 18 facilities incur costs greater than or equal to one percent of revenue, including six facilities that have costs greater than or equal to three percent of revenue, and an additional 96 facilities incur costs that are less than one percent of revenue. By contrast, the four regulatory options the EPA analyzed for this proposal are estimated to provide cost savings that reduce this impact to various degrees, with Option 2 showing the largest reductions in cost. Options 1, 3, and 4 show an estimated 16 to 19 facilities with costs greater than or equal to one percent of revenue, including four or five facilities with costs greater than or equal to three percent of revenue. Under Option 2, the EPA estimated that eight facilities incur costs greater than or equal to one percent of revenue, including two facilities that have costs greater than or equal to three percent of revenue, and an additional 100 facilities incur costs that are less than one percent of revenue.

b. Parent Entity-Level Cost-to-Revenue Analysis

The EPA also assessed the economic impact of the regulatory options presented in Table VII–1 at the parent entity level. The screening-level cost-to-revenue analysis at the parent entity level provides insight on the impact on those entities that own existing boilers at steam electric facilities. In this analysis, the domestic parent entity associated with a given facility is defined as that entity with the largest ownership share in the facility. For each parent entity, the EPA compared the incremental change in the total annualized after-tax costs and the total revenue for the entity compared to the baseline (*see* Chapter 4 of the RIA for details). Following the methodology employed in the analyses for the 2015 rule (80 FR 67838), the EPA considered a range of estimates for the number of entities owning an existing boiler at a steam electric power facility to account for partial information available for steam electric facilities that are not expected to incur ELG compliance costs.

Similar to the facility-level analysis above, cost-to-revenue ratios provide screening-level indicators of potential economic impacts, this time to the owning entities; higher ratios suggest a higher probability of economic impacts. The EPA estimated that the number of entities owning existing boilers at steam electric facilities ranges from 243 (lower-bound estimate) to 478 (upper-bound estimate), depending on the assumed ownership structure of facilities not incurring ELG costs and not explicitly analyzed. The EPA estimates that in the baseline 236 to 470 parent entities, respectively, would either incur no costs or the annualized cost they incur to meet the 2015 rule BAT limitations and pretreatment standards would represent less than one percent of their revenues.

Compared to the baseline, all four regulatory options reduce the impacts on the small number of entities incurring costs. The changes are greatest for Option 2, which has five fewer entities with costs exceeding one percent of revenue, including one less entity with costs exceeding three percent of revenue, with the remaining entities either having no cost, or costs that are less than one percent of revenue. Options 1 and 3 each have two fewer entities in the one to three percent of revenue category, and Option 4 has

[85] U.S. EPA (Environmental Protection Agency). 2006. EPA's Action Development Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act. November 2006. Available online at: *https://www.epa.gov/reg-flex/epas-action-development-process-final-guidance-epa-rulewriters-regulatory-flexibility-act.*

one fewer entity in the one to three percent of revenue category.

2. Electricity Market Impacts

In analyzing the impacts of regulatory actions affecting the electric power sector, the EPA used IPM, a comprehensive electricity market optimization model that can evaluate such impacts within the context of regional and national electricity markets. The model is designed to evaluate the effects of changes in boiler-level electric generation costs on the total cost of electricity supply, subject to specified demand and emissions constraints. Use of a comprehensive, market analysis system is important in assessing the potential impact of any power facility regulation because of the interdependence of electric boilers in supplying power to the electric transmission grid. Changes in electricity production costs at some boilers can have a range of broader market impacts affecting other boilers, including the likelihood that various units are dispatched, on average. The analysis also provides important insight on steam electric capacity closures (*e.g.,* retirements of boilers that become uneconomical relative to other boilers), or avoided closures, based on a more detailed analysis of market factors than in the screening-level analyses above. The results further inform the EPA's understanding of the potential impacts of the regulatory options presented in Table VII–1. For the current analyses, the EPA used version 6 (V6) of IPM to analyze the impacts of the regulatory options. IPM V6 is based on an inventory of U.S. utility- and non-utility-owned boilers and generators that provide power to the integrated electric transmission grid, including facilities to which the ELGs apply. IPM V6 embeds an energy demand forecast that is derived from DOE's ''Annual Energy Outlook 2018'' (AEO 2018). IPM V6 also incorporates the expected compliance response to existing regulatory requirements for regulations affecting the power sector (*e.g.,* Cross-State Air Pollution Rule (CSAPR) and CSAPR Update Rule, Mercury and Air Toxics Rule (MATS), the Cooling Water Intake Structure (CWIS) rule, and 2015 CCR rule, as well as the 2015 rule). Federal CO_2 standards for existing sources are not modeled in IPM V6, owing to ongoing litigation.

The EPA analyzed proposed Option 2 and Option 4 using IPM V6. As discussed in Section VIII.A, these two options have the greatest and least cost savings, respectively, compared to the baseline, and therefore reflect the full range of potential impacts from the regulatory options in this proposal. In addition, following promulgation of the ACE final rule, EPA also analyzed proposed Option 2 relative to a baseline that includes the ACE rule. *See* Appendix C in the RIA for details of these results.

In contrast to the screening-level analyses, which are static analyses and do not account for interdependence of electric boilers in supplying power to the electricity transmission grid, IPM V6 accounts for potential changes in the generation profile of steam electric and other boilers and consequent changes in market-level generation costs, as the electric power market responds to changes in generation costs for steam electric boilers due to the regulatory options. Additionally, in contrast to the screening-level analyses, in which the EPA assumed no cost pass through of ELG compliance costs, IPM V6 depicts production activity in wholesale electricity markets where the specific increases in electricity prices for individual markets would result in some recovery of compliance costs for plants in those markets.

In analyzing the regulatory options presented in Table VII–1, the EPA estimated changes in fixed and variable costs for the steam electric facilities and boilers already incurring costs in the baseline to instead incur costs (or avoid incurring costs) to comply with Option 2 and Option 4. Because IPM is not designed to endogenously model the selection of wastewater treatment technologies as a function of electricity generation, effluent flows, and pollutant discharge, the EPA estimated these costs exogenously for each steam electric generating unit and input these costs into the IPM model as fixed and variable O&M cost adders. The EPA then ran IPM V6 including these new cost estimates to determine the dispatch of electric boilers that would meet projected demand at the lowest costs, subject to the same constraints as those present in the baseline analysis. The estimated changes in facility- and boiler-specific production levels and costs—and, in turn, changes in total electric power sector costs and production profile—are key data elements in evaluating the expected national and regional effects of the regulatory options in this proposal, including closures or avoided closures of steam electric boilers and facilities. The EPA considered impact metrics of interest at three levels of aggregation: (1) Impact on national and regional electricity markets (all electric power generation, including steam and non-steam electric facilities); (2) impact on steam electric facilities as a group, and (3) impact on individual steam electric facilities incurring costs. Chapter 5 of the RIA discusses the first analysis; the sections below summarize the last two, which are further described in Chapter 5 and in Appendix C of the RIA. All results presented below are representative of modeled market conditions in the years 2028–2033, when the rule would either be implemented or plans for implementation by the end of 2028 would be well underway at all facilities.

a. Impacts on Existing Steam Electric Facilities

The EPA used IPM V6 results for 2030 [86] to assess the potential impact of the regulatory options presented in Table VII–1 on existing boilers at steam electric facilities. The purpose of this analysis is to assess any fleetwide changes from baseline impacts on boilers at steam electric facilities. Table VIII–3 reports estimated results for existing boilers at steam electric facilities, as a group. The EPA looked at the following metrics: (1) Incremental (and avoided) early retirements and capacity closures, calculated as the difference between capacity under the regulatory option and capacity under the baseline; (2) incremental capacity closures as a percentage of baseline capacity; (3) change in electricity generation from facilities regulated by ELGs; (4) changes in variable production costs per MWh, calculated as the sum of total fuel and variable O&M costs divided by net generation; and (5) changes in annual costs (fuel, variable O&M, fixed O&M, and capital). Note that changes in electricity generation presented in Table VIII–3 are attributable both to changes in retirements, as well as changes in capacity utilization at boilers and plants whose retirement status does not change.

[86] IPM model year 2030 represents years 2028–2033.

TABLE VIII–3—ESTIMATED IMPACT ON STEAM ELECTRIC FACILITIES AS A GROUP AT THE YEAR 2030

Metric	Baseline value	Change attributable to regulatory option as compared to baseline			
		Option 2		Option 4	
		Value	Percent	Value	Percent
Total capacity (MW)	336,872	2,880	0.9	3,194	0.9
Early retirements or closures[a] (MW)	58,192	−2,880	−4.9	−3,194	−5.5
Early retirements or closures[a] (number of plants)	79	0	0.0	−1	−1.3
Total generation (GWh)	1,570,513	4,676	0.3	1,235	0.1
Variable production cost (2018$/MWh)	$26.00	$0.02	0.1	$0.05	0.2
Annual costs (million 2018$)	$60,298	$98	0.2	$103	0.1

[a] Values for incremental early retirements or closures represent change relative to the baseline. IPM may show partial (unit) or full facility early retirements (closures). It may also show avoided closures (negative closure values) in which a boiler or facility that is projected to close in the baseline is estimated to continue operating in the policy case.

Under proposed Option 2, generation at steam electric facilities is projected to increase by 4,676 GWh (0.3 percent) nationally, when compared to the baseline. IPM V6 projects a net increase in total steam electric capacity by 2,880 MW or approximately 0.9 percent of total baseline capacity, but no net change in the number of full facility retirements and the net avoidance of three partial retirements (unit closures) nationwide indicating a higher capacity utilization by these facilities. *See* Section 5.2.2.2 in the RIA for details.

IPM V6 projects generation at steam electric facilities increases under Option 4 by 1,235 GWh (0.1 percent) nationally, which is smaller in magnitude than the increase under Option 2. National level results for steam electric facilities under Option 4 show an increase in total steam electric capacity of 3,194 MW (0.9 percent of the baseline). At the national level, IPM projects one net avoided full facility closure and the same three avoided partial retirements as for Option 2. *See* Section 5.2.2.2 in the RIA for details.

These findings suggest that all of the regulatory options in this proposal can be expected to have small economic consequences for the steam electric facilities as a group. Options 2 and 4 also affect the operating status of very few steam electric facilities, with no net change in facility closures under Option 2, and one net avoided closure under Option 4.[87] For further discussion of closures and related distributional impacts, see Chapter 5 of the RIA.

Because the analysis of the proposed options discussed in the RIA was completed before the EPA finalized the ACE rule, this analysis does not include the projected effects of the ACE rule. Thus, the EPA conducted a supplemental IPM run with the costs of Option 2 on a baseline that includes the ACE illustrative case presented in the ACE final rule (*see* Appendix C in RIA). A summary of these results is presented in Table VIII–4.

TABLE VIII–4—ESTIMATED IMPACT OF ELG OPTION 2 ON STEAM ELECTRIC POWER PLANTS AS A GROUP AT THE YEAR 2030, FOR SENSITIVITY ANALYSIS INCLUDING ACE FINAL RULE

Metric	Baseline with ACE rule	Option 2 with ACE rule		
		Value	Difference	Percent change
Early retirements or closures[a] (MW)	336,547	339,654	−3,107	−0.9
Early retirements or closures[a] (number of plants)	78	79	1	1.3
Total generation (GWh)	1,569,109	1,576,455	7,345	0.5
Variable production cost (2018$/MWh)	$25.85	$25.87	$0.02	0.1
Annual costs (million 2018$)	$60,387	$60,578	$191	0.3

[a] Values for incremental early retirements or closures represent change relative to the baseline. IPM may show partial (unit) or full facility early retirements (closures). It may also show avoided closures (negative closure values) in which a boiler or facility that is projected to close in the baseline is estimated to continue operating in the policy case.

Examining the incremental impacts of Option 2 on a baseline including ACE, generation at steam electric facilities is projected to increase by 3,107 GWh (0.9 percent) nationally. IPM V6 projects a net increase in total steam electric capacity by 7,345 MW or approximately 0.5 percent of total baseline capacity. There is one incremental full facility retirement as well as the net avoidance of four partial retirements (unit closures) nationwide indicating a higher capacity utilization by these facilities. See Appendix C of the RIA for further details.

b. Impacts on Individual Facilities Incurring Costs

To assess potential facility-level effects, the EPA also analyzed facility-specific changes attributable to the regulatory options in Table VII–1 for the following metrics: (1) Capacity utilization (defined as annual generation (in MWh) divided by [capacity (MW) times 8,760 hours]) (2) electricity generation, and (3) variable production costs per MWh, defined as variable O&M cost plus fuel cost divided by net generation. The analysis of changes in individual facilities is detailed in Chapter 5 of the RIA.

The results for both Option 2 and Option 4 show no change, or less than a one percent reduction or one percent increase for steam electric facilities projected to incur ELG compliance costs. For Option 2, a greater number of facilities see improving operating

[87] The additional closure under Option 2 is not a result of the facility incurring costs under this proposed rule. The IPM model predicts this facility becomes uneconomical due to the increased generation from other coal facilities in the same NERC region.

conditions (*i.e.,* higher capacity utilization or generation, lower variable production costs) than deteriorating conditions. Effects under Option 4 are similar, although approximately the same number of facilities see positive changes in operating conditions as negative changes. Thus, the results for the subset of facilities incurring costs further support the conclusion that the effects of any of the regulatory options in this proposed rule on the steam electric power generating industry will be less than that of the 2015 rule. This conclusion holds when including the effects of the ACE final rule, as detailed in Appendix C of the RIA for proposed Option 2.

IX. Changes to Pollutant Loadings

In developing ELGs, the EPA typically evaluates the pollutant loading reductions of regulatory options to assess the impacts of the compliance requirements on discharges from the industry as a whole. In estimating pollutant reductions associated with this proposal, the EPA took the same approach as described above for facility-specific costs. That is, the EPA compared the values to a baseline that reflects implementation of existing environmental regulations, including the 2015 rule. In the 2015 rule, the baseline did not reflect pollutant loading reductions for achieving the 2015 rule requirements as that impact is what EPA analyzed. Here, the baseline appropriately includes pollutant loading reductions for achieving the 2015 rule requirements as the EPA is analyzing the impact resulting from any changes to those requirements. More specifically, the EPA considered the change in the pollutant loading reductions associated with the regulatory options in this proposal to those projected under the baseline.

The general methodology that the EPA used to calculate pollutant loadings is the same as that described in the 2015 rule. The EPA used data collected for the 2015 rule, as well as the data described in Section VI, to characterize pollutant concentrations for FGD wastewater and bottom ash transport water. The EPA evaluated these data sources to identify analytical data that meet EPA's acceptance criteria for inclusion in analyses for characterizing discharges of FGD wastewater and bottom ash transport water. For each plant discharging FGD wastewater or bottom ash transport water, the EPA used data from the 2009 survey and/or industry-submitted data to determine the discharge flow rates for FGD wastewater and bottom ash transport water. The EPA adjusted the discharge flow rates used in the pollutant loadings estimates to account for retirements, fuel conversions, and other changes in operations scheduled to occur by December 31, 2028, described in Section 6 of the Supplemental TDD, that will eliminate or alter the discharge of an applicable wastestream. Finally, the Agency adjusted the discharge flow rates to account for changes in plant operations to optimize FGD wastewater flows and to comply with the CCR rule. For further discussion of these adjustments see Section 6.2.2 and 6.3.2 of the Supplemental TDD, respectively.

The EPA first estimated—on an annual, per facility basis—the pollutant discharge load for FGD wastewater and BA transport water associated with the technology basis evaluated for facilities to comply with the 2015 rule requirements for FGD wastewater and BA transport water relative to the conditions currently present or planned at each facility. The EPA similarly estimated facility-specific post-compliance pollutant loadings associated with the technology bases for facilities to comply with effluent limitations based on each of the regulatory options in this proposal. For each regulatory option, the EPA then calculated the changes in pollutant loadings at a particular facility as the sum of the differences between the estimated baseline and post-compliance discharge loadings for each applicable wastestream.

For those facilities that discharge indirectly to POTWs, the EPA adjusted the baseline and option loadings to account for pollutant removals expected from POTWs. These adjusted pollutant loadings for indirect dischargers therefore approximate the resulting discharges to receiving waters. For additional details on the methodology the EPA used to calculate pollutant loading reductions, *see* Section 6 of the Supplemental TDD.

A. FGD Wastewater

For FGD wastewater, the EPA continued to use the average pollutant effluent concentration with facility-specific discharge flow rates to estimate the mass pollutant discharge per facility for baseline and each regulatory option in Table VII–1. The EPA used data compiled for the 2015 rule as the initial basis for estimating discharge flow rates and updated the data to reflect retirements or other relevant changes in operation. For example, the EPA reviewed state and EIA data to identify flow rates for new scrubbers that have come online since the 2015 rule. The EPA also accounted for increased rates of recycle through the scrubber that would affect the discharge flow.

The EPA assigned pollutant concentrations for each analyte based on the operation of a treatment system designed to comply with the baseline or the regulatory options considered. The EPA used data compiled for the 2015 rule to characterize untreated FGD purge, chemical precipitation effluent, and chemical precipitation plus high hydraulic residence time biological reduction effluent. The EPA used data provided by industry to characterize effluent quality for chemical precipitation plus LRTR and membrane filtration effluent. In addition, the EPA used data provided by industry and other stakeholders as described in Section VI of this preamble to quantify bromide in FGD wastewater under baseline conditions and for the regulatory options.

B. BA Transport Water

The EPA estimated baseline and post-compliance loadings for each regulatory option in Table VII–1 using pollutant concentrations for BA transport water and facility-specific flow rates. The EPA used data compiled for the 2015 rule as the basis for estimating BA transport water discharge flows and updated the data set to reflect retirements and other relevant changes in operation (*e.g.,* ash handling conversions, fuel conversions) that occurred after the 2015 rule data were collected. For the high recycle rate technology option, the EPA also estimated discharge flows associated with the purge from remote MDS operation, based on the boiler capacity and the volume of the remote MDS. Under the baseline, which reflects the 2015 rule limitation of zero discharge, the EPA estimated a flow rate of zero.

For this proposed rule, in response to the administrative petitions discussed in Section IV of this preamble, the EPA was able to use a revised set of the 2015 rule analytical data to characterize BA transport water effluent from steam electric facilities. As an example, the EPA re-evaluated and revised, as appropriate, its data sets in light of questions petitioners raised about the inclusion and validity of certain data due, in part, to what the petitioners assert are flaws in data acceptance criteria, obsolete analytical methods, and the treatment of non-detect analytical results, which petitioners believed resulted in an overestimation of pollutant loadings resulting from current practices for BA transport water, in turn resulting in an overestimation of pollutant removals under the 2015 rule. The EPA also updated the data set and incorporated BA transport water

sampling data submitted by industry during the final months of the 2015 rule and as part of a voluntary sampling program described in Section VI of this preamble. For a detailed discussion, *see* Section 6 of the Supplemental TDD.

C. Summary of Incremental Changes of Pollutant Loadings From Proposed Regulatory Options

Table IX–1 summarizes the net change to annual pollutant loadings, compared to baseline, associated with each regulatory option in Table VII–1.

TABLE IX–1—ESTIMATED INCREMENTAL CHANGES TO ANNUAL POLLUTANT LOADING FOR PROPOSED REGULATORY OPTIONS 1, 2, 3, AND 4 [in pounds/year] COMPARED TO BASELINE

Regulatory option [a]	Changes in pollutant loadings
1	13,400,000
2	−104,000,000
3	−276,000,000
4	−1,320,000,000

Note: Changes in pollutant loadings are rounded to three significant figures.
[a] Negative values represent an estimated decrease in loadings to surface waters compared to baseline. Positive values represent an estimated increase in loadings to surface waters compared to baseline.

Compared to the 2015 rule, Options 2, 3 and 4 result in decreased pollutant loadings to surface waters. Reductions under Options 2 and 3 would be realized to the extent that operators chose to meet the limitations based on membrane filtration under the proposed revisions of VIP for FGD wastewater. Under Option 2, the EPA estimated that 18 plants (27 percent of plants estimated to incur FGD compliance costs) would opt into the VIP program and under Option 3 the number rises to 23 plants (34 percent of plants estimated to incur FGD compliance costs).

X. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require the EPA to consider non-water quality environmental impacts (including energy impacts) associated with ELGs. Accordingly, the EPA has considered the potential impact of the regulatory options in today's proposal on air emissions, solid waste generation, and energy consumption. For the reasons described in Section IX of this preamble, the baseline for these analyses appropriately includes non-water quality environmental impacts associated with achieving the 2015 rule requirements, and the EPA is analyzing the incremental impacts resulting from the regulatory options presented in Table VII–1 compared to those projected under the baseline. In general, the EPA used the same methodology to conduct the current analysis (with updated data as applicable) as it did for the analysis supporting the 2015 rule. The following summarizes the methodology and results. *See* Section 7 of the Supplemental TDD for additional details.

A. Energy Requirements

Steam electric facilities use energy when transporting ash and other solids on or off site, operating wastewater treatment systems (*e.g.,* chemical precipitation, biological treatment), or operating ash handling systems. For today's proposal, the EPA considered whether there would be an associated change in the incremental energy requirements compared to baseline. Energy requirements vary depending on the regulatory option evaluated and the current operations of the facility. Therefore, as applicable, the EPA estimated the increase in energy usage in megawatt hours (MWh) for equipment added to the facility systems or in consumed fuel (gallons) for transportation/operating equipment for baseline and all regulatory options. The EPA summed the facility-specific estimates to calculate the net change in energy requirements from baseline for the regulatory options.

The EPA estimated the amount of energy needed to operate wastewater treatment systems and ash handling systems based on the horsepower rating of the pumps and other equipment. The EPA also estimated the fuel consumption associated with the changes in transportation needed to landfill solid waste and combustion residuals (*e.g.,* ash) at steam electric facilities (on-site or off-site). The frequency and distance of transport depends on a facility's operation and configuration; specifically, the volume of waste generated and the availability of either an on-site or off-site non-hazardous landfill and its distance from the facility. Table X–1 shows the net change in annual electrical energy usage associated with the regulatory options compared to baseline, as well as the net change in annual fuel consumption requirements associated with the regulatory options compared to baseline.

TABLE X–1—ESTIMATED INCREMENTAL CHANGE IN ENERGY REQUIREMENTS ASSOCIATED WITH REGULATORY OPTIONS COMPARED TO BASELINE

Non-water quality impact	Energy use associated with regulatory options [a]			
	Option 1	Option 2	Option 3	Option 4
Electrical Energy Used (MWh)	−82,300	−54,570	−27,000	94,000
Fuel Used (Thousand Gallons)	0	−48,000	40,000	243,000

[a] Negative values represent a decrease in energy use compared to baseline. Positive values represent an increase in energy use compared to baseline.

B. Air Pollution

The regulatory options are expected to affect air pollution through three main mechanisms: (1) Changes in auxiliary electricity use by steam electric facilities to operate wastewater treatment, ash handling, and other systems needed to meet regulatory standards; (2) changes to transportation-related emissions due to the trucking of CCR waste to landfills; and (3) the change in the profile of electricity generation due to any regulatory requirements. This section discusses air emission changes associated with the first two mechanisms and presents the corresponding estimated net change in air emissions. *See* Section XII of this preamble for additional discussion of the third mechanism.

Steam electric facilities generate air emissions from operating transport vehicles, such as dump trucks, which release criteria air pollutants and greenhouse gases when operated. Similarly, a decrease in energy use or vehicle operation would result in decreased air pollution.

To estimate the net air emissions associated with changes in electrical energy use projected as a result of the regulatory options in today's proposal compared to baseline, the EPA combined the energy usage estimates with air emission factors associated with electricity production to calculate air emissions associated with the incremental energy requirements. The EPA used emission factors projected by IPM V6 (ton/MWh) for nitrogen oxides, sulfur dioxide, and carbon dioxide to generate estimates of the changes in air emissions associated with changes in energy production for Options 2 and 4 compared to baseline.[88]

To estimate net air emissions associated with the change in operation of transport vehicles, the EPA used the MOVES2014b model to identify air emission factors (grams per mile) for the air pollutants of interest. The EPA estimated the annual number of miles that dump trucks moving ash or wastewater treatment solids to on- or off-site landfills would travel for the regulatory options. The EPA used these estimates to calculate the net change in air emissions for the Options 2 and 4 compared to baseline. Table X–2 presents EPA's estimated net change in air emissions associated with auxiliary electricity and transportation.

TABLE X–2—ESTIMATED NET CHANGE IN INDUSTRY-LEVEL AIR EMISSIONS ASSOCIATED WITH AUXILIARY ELECTRICITY AND TRANSPORTATION FOR OPTIONS COMPARED TO BASELINE [a] [b]

Non-water quality impact	Change in emissions—Option 2 (tons/year) [b]	Change in emissions—Option 4 (tons/year) [c]
NO_X	−32.7	32.7
SO_X	−54.3	20.4
CO_2	−44,600	60,600

[a] Negative values represent a decrease in energy use compared to baseline. Positive values represent an increase in energy use compared to baseline.
[b] Option 2 estimates are based on the IPM sensitivity analysis scenario that includes the ACE rule in the baseline (IPM–ACE).
[c] Option 4 estimates are based on IPM analysis scenario that does not include the ACE rule in the baseline.

The modeled output from IPM V6 predicts changes in electricity generation due to compliance costs attributable to Options 2 and 4 compared to baseline. These changes in electricity generation are, in turn, predicted to affect the amount of NO_X, SO_2, and CO_2 emissions from steam electric facilities. A summary of the net change in annual air emissions under Options 2 and 4 for all three mechanisms is shown in Table X–3. Similar to costs, the IPM V6 results from these options reflect the range of NWQEI associated with all four regulatory options. To provide some perspective on the estimated changes in annual air emissions, EPA compared the estimated change in air emissions to the net amount of air emissions generated in a year by all electric power facilities throughout the United States. For a more details on the sources of air emission changes, *see* Section 7 of the Supplemental TDD.

TABLE X–3—ESTIMATED NET CHANGE IN INDUSTRY-LEVEL AIR EMISSIONS ASSOCIATED WITH CHANGES IN ELECTRICITY GENERATION FOR OPTIONS COMPARED TO BASELINE

Non-water quality impact	Change in emissions—Option 2 (million tons) [a]	Change in emissions—Option 4 (million tons) [b]	2016 Emissions by electric power generating industry (million tons)
NO_X	0.005	0.001	1.47
SO_X	0.005	0.002	1.63
CO_2	5.66	1.24	2,030

[a] Option 2 emissions are based on the IPM sensitivity analysis scenario that includes the ACE rule in the baseline.
[b] Option 4 emissions are based on the IPM sensitivity analysis scenario that does not include the ACE rule in the baseline.

C. Solid Waste Generation and Beneficial Use

Steam electric facilities generate solid waste associated with sludge from wastewater treatment systems (*e.g.,* chemical precipitation, biological treatment). The EPA estimated the change in the amount of solids generated under each regulatory option for each facility in comparison to the baseline. For FGD wastewater treatment, Regulatory Options 2, 3, and 4 result in an increase in the amount of solid waste generated compared to baseline. The

[88] Only Options 2 and 4 were run through IPM; however, extrapolated net benefits from air impacts for Options 1 and 3 are available in Chapter 8 of the Benefit Cost Analysis report.

solid waste generation associated with Option 1 is comparable to baseline. While BA solids are also generated at steam electric facilities, all of the BA solids accounted for in the waste volumes disposed in the 2015 rule analysis were suspended solids from combustion, and therefore the regulatory options in today's proposal do not alter the amount of BA or other combustion residuals generated. Table X–4 shows the net change in annual solid waste generation, compared to baseline, associated with the proposed regulatory options.

TABLE X–4—ESTIMATED INCREMENTAL CHANGES TO SOLID WASTE GENERATION ASSOCIATED WITH REGULATORY OPTIONS COMPARED TO BASELINE

Non-water quality impact	Solid waste generation associated with regulatory options			
	Option 1	Option 2	Option 3	Option 4
Solids Generated (tons/year)	0	328,000	487,000	2,326,000

The EPA also evaluated the potential impacts of diverting FA from current beneficial uses toward encapsulation of brine (from membrane filtration) for disposal in landfills. According to the latest ACAA survey,[89] over half of the FA generated by coal-fired facilities is being sold for beneficial uses rather than disposed of, and the majority of this beneficially used FA is replacing Portland cement in concrete. This also holds true for the specific facilities currently discharging FGD wastewater, as seen by sales of FA in the 2016 EIA–923 Schedule 8A.[90] Summary statistics of the FA beneficial use percentage for these facilities are displayed in Table X–5 below.

TABLE X–5—PERCENT OF FA SOLD FOR BENEFICIAL USE BY FACILITIES DISCHARGING FGD WASTEWATER

Statistic	Percent of FA sold for beneficial use
Min	0
10th percentile	0
25th percentile	3
Mean	48
Median	50
75th percentile	88
90th percentile	98
Max	100

In the EPA's coal combustion residuals disposal rule,[91] the EPA noted that FA replacing Portland cement in concrete would result in significant avoided environmental impacts to energy use, water use, greenhouse gas emissions, air emissions, and waterborne wastes. Although the EPA cannot tie specific facilities selling their FA to this specific beneficial use, over half of the FA beneficially used currently replaces Portland cement in concrete. Therefore, where sale for this particular beneficial use occurs by facilities that may otherwise use their fly ash to encapsulate membrane filtration brine under Option 4, the EPA proposes to find that unacceptable air and other non-water quality environmental impacts will result.

D. Changes in Water Use

Steam electric facilities generally use water for handling solid waste, including ash, and for operating wet FGD scrubbers. The BA handling technologies associated with baseline and the regulatory options in today's proposal for BA transport water eliminate or reduce water use associated with wet sluicing BA operating systems. The 2015 rule baseline requires zero discharge of pollutants in BA transport water, and because the use of other wastewater could significantly increase the necessary purge flow to maintain water chemistry, the EPA estimated the increase in water use for BA handling associated with Options 1, 2, 3, and 4 compared to baseline as equal to the BA purge flow.

Two of the three technology bases for FGD wastewater included in the regulatory options in today's proposal, chemical precipitation and chemical precipitation plus LRTR, are not expected to reduce or increase the amount of water use. Facilities that install a membrane filtration system for FGD wastewater treatment under Option 2 or 3 as part of the VIP option, or under Option 4, are assumed to decrease water use compared to baseline by recycling all permeate back into the FGD system, which would avoid costs of pumping or treating new makeup water. Therefore, the EPA estimated this reduction in water use resulting from membrane filtration treatment based on the estimated volume of the permeate stream from the membrane filtration system. Table X–6 sums the changes for FGD wastewater and BA transport water and shows the net change in water use, compared to baseline, for the proposed regulatory options.

[89] Available online at: *https://www.acaa-usa.org/Portals/9/Files/PDFs/2016-Survey-Results.pdf.*

[90] Available online at: *https://www.eia.gov/electricity/data/eia923/.*

[91] Available online at: *http://www.regulations.gov Docket ID:* EPA–HQ–RCRA–2009–0640.

TABLE X–6—ESTIMATED INCREMENTAL CHANGES TO WATER USE ASSOCIATED WITH REGULATORY OPTIONS COMPARED TO BASELINE

Non-water quality impact	Changes to water use associated with regulatory options			
	Option 1	Option 2	Option 3	Option 4
Changes in Water Use (gallons/year)	3,370,000	21,100,000	613,000	−9,380,000

XI. Environmental Assessment

A. Introduction

The EPA conducted an environmental assessment for this proposed rule. The environmental assessment reviewed currently available literature on the documented environmental and human health impacts of steam electric power facility FGD wastewater and BA transport water discharges and conducted modeling to determine the impacts of pollution from the universe of steam electric facilities to which the steam electric ELGs apply. For the reasons described in Section VIII of this preamble, in conducting these analyses, the baseline appropriately evaluates environmental and human health impacts of achieving the 2015 rule requirements as the EPA is analyzing the impact resulting from any changes to those requirements compared to the 2015 rule (the same baseline used to evaluate costs). More specifically, the EPA considered the change in impacts associated with the regulatory options presented in Table VII–1 in relation to those projected under the baseline.

Information from the EPA's review of the scientific literature and documented cases of impacts of steam electric power facility FGD wastewater and BA transport water discharges on human health and the environment, as well as a description of the EPA's modeling methodology and results, are provided in the Supplemental Environmental Assessment (Supplemental EA). The Supplemental EA contains information on literature that the EPA has reviewed since the 2015 rule, updates to the modeling methodology and modeling results for each of the regulatory options in today's proposal. The 2015 EA provides information from the EPA's earlier review of the scientific literature and documented cases of the full spectrum of impacts associated with the wider range of steam electric power facility wastewater discharges addressed in the 2015 rule on human health and the environment, as well as a full description of the EPA's modeling methodology.

Current scientific literature indicates that untreated steam electric power facility wastewaters, such as FGD wastewater and BA transport water, contain large amounts of a wide range of pollutants, some of which are toxic and bioaccumulative, and which cause detrimental environmental and human health impacts. For additional information, *see* Section 2 of the Supplemental EA. The EPA also considered environmental and human health effects associated with changes in air emissions, solid waste generation, and water withdrawals. Sections X and XII discuss these effects.

B. Updates to the Environmental Assessment Methodology

The environmental assessment modeling for today's proposed rule consisted of the steady-state, national-scale immediate receiving water (IRW) model that was used to evaluate the direct and indirect discharges from steam electric facilities in the 2015 final ELG rule and 2015 final CCR rule.[92] The model focused on impacts within the immediate surface waters where the discharges occur (approximately 0.5 to 6 miles from the outfall). The EPA also modeled receiving water concentrations downstream from steam electric power facility discharges using a downstream fate and transport model (see Section XII of this preamble).

The environmental assessment also incorporates changes to the industry profile outlined in Section V of this preamble. Additionally, the EPA updated and improved several input parameters for the IRW model, including receiving water boundaries and volumetric flow data from National Hydrography Dataset Plus (NHDPlus) Version 2, updated national recommended water quality criteria (WQC) for cadmium and selenium, updated benchmarks for ecological impacts in benthic sediment, and an updated bioconcentration factor for cadmium.

C. Outputs From the Environmental Assessment

The EPA estimates small environmental and ecological changes associated with changes in pollutant loadings for the regulatory options presented in Table VII–1 as compared to the baseline, including small changes in impacts to wildlife and humans. More specifically, in addition to other unquantified environmental changes, the environmental assessment evaluated changes in (1) surface water quality, (2) impacts to wildlife, (3) number of receiving waters with potential human health cancer risks, (4) number of receiving waters with potential to cause non-cancer human health effects, and (5) nutrient impacts.

The EPA focused its quantitative analyses on the changes in environmental and human health impacts associated with exposure to toxic bioaccumulative pollutants via the surface water pathway. The EPA modeled changes in discharges of toxic, bioaccumulative pollutants from both FGD wastewater and BA transport water into rivers and streams and lakes and ponds, including reservoirs. The EPA addressed environmental impacts from nutrients in a separate analysis discussed in Section XII of this preamble.

The environmental assessment concentrates on impacts to aquatic life based on changes in surface water quality; impacts to aquatic life based on changes in sediment quality within surface waters; impacts to wildlife from consumption of contaminated aquatic organisms; and impacts to human health from consumption of contaminated fish and water. The Supplemental EA discusses, with quantified results, the estimated environmental changes projected within the immediate receiving waters due to the estimated pollutant loading changes associated with the regulatory options in today's proposal compared to the 2015 rule. All of the modeled changes are small in magnitude.

XII. Benefits Analysis

This section summarizes the EPA's estimates of the changes in national environmental benefits expected to result from potential changes in steam electric facility wastewater discharges described in Section IX of this preamble, and the resultant environmental effects, summarized in Section XI. The Benefit Cost Analysis

[92] These rules modeled the same waterbodies for which the model was peer reviewed in 2008.

(BCA) report provides additional details on the benefits methodologies and analyses, including uncertainties and limitations. The analysis methodology for quantified benefits is generally the same as that used by the EPA for the 2015 rule, but with revised inputs and assumptions that reflect updated data. The EPA has updated the methodology from the Stage 2 Disinfection Byproduct Rule for estimating benefits of reducing bladder cancer incidence related to bromide discharges from steam electric facilities and associated brominated disinfection by-product formation at drinking water treatment facilities.

A. Categories of Benefits Analyzed

Table XII–1 summarizes benefit categories associated with the proposed regulatory options and notes which categories the EPA was able to quantify and monetize. Analyzed benefits fall into six broad categories: Human health benefits from surface water quality improvements, ecological conditions and effects on recreational use from surface water quality changes, market and productivity benefits, air-related effects, and changes in water withdrawal. Within these broad categories, the EPA was able to assess changes in the benefits projected for the regulatory options in today's proposal with varying degrees of completeness and rigor. Where possible, the EPA quantified the expected changes in effects and estimated monetary values. However, data limitations, modeling limitations, and gaps in the understanding of how society values certain environmental changes prevent the EPA from quantifying and/or monetizing some benefit categories. In the following discussion, positive benefit values represent improvements in environmental conditions and negative values represent forgone benefits of the proposed options compared to the baseline.

TABLE XII–1—SUMMARY OF BENEFITS CATEGORIES ASSOCIATED WITH CHANGES IN POLLUTANT DISCHARGES FROM STEAM ELECTRIC FACILITIES

Benefit category	Quantified and monetized	Quantified but not monetized	Neither quantified nor monetized
Human Health Benefits from Surface Water Quality Changes			
Changes in incidence of bladder cancer from exposure to total trihalomethanes (TTHM) in drinking water.	✓	.....	.....
Changes in incidence of cancer from arsenic exposure via fish consumption.	✓	.....	.....
Changes in incidence of cardiovascular disease from lead exposure via fish consumption.	.....	.....	✓
Changes in incidence of other cancer and non-cancer adverse health effects (*e.g.,* reproductive, immunological, neurological, circulatory, or respiratory toxicity) due to exposure to arsenic, lead, cadmium, and other toxics from fish consumption or drinking water.	.....	✓	✓
Changes in IQ loss in children from lead exposure via fish consumption.	✓	.....	.....
Changes in need for specialized education for children from lead exposure via fish consumption.	✓	.....	.....
Changes in *in utero* mercury exposure via maternal fish consumption.	✓	.....	.....
Changes in health hazards from exposure to pollutants in waters used recreationally (*e.g.,* swimming).	.....	.....	✓
Ecological Conditions and Effects on Recreational Use from Surface Water Quality Changes			
Benefits from changes in surface water quality, including: Aquatic and wildlife habitat; water-based recreation, including fishing, swimming, boating, and nearwater activities; aesthetic benefits, such as enhancement of adjoining site amenities (*e.g.,* residing, working, traveling, and owning property near the water; [a] and non-use value (existence, option, and bequest value from improved ecosystem health) [a].	✓	.....	.....
Benefits from protection of threatened and endangered species.	.....	✓	.....
Changes in sediment contamination.	.....	.....	✓
Market and Productivity Benefits			
Changes in impoundment failures.	.....	.....	✓
Changes in water treatment costs for municipal drinking water, irrigation water, and industrial process.	.....	.....	✓
Changes in commercial fisheries yields.	.....	.....	✓
Changes in tourism and participation in water-based recreation.	.....	.....	✓
Changes in property values from water quality changes.	.....	.....	✓
Changes in ability to market coal combustion byproducts.	.....	.....	✓
Changes in maintenance dredging of navigational waterways and reservoirs due to changes in sediment discharges.	✓	.....	.....
Air-Related Effects			
Human health benefits from changes in morbidity and mortality from exposure to NO_X, SO_2 and particulate matter ($PM_{2.5}$).	.....	✓	.....
Avoided climate change impacts from CO_2 emissions.	✓	.....	.....
Changes in Water Withdrawal			
Changes in the availability of groundwater resources.	✓	.....	.....
Changes in impingement and entrainment of aquatic organisms.	.....	.....	✓

TABLE XII–1—SUMMARY OF BENEFITS CATEGORIES ASSOCIATED WITH CHANGES IN POLLUTANT DISCHARGES FROM STEAM ELECTRIC FACILITIES—Continued

Benefit category	Quantified and monetized	Quantified but not monetized	Neither quantified nor monetized
Changes in susceptibility to drought.	.....	.....	✓

[a] These values are implicit in the total willingness-to-pay (WTP) for water quality improvements.

The following section summarizes the EPA's analysis of the benefit categories that the Agency was able to quantify and/or monetize (identified in the second and third columns of Table XII–1, respectively). Benefits are a function of not only the changes in pollutant loadings under the various options, but also the timing of those options. For example, although loadings increase more under Option 1, treatment technologies are in place sooner, resulting in fewer forgone lead, mercury, and arsenic-related human health benefits under Option 1 than under more stringent options that may be installed in the future. The regulatory options would also affect additional benefit categories that the Agency was not able to monetize. The BCA Report further describes some of these additional nonmonetized benefits.

B. Quantification and Monetization of Benefits

1. Changes in Human Health Benefits From Changes in Surface Water Quality

Changes in pollutant discharges from steam electric facilities affect human health benefits in multiple ways. Exposure to pollutants in steam electric power facility discharges via consumption of fish from affected waters can cause a wide variety of adverse health effects, including cancer, kidney damage, nervous system damage, fatigue, irritability, liver damage, circulatory damage, vomiting, diarrhea, brain damage, IQ loss, and many others. Exposure to drinking water containing brominated disinfection by-products could cause adverse health effects such as cancer and reproductive and fetal development issues. Because the regulatory options in this proposal would change discharges of steam electric pollutants into waterbodies that receive or are downstream from these discharges, they may alter incidence of associated illnesses, even if by small amounts. These analyses, which are detailed in Chapters 4 and 5 of the BCA, find that the incremental changes in exposure between the baseline and regulatory options are minimal compared to the absolute changes for those same pollutants evaluated in the 2015 rule.

Due to data limitations and uncertainties, the EPA is able to monetize only a subset of the changes in health benefits associated with changes in pollutant discharges from steam electric facilities resulting from the regulatory options in this proposal as compared to the baseline. The EPA monetized these changes in human health effects by estimating the change in the expected number of individuals experiencing adverse human health effects in the populations exposed to steam electric discharges and/or altered exposure levels for the regulatory options relative to the baseline, and valuing these changes using different monetization methods for different benefit endpoints.

The EPA estimated changes in health risks from the consumption of contaminated fish from waterbodies within 50 miles of households. The EPA used Census Block population data and state-specific average fishing rates to estimate the exposed population. The EPA used cohort-specific fish consumption rates and waterbody-specific fish tissue concentration estimates to calculate potential exposure to steam electric pollutants. Cohorts were defined by age, sex, race/ethnicity, and fishing mode (recreational or subsistence). The EPA used these data to quantify and monetize changes in the following five categories of human health effects, which are further detailed in the BCA Report:

- Changes in IQ Loss in Children Aged Zero to Seven from Lead Exposure via Fish Consumption.
- Changes in Need for Specialized Education for Children from Lead Exposure via Fish Consumption.
- Changes in In Utero Mercury Exposure via Maternal Fish Consumption and Associated IQ Loss.
- Changes in Incidence of Cancer from Arsenic Exposure via Fish Consumption.

Table XII–2 summarizes the monetary value of changes in all estimated health outcomes associated with consumption of contaminated fish tissue for the ELG options compared to the baseline. Chapter 5 of the BCA provides additional detail on the methodology. The EPA solicits comment on the assumptions and uncertainties included in this analysis.

TABLE XII–2—ESTIMATED TOTAL MONETARY VALUES OF CHANGES IN HUMAN HEALTH OUTCOMES FOR ELG OPTIONS (MILLIONS OF 2018$) COMPARED TO BASELINE [a]

Discount rate (%)	Option	Reduced lead exposure for children [b]	Reduced mercury exposure for children	Reduced cancer cases from arsenic	Total
3	1	$0.00	−$0.31	$0.00	−$0.31
	2	−0.01	−2.84	0.00	−2.85
	3	0.00	−2.85	0.00	−2.85
	4	0.00	−1.49	0.00	−1.49
7	1	0.00	−0.06	0.00	−0.06
	2	0.00	−0.57	0.00	−0.575
	3	0.00	−0.58	0.00	−0.58
	4	0.00	−0.30	0.00	−0.30

[a] Negative values represent forgone benefits.

[b] "$0.00" indicates that monetary values are greater than −$0.01 million but less than $0.00 million. Benefits to children from exposure to lead range from −$9.1 to $0.7 thousands per year, using a 3 percent discount rate, and from −$2.1 to $0.2 thousands, using a 7 percent discount rate.

The EPA also estimated changes in bladder cancer incidence from the use and consumption of drinking water contaminated with total trihalomethanes (TTHMs) derived from changes in pollutant loadings of bromide associated with the four regulatory options in today's proposal relative to the baseline. This qualitative relationship between bladder cancer and bromide demonstrates the relative size of the benefit to other benefits associated with this proposal. Should this analysis be used to justify an economically significant rulemaking, the EPA intends to peer review the analysis consistent with OMB's Information Quality Bulletin for Peer Review. That review would include robust examination of the strengths and limitations of the methods and an exploration of the sensitivity of the results to the assumptions made. If the analysis is designated a highly influential scientific assessment (HISA), one way the EPA may seek such a review is via the EPA's Science Advisory Board (SAB), which is particularly well suited to provide a peer review of HISAs. The EPA's SAB is a statutorily established committee with a broad mandate to provide advice and recommendations to the Agency on scientific and technical matters.

The EPA estimated changes in cancer risks within populations served by drinking water treatment facilities with intakes on surface waters influenced by bromide discharges from steam electric facilities. The EPA used Safe Drinking Water Information System (SDWIS) and US Census data to estimate the exposed population. The EPA used estimates of changes in waterbody-specific bromide concentrations and estimates of drinking water treatment facility-specific TTHM concentrations to calculate potential changes in exposure to TTHM and associated adverse health outcomes.

The TTHM MCL is set higher than the health-based trihalomethane Maximum Contaminant Level Goals (MCLGs) in order to balance protection from human health risks from DBP exposure with the need for adequate disinfection to control human health risks from microbial pathogens. Actions that reduce TTHM levels below the MCL can therefore further reduce human health risk. The EPA's analysis quantifies the human health effects associated with incremental changes between the MCL and the MCLG. Recent TTHM compliance monitoring data indicate that the drinking water treatment facilities contributing most significantly to the total estimated benefits for the regulatory options have TTHM levels below the MCL but in excess of the MCLGs for trihalomethanes.

Table XII–3 summarizes the estimated monetary value of estimated changes in bromide-related human health outcomes from modeled surface water quality improvements under Options 2, 3, and 4 or degradation under Option 1. As described in Chapter 4 of the BCA Report, approximately 90 percent of these benefits derive from a small number of steam electric facilities (6 facilities under Option 2, 7 facilities under Option 3, and 17 facilities under Option 4). Bromide reduction benefits under Options 2 and 3 derive from estimated facility participation in the VIP.

The formation of TTHM in a particular water treatment system is a function of several site-specific factors, including chlorine, bromine, organic carbon, temperature, pH and the system residence time. The EPA did not collect site-specific information on these factors at each potentially affected drinking water treatment facility. Instead, the EPA conducted a site-based analysis which only addresses the estimated site-specific changes in bromides. To account for the changes in TTHM, and subsequently bladder cancer incidence, using only the estimated site-specific changes in bromides, the EPA used the national relationship from Regli et al (2015).[93] Using this relationship the analysis held all of the other site-specific factors constant at the measured values at the approximately 200 drinking water treatment facilities in that study. Thus, while the national changes in TTHM and bladder cancer incidence given estimated changes in bromide are the EPA's best estimate on a nationwide basis, the EPA cautions that for any specific drinking water treatment facility the estimates could be over- or underestimated. The EPA solicits comment on the extent to which uncertainty surrounding site-specific estimated benefits associated with bromides reductions impact the national estimates presented in this analysis, as well as data that would assist the EPA in evaluating this uncertainty. Additional details and uncertainties of this analysis are provided in Chapter 4 of the BCA Report.

TABLE XII–3—ESTIMATED HUMAN HEALTH BENEFITS OF CHANGING BROMIDE DISCHARGES UNDER THE ELG OPTIONS COMPARED TO BASELINE

[Million of 2018$, three and seven percent discount rate]

Regulatory option	Annualized human health benefits over 27 years (millions of 2018$, discounted to 2020) [a]	
	3% Discount rate	7% Discount rate
Option 1	−$0.36	−$0.23
Option 2	37.61	24.21
Option 3	42.57	27.48
Option 4	84.32	54.30

[a] The analysis accounts for the persisting health effects (up until 2121) from changes in TTHM exposure during the period of analysis (2021–2047).

[93] Regli, S., Chen, J., Messner, M., Elovitz, M.S., Letkiewicz, F.J., Pegram, R.A., Pepping, T.J., Richardson, S.D., Wright, J.M., 2015. Estimating potential increased bladder cancer risk due to increased bromide concentrations in sources of disinfected drinking waters. Environmental Science & Technology, 49(22), 13094–13102.

2. Changes in Surface Water Quality

The EPA evaluated whether the regulatory options in today's proposal would alter aquatic habitats and human welfare by changing concentrations of harmful pollutants such as arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, zinc, nitrogen, phosphorus, and suspended sediment relative to the baseline. As a result, the usability of some of the waters for recreation relative to baseline discharge conditions could change under each option, thereby affecting recreational users. Changes in pollutant loadings can also change the attractiveness of waters usable for recreation by making recreational trips more or less enjoyable. The regulatory options may also change nonuse values stemming from bequest, altruism, and existence motivations. Individuals may value water quality maintenance, ecosystem protection, and healthy species populations independent of any use of those attributes.

The EPA uses a water quality index (WQI) to translate water quality measurements, gathered for multiple parameters that are indicative of various aspects of water quality, into a single numerical indicator that reflects achievement of quality consistent with the suitability for certain uses. The WQI includes seven parameters: Dissolved oxygen, biochemical oxygen demand, fecal coliform, total nitrogen, total phosphorus, TSS, and one aggregate subindex for toxics. The EPA modeled changes in four of these parameters, and held the remaining parameters (dissolved oxygen, biochemical oxygen demand, and fecal coliform) constant for the purposes of this analysis. Table XII–4 summarizes water quality change ranges relative to the baseline under the four regulatory options. Under Options 1 through 3, 78 to 84 percent of potentially affected reaches have a negative change in the WQI. Another 16 to 22 percent of reaches show no change under these options. Under Option 4, 61 percent of reaches would experience a negative change in the WQI, and another 12 percent of reaches show no change.

TABLE XII–4—ESTIMATED RANGES OF WATER QUALITY CHANGES UNDER REGULATORY OPTIONS COMPARED TO BASELINE

Regulatory option	Minimum ΔWQI [a]	Maximum ΔWQI	Median ΔWQI	ΔWQI interquartile range
Option 1	−5.29	0.00	−0.00102	0.01000
Option 2	−2.95	1.30	−0.00047	0.00168
Option 3	−2.95	1.30	−0.00023	0.00078
Option 4	−2.62	1.31	−0.00002	0.00125

[a] Negative changes in WQI values indicate degrading water quality.

The EPA estimated the change in monetized benefit values using the same meta-regressions of surface water valuation studies used in the benefit analysis for the 2015 rule. The meta-regressions quantify average household WTP for incremental improvements in surface water quality. This WTP is the maximum amount of money a person is willing to give up to obtain an improvement in water quality. Chapter 6 of the BCA provides additional detail on the valuation methodology. Overall, Option 1 results in water quality degradation, which is reflected in negative annual household WTP values ranging from −$0.11 to −$0.62. Under Options 2, 3, and 4, the net water quality improvements (accounting for all increases and decreases of pollutant loadings) result in positive net benefits to households affected by water quality changes from the regulatory options proposed. The estimated annual household WTP for water quality changes ranges from $0.10 to $0.56 for Option 2, $0.16 to $0.87 for Option 3, and $0.19 to $1.04 for Option 4.

Table XII–5 presents annualized total WTP values for water quality changes associated with modified metal (arsenic, cadmium, chromium, copper, lead, mercury, zinc, and nickel), non-metal (selenium), nutrient (phosphorus and nitrogen), and sediment pollutant discharges to the approximately 10,393 reach miles affected by the regulatory options in this proposal. An estimated 85 million households reside in Census block groups within 100 miles of affected reaches. The central tendency estimate of the total annualized benefits of water quality changes for Option 2 range from $14.3 million (7 percent discount rate) to $16.7 million (3 percent discount rate).

TABLE XII–5—ESTIMATED TOTAL WILLINGNESS-TO-PAY FOR WATER QUALITY CHANGES (MILLIONS 2018$) COMPARED TO BASELINE [a]

Regulatory option	Number of affected households (millions)	3% Discount rate			7% Discount rate		
		Low	Central	High	Low	Central	High
Option 1	85.2	−$10.0	−$12.5	−$55.5	−$8.6	−$10.9	−$48.1
Option 2	86.9	11.8	16.7	65.6	10.1	14.3	56.1
Option 3	84.6	16.3	22.5	90.7	14.0	19.4	77.8
Option 4	86.5	19.8	27.3	110.2	17.0	23.6	94.6

[a] Negative values represent forgone benefits and positive values represent realized benefits.

3. Effects on Threatened and Endangered Species

To assess the potential for impacts on T&E species (both aquatic and terrestrial) relative to the 2015 baseline, the EPA analyzed the overlap between waters expected to change their wildlife WQC exceedance status under a particular option and the known critical habitat locations of high-vulnerability T&E species. The EPA examined the life history traits of potentially affected T&E species and categorized them by potential for population impacts due to surface water quality changes. Chapter 7

of the BCA Report provides additional detail on the methodology. The EPA determined that there are 24 species whose known critical habitat overlaps with surface waters that may be affected by the proposed options when compared to the baseline, including three fish species, two amphibian and reptile species, one bird species, 17 clam and mussel species, and one snail species. Six of these species have known critical habitat overlapping surface waters that are expected to see reduced exceedances of NRWQC under proposed Options 2, 3, or 4, while 23 species (including 5 species that may see reduced exceedances of NRWQC under proposed Options 2, 3, or 4, depending on habitat location) have known critical habitat overlapping surface waters that may see increased exceedances of NRWQC under one or more of the proposed options. Under Option 2, there are two species whose known critical habitat overlaps with surface waters that may see reduced exceedances of NRWQC, and 12 species whose known critical habitat overlaps with surface waters that may see increased exceedances of NRWQC. Option 1 is expected to result in increased exceedances of NRWQC across all habitat locations. Principal sources of uncertainty include the specifics of how these proposed options will impact threatened and endangered species, exact spatial distribution of the species, and additional species of concern not considered.

4. Changes in Benefits From Marketing of Coal Combustion Residuals

The proposed rule options could affect the ability of steam electric facilities to market coal combustion byproducts for beneficial use by converting from wet to dry handling of BA. In particular, the EPA evaluated the potential effects from changes in marketability of BA as a substitute for sand and gravel in fill applications. Among the regulatory options considered for this proposal, EPA estimates that only Option 2 would affect the quantity of BA handled wet when compared to the baseline, and for that option the estimated increase in BA handled wet is small (total of 310,671 tons per year at 20 facilities). Given these small changes and the uncertainty associated with projecting facility-specific changes in marketed ash, the EPA chose not to monetize this benefit category in the analysis of the proposed regulatory options. *See* Chapter 2 in the BCA report for additional details.

5. Changes in Dredging Costs

The proposed regulatory options would affect discharge loadings of various categories of pollutants, including TSS, thereby changing the rate of sediment deposition to affected waterbodies, including navigable waterways and reservoirs that require dredging for maintenance.

Navigable waterways, including rivers, lakes, bays, shipping channels and harbors, are an integral part of the United States transportation network. They are prone to reduced functionality due to sediment build-up, which can reduce the navigable depth and width of the waterway. In many cases, costly periodic dredging is necessary to keep them passable. Reservoirs serve many functions, including storage of drinking and irrigation water supplies, flood control, hydropower supply, and recreation. Streams can carry sediment into reservoirs, where it can settle and cause buildup of silt layers over time. Sedimentation reduces reservoir capacity and the useful life of reservoirs unless measures such as dredging are taken to reclaim capacity. Chapter 10 of the BCA provides additional detail on the methodology.

The EPA expects that Option 4 would provide cost savings ranging from $0.48 million (7 percent discount rate) to $0.72 million (3 percent discount rate) by reducing required dredging maintenance for both navigable waterways and reservoirs. Estimated increases in sediment loadings under Options 1, 2, and 3 would result in cost increases. Cost increases range from $0.05 million to $0.09 million for Option 1, $0.12 million to $0.21 million for Option 2, and $0.04 million to $0.07 million for Option 3.

6. Changes in Air-Related Effects

The EPA expects the proposed options to affect air pollution through three main mechanisms: (1) Changes in auxiliary electricity use by steam electric facilities to operate wastewater treatment, ash handling, and other systems that the EPA predicts facilities would use under each proposed option; (2) changes in transportation-related air emissions due to changes in trucking of CCR waste to landfills; and (3) change in the profile of electricity generation due to the relatively higher or lower costs to generate electricity at steam electric facilities incurring compliance costs under the proposed options.

Changes in the electricity generation profile can increase or decrease air pollutant emissions because emission factors vary for different types of electric boilers. For this analysis, the changes in air emissions are based on the change in dispatch of generation units as projected by IPM V6 given the overlaying of costs for complying with the proposed options onto steam electric boilers' production costs. As discussed in Section VIII of this preamble, the IPM V6 analysis accounts for the effects of other regulations on the electric power sector.

The EPA evaluated potential effects resulting from net changes in air emissions of three pollutants: NO_X, SO_2, and CO_2. NO_X and SO_X are precursors to fine particles sized 2.5 microns and smaller ($PM_{2.5}$), this air pollutant causes a variety of adverse health effects including premature death, non-fatal heart attacks, hospital admissions, emergency department visits, upper and lower respiratory symptoms, acute bronchitis, aggravated asthma, lost work days, and acute respiratory symptoms. CO_2 is a key greenhouse gas linked to a wide range of domestic effects.[94]

The EPA used domestic social cost of carbon estimates to value changes in CO_2 emissions (SC–CO_2). The Agency quantified changes in emissions of $PM_{2.5}$ precursors, NO_X, and SO_2. To map those emission changes to air quality changes across the country, air quality modeling is needed. Prior to this proposal, the EPA's modeling capacity was fully allocated to supporting other regulatory and policy efforts.

Table XII–6 shows the changes in emissions of NO_X, SO_2, and CO_2 based on the estimated increases in electricity generation (see Table VIII–3) for options 2 and 4 (the two regulatory options that the EPA analyzed for these increased emission effects). Table XII–7 shows the total annualized monetary values associated with changes in emissions of CO_2 for options 2 and 4. All total monetary values are negative, indicating that the proposed rule results in net forgone CO_2-related benefits when compared to the baseline. While not monetized, additional forgone benefits associated with $PM_{2.5}$ would also occur. The majority of the forgone benefits are due to changes in the profile of electricity generation. Smaller shares of the changes in total benefits are attributable to changes in energy use to operate wastewater treatment systems. Benefits from changes in trucking emissions are negligible. The EPA did not analyze benefits from changes in air emissions for Options 1 and 3 but instead extrapolated values by scaling air-related benefits under Option 2 in

[94] U.S. EPA. Integrated Science Assessment (ISA) for Particulate Matter (Final Report, Dec 2009). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F, 2009.

proportion to the total social costs of each option. Chapter 8 of the BCA Report provides additional details on the analysis of air-related benefits.

TABLE XII–6—ESTIMATED CHANGES IN AIR EMISSIONS COMPARED TO BASELINE [a]

Regulatory option	Category of emissions	CO_2 (metric tons/year)	NO_X (tons/year)	SO_2 (tons/year)
Option 2	Electricity generation [b c]	5,656,000	4,650	4,930
	Trucking	−490	0	0
	Energy use [b c]	−44,080	−32	−54
	Total [d]	5,611,000	4,620	4,870
Option 4	Electricity generation [b e]	1,244,000	1,900	1,020
	Trucking	1,440	1	0
	Energy use [b e]	59,320	31	20
	Total [d]	1,305,000	1,940	1,040

[a] Negative values represent emission reductions.
[b] Estimated changes in emissions shown for 2028–2032 based on the estimated increase in electricity generation of 0.3% for Option 2 and 0.1% for Option 4.
[c] Option 2 estimates are based on the IPM sensitivity analysis scenario that includes the ACE rule in the baseline (IPM–ACE).
[d] Values may not sum to the total due to independent rounding.
[e] Option 4 estimates are based on IPM analysis scenario that does not include the ACE rule in the baseline.

TABLE XII–7—ESTIMATED ANNUALIZED BENEFITS FROM CHANGES IN CO_2 AIR EMISSIONS (MILLIONS; 2018$) COMPARED TO BASELINE [a]

Regulatory option	Category of emissions	3% Discount rate	7% Discount rate
Option 2	Electricity generation [b]	−$32.0	−$5.2
	Trucking	0.0	0.0
	Energy use [b]	0.4	0.1
	Total [c]	−31.6	−5.2
Option 4	Electricity generation [d]	−4.3	−0.8
	Trucking	0.0	0.0
	Energy use [d]	−0.5	0.0
	Total [c]	−4.8	−0.9

[a] Negative values represent forgone benefits.
[b] Option 2 estimates are based on the IPM sensitivity analysis scenario that includes the ACE rule in the baseline (IPM–ACE).
[c] Values may not sum to the total due to independent rounding.
[d] Option 4 estimates are based on IPM analysis scenario that does not include the ACE rule in the baseline.

7. Benefits From Changes in Water Withdrawals

Steam electric facilities use water for handling BA and operating wet FGD scrubbers. By reducing water used in sluicing operations or prompting the recycling of water in FGD wastewater treatment systems, Option 4 is expected to reduce water withdrawals from surface waters, whereas proposed Options 1, 2, and 3 are expected to increase water withdrawals from surface waterbodies. Option 2 is also expected to increase water withdrawal from aquifers. Using the same methodology used for the 2015 rule, the EPA estimated the monetary value of increased ground water withdrawals based on increased costs of ground water supply. For each relevant facility, the EPA multiplied the increase in ground water withdrawal (in gallons per year) by water costs of about $1,192 per acre-foot. Chapter 9 of the BCA Report provides the details of this analysis. The EPA estimates the changes in annualized benefits of increased ground water withdrawals are less than $0.2 million annually. Due to data limitations, the EPA was not able to estimate the monetary value of changes in surface water withdrawals. Chapter 9 of the BCA Report and Section 7 of the Supplemental TDD provide additional details on the estimated changes in surface water withdrawals.

C. Total Monetized Benefits

Using the analysis approach described above, the EPA estimated the total monetary value of annual benefits of the proposed rule for all monetized categories. Table XII–8 and Table XII–9 summarize the total annualized monetary value of social welfare effects using 3 percent and 7 percent discount rates, respectively. The total monetary value of benefits under Option 2 range from $14.8 million to $68.5 million using a 3 percent discount rate and from $28.4 million to $74.4 million using a 7 percent discount rate.

TABLE XII–8—SUMMARY OF TOTAL ANNUALIZED BENEFITS AT 3 PERCENT
[Millions; 2018$] [a]

Benefit category	Option 1			Option 2			Option 3			Option 4		
	Low	Mid	High	Low	Mid	High	Low	Mid	High	Low	Mid	High
Human Health [d]		−$0.7			$34.8			$39.7			$82.8	
Changes in IQ losses in children from exposure to lead [b]		<0.0			<0.0			<0.0			<0.0	
Changes in IQ losses in children from exposure to mercury		−0.3			−2.84			−2.85			−1.49	
Reduced cancer risk from DBPs in drinking water		−0.4			37.6			42.6			84.3	
Ecological Conditions and Recreational Uses Changes	−$10.0	−$12.5	−$55.5	$11.8	$16.7	$65.6	$16.3	$22.5	$90.7	$19.8	$27.3	$110.2
Use and nonuse values for water quality changes	−10.0	−12.5	−55.5	11.8	16.7	65.6	16.3	22.5	90.7	19.8	27.3	110.2
Market and Productivity [d]	−0.1	−0.1	−0.1	−0.2	−0.2	−0.2	−0.1	−0.1	−0.1	0.6	0.6	0.7
Changes in dredging costs	−0.1	−0.1	−0.1	−0.1	−0.2	−0.2	−0.1	−0.1	−0.1	0.6	0.6	0.7
Reduced water withdrawals [b]		$0.0			<$0.0			$0.0			$0.0	
Air-related effects		−30.3			−31.6			−20.9			−4.8	
Changes in CO_2 air emissions [c]		−30.3			−31.6			−20.9			−4.8	
Total [d]	−$41.0	−$43.6	−$86.6	$14.8	$19.6	$68.5	$35.1	$41.3	$109.4	$98.4	$105.9	$188.9

[a] Negative values represent forgone benefits and positive values represent realized benefits.
[b] "<$0.0" indicates that monetary values are greater than −$0.1 million but less than $0.00 million.
[c] The EPA estimated the air-related benefits for Option 2 using the IPM sensitivity analysis scenario that includes the ACE rule in the baseline (IPM–ACE). EPA extrapolated estimates for Options 1 and 3 air-related benefits from the estimate for Option 2 that is based on IPM–ACE outputs. The values for Option 4 air-related benefits were estimated using the IPM analysis scenario that does not include the ACE rule in the baseline.
[d] Values for individual benefit categories may not sum to the total due to independent rounding.

TABLE XII–9—SUMMARY OF TOTAL ANNUALIZED BENEFITS AT 7 PERCENT
[Millions; 2018$] [a]

Benefit category	Option 1			Option 2			Option 3			Option 4		
	Low	Mid	High	Low	Mid	High	Low	Mid	High	Low	Mid	High
Human Health [d]		−$0.3			$23.6			$26.9			$54.0	
Changes in IQ losses in children from exposure to lead [b]		<0.0			<0.0			<0.0			<0.0	
Changes in IQ losses in children from exposure to mercury		−0.1			−0.6			−0.6			−0.3	
Reduced cancer risk from DBPs in drinking water		−0.2			24.2			27.5			54.3	
Ecological Conditions and Recreational Uses Changes	−$8.6	−$10.9	−$48.1	$10.1	$14.3	$56.1	$14.0	$19.4	$77.8	$17.0	$23.6	$94.6
Use and nonuse values for water quality changes	−8.6	−10.9	−48.1	10.1	14.3	56.1	14.0	19.4	77.8	17.0	23.6	94.6
Market and Productivity [d]	−0.1	−0.1	−0.1	−0.1	−0.2	−0.2	0.0	−0.1	−0.1	0.5	0.5	0.7
Changes in dredging costs	−0.1	−0.1	−0.1	−0.1	−0.1	−0.2	0.0	−0.1	−0.1	0.5	0.5	0.7
Reduced water withdrawals [b]		$0.0			<$0.0			$0.0			$0.0	
Air-related Effects		−4.8			−5.2			−3.7			−0.9	
Changes in CO_2 air emissions [c]		−4.8			−5.2			−3.7			−0.9	
Total [d]	−$13.7	−$16.0	−$53.3	$28.4	$32.6	$74.4	$37.1	$42.5	$100.9	$70.6	$77.2	$148.4

[a] Negative values represent forgone benefits and positive values represent realized benefits.
[b] "<$0.0" indicates that monetary values are greater than −$0.1 million but less than $0.00 million.
[c] The EPA estimated the air-related benefits for Option 2 using the IPM sensitivity analysis scenario that includes the ACE rule in the baseline (IPM–ACE). EPA extrapolated estimates for Options 1 and 3 air-related benefits from the estimate for Option 2 that is based on IPM–ACE outputs. The values for Option 4 air-related benefits were estimated using the IPM analysis scenario that does not include the ACE rule in the baseline.
[d] Values for individual benefit categories may not sum to the total due to independent rounding.

D. Unmonetized Benefits

The monetary value of the proposed rule's effects on social welfare does not account for all effects of the proposed options because, as described above, the EPA is unable to monetize some categories. Examples of effects not reflected in these monetary estimates include health and other effects from changes in NO_X and SO_2 air emissions; changes in certain non-cancer health risks (*e.g.,* effects of cadmium on kidney functions and bone density); impacts of pollutant load changes on threatened and endangered species habitat; and ash marketing changes. The BCA Report discusses changes in these effects qualitatively, indicating their potential magnitude where possible.

XIII. Development of Effluent Limitations and Standards

A. FGD Wastewater

The proposed rule contains new numeric effluent limitations and pretreatment standards that apply to discharges of FGD wastewater at existing sources.[95] The EPA is

[95] Effluent limitations for boilers with nameplate capacity of 50 MW or smaller and for boilers that will retire by December 31, 2028, are not discussed

proposing several sets of effluent limitations and pretreatment standards for FGD wastewater discharges; the specific set of limitations that would apply to any particular facility are determined by which subcategory the facility falls within, or whether it chooses to participate in the voluntary incentives program. The EPA developed the numeric effluent limitations and pretreatment standards in this proposed rule using long-term average effluent values and variability factors that account for variations in performance at well-operated facilities that employ the technologies that constitute the bases for control. The EPA's methodology for derivation of limitations in ELGs is longstanding and has been upheld in court. *See, e.g., Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d 177 (5th Cir. 1989); *Nat'l Wildlife Fed'n* v. *EPA*, 286 F.3d 554 (D.C. Cir. 2002). The EPA establishes the final effluent limitations and standards as ''daily maximums'' and ''maximums for monthly averages.'' Definitions provided in 40 CFR 122.2 state that the daily maximum limitation is the ''highest allowable 'daily discharge' '' and the maximum for monthly average limitation is the ''highest allowable average of 'daily discharges' over a calendar month, calculated as the sum of all 'daily discharges' measured during a calendar month divided by the number of 'daily discharges' measured during that month.'' Daily discharges are defined to be the '' 'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.''

1. Overview of the Limitations and Standards

The EPA's objective in establishing daily maximum limitations is to restrict the discharges on a daily basis at a level that is achievable for a facility that designs and operates its treatment to achieve the long-term average performance that the EPA's statistical analyses show the BAT/PSES technology can attain (*i.e.,* the mean of the underlying statistical distribution of daily effluent values). The EPA recognizes that variability around the long-term average occurs during normal operations. This variability means that facilities occasionally may discharge at a level that is higher than the long-term average, and at other times will discharge at a level that is lower than the long-term average. To allow for these possibly higher daily discharges and provide an upper bound for the allowable concentration of pollutants that may be discharged, while still targeting achievement of the long-term average, the EPA has established the daily maximum limitation. A facility consistently discharging at a level near the daily maximum limitation would be symptomatic of a facility that is *not* operating its treatment to achieve the long-term average. Targeting treatment to achieve the daily limitation, rather than the long-term average, is not consistent with the capability of the BAT/PSES technology basis and may result in values that periodically exceed the limitations due to routine variability in treated effluent.

The EPA's objective in establishing monthly average limitations is to provide an additional restriction to help ensure that facilities target their average discharges to achieve the long-term average. The monthly average limitation requires dischargers to provide ongoing control, on a monthly basis, that supplements controls imposed by the daily maximum limitation. In order to meet the monthly average limitation, a facility must counterbalance a value near the daily maximum limitation with one or more values well below the daily maximum limitation.

2. Criteria Used To Select Data

In developing effluent limitations guidelines and standards for any industry, the EPA qualitatively reviews all the data before selecting data that represents proper operation of the technology that forms the basis for the limitations. The EPA typically uses four criteria to assess the data. The first criterion requires that the facilities have the model treatment technology identified as a candidate basis for effluent limitations (*e.g.,* chemical precipitation with LRTR) and demonstrate consistently diligent and optimal operation. Application of this criterion typically eliminates any facility with treatment other than the model technology. The EPA generally determines whether a facility meets this criterion based upon site visits, discussions with facility management, and/or comparison to the characteristics, operation, and performance of treatment systems at other facilities. The EPA reviews available information to determine whether data submitted were representative of normal operating conditions for the facility and equipment. As a result of this review, the EPA typically excludes the data in developing the limitations when the facility has not optimized the performance of its treatment system.

A second criterion generally requires that the influents and effluents from the treatment components represent typical wastewater from the industry, without incompatible wastewater from other sources. Application of this criterion results in the EPA selecting those facilities where the commingled wastewaters did not result in substantial dilution, unequalized slug loads resulting in frequent upsets and/or overloads, more concentrated wastewaters, or wastewaters with different types of pollutants than those generated by the wastestream for which the EPA is proposing effluent limitations and pretreatment standards.

A third criterion typically ensures that the pollutants are present in the influent at sufficient concentrations to evaluate treatment effectiveness. If a data set for a pollutant shows that the pollutant was not present at a treatable concentration at sufficient frequency (*e.g.,* the pollutant was below the level of detection in all influent samples), the EPA excludes the data for that pollutant at that facility when calculating the limitations.

A fourth criterion typically requires that the data are valid and appropriate for their intended use (*e.g.,* the data must be analyzed with a sufficiently sensitive method). Also, the EPA does not use data associated with periods of treatment upsets because these data would not reflect the performance from well-designed and well-operated treatment systems. In applying the fourth criterion, the EPA may evaluate the pollutant concentrations, analytical methods and the associated quality control/quality assurance data, flow values, mass loading, facility logs, test reports, and other available information. As part of this evaluation, the EPA reviews the process or treatment conditions that may have resulted in extreme values (high and low). As a consequence of this review, the EPA may exclude data associated with certain time periods or other data outliers that reflect poor performance or analytical anomalies by an otherwise well-operated site.

The fourth criterion also is applied in the EPA's review of data corresponding to the initial commissioning period for treatment systems (and startup periods for pilot test equipment). Most industries incur commissioning periods during the adjustment period associated with installing new treatment systems. During this acclimation and optimization process, the effluent concentration values tend to be highly variable with occasional extreme values (high and low). This occurs because the treatment system typically requires

in this section. The proposed limitations for these generating units are based on the previously established BPT limitations on TSS.

some ''tuning'' as the facility staff and equipment and chemical vendors work to determine the optimum chemical addition locations and dosages, vessel hydraulic residence times, internal treatment system recycle flows (*e.g.,* filter backwash frequency, duration and flow rate, return flows between treatment system components), and other operational conditions including clarifier sludge wasting protocols. It may also take time for treatment system operators to gain expertise on operating the new treatment system, which also contributes to treatment system variability during the commissioning period. After this initial adjustment period, the systems should operate at steady state with relatively low variability around a long-term average over many years. Because commissioning periods typically reflect one-time operating conditions unique to the first time the treatment system begins operation, the EPA generally excludes such data in developing the limitations.[96]

3. Data Used To Calculate Limitations and Standards

The Supplemental TDD provides a description of the data and methodology used to develop long-term averages, variability factors, and limitations and standards for this proposed rule. The effluent limitations and pretreatment standards for the low utilization subcategory and high flow subcategory are based on chemical precipitation. The derivation of the limitations for these subcategories and the data used are described in Section 13 of the 2015 TDD. The new limitations and pretreatment standards proposed today for facilities not in those subcategories and for the voluntary incentives plan were derived from a statistical analysis of effluent data collected by facilities during extended testing of the LRTR technology and membrane filtration technology, respectively. The duration of the test programs at these facilities spanned from approximately one month for membranes to more than a year for LRTR, enabling the EPA to evaluate long-term performance of these technologies under conditions that can contribute to influent variability, including varying power demand, changes in coal suppliers, and changes in operation of the air pollution control system. The tests occurred over different seasons of the year and demonstrate that the technologies operate effectively under varying climate conditions.

During the development of these new limitations and pretreatment standards, the EPA identified certain data that warranted exclusion because: (1) The samples were analyzed using a method that is not sensitive enough to reliably quantify the pollutants present (*e.g.,* use of EPA Method 245.1 to measure the concentration of mercury in effluent samples); (2) the analytical results were identified as questionable due to quality control issues associated with the laboratory analysis or sample collection, or were analytical anomalies; (3) the samples were collected prior to steady-state operating condition and do not represent BAT/PSES level of performance; (4) the samples were collected during a period where influent composition did not reflect the FGD wastewater (*e.g.,* untreated FGD wastewater was mixed with large volume of non-FGD wastewater prior to the treatment system); (5) the treatment system was operating in a manner that does not represent BAT/PSES level of performance; or (6) the samples were collected from a location that is not representative of treated effluent.

4. Long-Term Averages and Effluent Limitations and Standards for FGD Wastewater

Table XIV–1 presents the proposed effluent limitations and standards for FGD wastewater. For comparison, the table also presents the long-term average treatment performance calculated for each parameter. Due to routine variability in treated effluent, a power facility that targets discharging its wastewater at a level near the values of the daily maximum limitation or the monthly average limitation may periodically experience values exceeding the limitations. For this reason, the EPA recommends that facilities design and operate the treatment system to achieve the long-term average for the model technology. In doing so, a system that is designed and operated to achieve the BAT/PSES level of control would meet the limitations.

The EPA expects that facilities will be able to meet their effluent limitations or standards at all times. If an exceedance is caused by an upset condition, the facility would have an affirmative defense to an enforcement action if the requirements of 40 CFR 122.41(n) are met. Exceedances caused by a design or operational deficiency, however, are indications that the facility's performance does not represent the appropriate level of control. For these proposed limitations and pretreatment standards, the EPA proposes to determine that such exceedances can be controlled by diligent process and wastewater treatment system operational practices, such as regular monitoring of influent and effluent wastewater characteristics and adjusting dosage rates for chemical additives to target effluent performance for regulated pollutants at the long-term average concentration for the BAT/PSES technology. Additionally, some facilities may need to upgrade or replace existing treatment systems to ensure that the treatment system is designed to achieve performance that targets the effluent concentrations at the long-term average. This is consistent with the EPA's costing approach and its engineering judgment, developed over years of evaluating wastewater treatment processes for steam electric facilities and other industrial sectors. The EPA recognizes that some dischargers, including those that are operating technologies representing the technology basis for the proposed rule, may need to improve their treatment systems, process controls, and/or treatment system operations in order to consistently meet the proposed effluent limitations and pretreatment standards. This is consistent with the CWA, which requires that BAT/PSES discharge limitations and standards reflect the best available technology economically achievable.

See Section 8 of the Supplemental TDD for more information about the calculation of the limitations and pretreatment standards presented in the tables below.

[96] Examples of conditions that are typically unique to the initial commissioning period include operator unfamiliarity or inexperience with the system and how to optimize its performance; wastewater flow rates that differ significantly from engineering design, altering hydraulic residence times, chemical contact times, and/or clarifier overflow rates, and potentially causing large changes in planned chemical dosage rates or the need to substitute alternative chemical additives; equipment malfunctions; fluctuating wastewater flow rates or other dynamic conditions (*i.e.,* not steady state operation); and initial purging of contaminants associated with installation of the treatment system, such as initial leaching from coatings, adhesives, and susceptible metal components. These conditions differ from those associated with the restart of an already-commissioned treatment system, such as may occur from a treatment system that has undergone either short or extended duration shutdown.

TABLE XIV–1—LONG-TERM AVERAGES AND EFFLUENT LIMITATIONS AND PRETREATMENT STANDARDS FOR FGD WASTEWATER FOR EXISTING SOURCES (BAT/PSES) [a]

Subcategory	Pollutant	Long-term average	Daily maximum limitation	Monthly average limitation
Requirements for all facilities not in the VIP or subcategories specified below (BAT & PSES).	Arsenic (μg/L)	5.1	18	9
	Mercury (ng/L)	13.5	85	31
	Nitrate/nitrite as N (mg/L)	2.6	4.6	3.2
	Selenium (μg/L)	16.6	76	31
Voluntary Incentives Program for FGD Wastewater (BAT only).	Arsenic (μg/L)	[b] 5.0	[c] 5	([d])
	Mercury (ng/L)	5.1	21	9
	Nitrate/nitrite as N (mg/L)	0.4	1.1	0.6
	Selenium (μg/L)	5.0	21	11
	Bromide (mg/L)	0.16	0.6	0.3
	TDS (mg/L)	88	351	156
Low utilization subcategory—AND—High flow subcategory (BAT & PSES).	Arsenic (μg/L)	5.98	11	8
	Mercury (ng/L)	159	788	356

[a] BAT effluent limitations for boilers with nameplate capacity of 50 MW or smaller, and boilers that will retire by December 31, 2028, are based on the previously established BPT limitations on TSS and are not shown in this table. The BAT effluent limitations for TSS for these retiring boilers is daily maximum of 100 mg/L; monthly average of 30 mg/L.
[b] Long-term average is the arithmetic mean of the quantitation limitations since all observations were not detected.
[c] Limitation is set equal to the quantitation limit for the data evaluated.
[d] Monthly average limitation is not established when the daily maximum limitation is based on the quantitation limit.

The EPA notes that while some limitations are higher than corresponding limits in the 2015 rule, in other cases limitations of additional pollutants or lower limitations for pollutants regulated in the 2015 rule have also been calculated. The EPA solicits comment on the demonstrated ability or inability of existing systems to meet the limitations in this proposal, the costs associated with modifying existing systems or with modifying the operation of existing systems to meet these limits, and whether any existing systems with demonstrated issues meeting these limits would be best addressed through FDF variances or through subcategorization. Furthermore, should the EPA determine subcategorization of facilities with existing FGD treatment systems is warranted, the EPA solicits comment on what limitations should apply to those facilities, including whether the 2015 rule limits would be appropriate for such facilities.

B. BA Transport Water Limitations

1. Maximum 10 Percent 30-Day Rolling Average Purge Rate

In contrast to the limitations estimated for specific pollutants above, the EPA is proposing a pollutant discharge allowance in the form of a maximum percentage purge rate for BA transport water. To develop this allowance, the EPA first collected data on the discharge needs of the model treatment technology (high recycle rate systems) to maintain water chemistry or water balance.[97] EPRI (2016) presents discharge data from seven currently operating wet BA transport water systems at six facilities. These facilities were able to recycle most or all BA transport water from these seven systems, resulting in discharges of between zero and two percent of the system volume. The EPA's goal in establishing the proposed purge rate was to provide an allowance to address the challenges that would be incorporated in the EPRI (2016) data, as well as infrequent precipitation and maintenance events, the EPA also needed a way to account for such infrequent events. While EPRI (2016) noted that infrequent discharges happened at some facilities, it did not include such events in its discharge calculations. As a result, EPA looked to EPRI (2018), which presents hypothetical maximum discharge volumes and the estimated frequency associated with such infrequent events for currently operating wet BA systems.[98] Since these calculations are only estimates, the EPA solicits data on actual precipitation and maintenance-related discharges. For purposes of calculating the allowance percentage associated with such infrequent events, the EPA divided the discharge associated with an estimated maintenance and precipitation event by the volume of the system, and then averaged the resulting percent over 30 days.

Finally, the EPA added each reported regular discharge percent from EPRI (2016) to the averaged infrequent discharge percent under four scenarios: (1) With no infrequent discharge event, (2) with only a precipitation-related discharge event, (3) with only a maintenance-related discharge event, and (4) with both a precipitation-related and maintenance-related discharge event. These potential discharge needs are reported in Table XIV–2 below. Consistent with the statistical approach used to develop limitations and pretreatment standards for individual pollutants, the EPA selected a 95th percentile of 10 percent of total system volume as representative of the 30-day rolling average.[99]

[97] Although the technology basis includes dry handling, the limitation is based on the necessary purge volumes of a wet, high recycle rate BA system.

[98] Although presented in EPRI (2018), the EPA did not consider events such as pipe leaks, as these would not be reflective of proper system operation (*see* DCN SE06920).

[99] While there were further decimal points for the actual calculated 95th percentile, the EPA notes that 10 percent is two significant digits, consistent with the limitations for FGD wastewater pollutants. Furthermore, a 10 percent volumetric limit will be easier for implementation by the permitting authority as it results in a simple decimal point movement for calculations.

TABLE XIV–2—30-DAY ROLLING AVERAGE DISCHARGE VOLUME AS A PERCENT OF SYSTEM VOLUME [a]

Infrequent discharge needs as estimated in EPRI (2018)		Regular discharge needs to maintain water chemistry and/or water balance as characterized in EPRI (2016)						
Type of infrequent discharge event	30-Day rolling average	Facility A	Facility B	Facility C	Facility D	Facility E	Facility F—System 1	Facility F—System 2
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
		0.1	0.0	1.0	0.0	0.8	2.0	2.0
Neither Event	0.0	0.1	0.0	1.0	0.0	0.8	2.0	2.0
Precipitation Only	5.4	5.5	5.4	6.4	5.4	6.2	7.4	7.4
Maintenance Only	3.3	3.4	3.3	4.3	3.3	4.1	5.3	5.3
Both Events	8.7	8.8	8.7	9.7	8.7	9.5	10.7	10.7

[a] These estimates sum actual/reported, facility-specific regular discharge needs with varying combinations of hypothetically estimated, infrequent discharge needs.

The EPA recognizes that some facilities may need to improve their equipment, process controls, and/or operations to consistently meet the zero discharge standard established by the 2015 rule. However, with the discharge allowance included in this proposed rule, the EPA expects that facilities would be able to avoid these costs in most circumstances. For example, in the table above, only when the Facility F systems experience both high-end precipitation- and maintenance-related discharge events could the required discharge potentially exceed the 30-day rolling average of 10 percent. This is consistent with the CWA, which requires that BAT/PSES discharge limitations and standards reflect the best available technology economically achievable. For further discussion of costs associated with managing a fully-closed-loop system, *see* Section 5 of the Supplemental TDD.

2. Best Management Practices Plan

As described in Section VII of this preamble, one of the regulatory options presented in today's proposed rule would require a subcategory of facilities discharging BA transport water and having low MWh production to develop and implement a BMP plan to recirculate BA transport water back to the BA handling system (*see* Section VII of this preamble for more details).

The proposed BMP provisions would require applicable facilities to develop a plan to minimize the discharge of pollutants by recycling as much BA transport water as practicable back to the BA handling system. For example, if a facility could recycle 80 percent of its BA transport water for a few thousand dollars, but recycling 81 percent would require the installation of a multi-million dollar system, the former would be practicable, but the latter would not.[100] After determining the amount of BA transport water that could be easily recycled and developing a facility-specific BMP plan, facilities are required to implement the plan and annually review and revise the plan as necessary.

XIV. Regulatory Implementation

A. Implementation of the Limitations and Standards

The requirements in this rule apply to discharges from steam electric facilities through incorporation into NPDES permits issued by the EPA or by authorized states under Section 402 of the Act, and through local pretreatment programs under Section 307 of the Act. Permits or control mechanisms issued after this rule's effective date must incorporate the ELGs, as applicable. Also, under CWA section 510, states can require effluent limitations under state law as long as they are no less stringent than the requirements of this rule. Finally, in addition to requiring application of the technology-based ELGs in this rule, CWA section 301(b)(1)(C) requires the permitting authority to impose more stringent effluent limitations, as necessary, to meet applicable water quality standards.

1. Timing

The direct discharge limitations proposed in this rule would apply only when implemented in an NPDES permit issued to a discharger. Under the CWA, the permitting authority must incorporate these ELGs into NPDES permits as a floor or a minimum level of control. The proposed rule would allow a permitting authority to determine a date when the new effluent limitations for FGD wastewater and BA transport water will apply to a given discharger. As proposed, the permitting authority would make these effluent limitations applicable on or after November 1, 2020. For any final effluent limitation that is specified to become applicable after November 1, 2020, the specified date must be as soon as possible, but in no case later than December 31, 2023, for BA transport water, or December 31, 2025, for FGD wastewater. For dischargers choosing to meet the voluntary incentives program effluent limitations for FGD wastewater, the date for meeting those limitations is December 31, 2028.

For FGD wastewater and BA transport water from boilers retiring by 2028, the proposed BAT limitations would apply on the date that a permit is issued to a discharger. The proposed rule does not build in an implementation period for meeting these limitations, as the BAT limitation on TSS is equal to the previously promulgated BPT limitation on TSS. Pretreatment standards are self-implementing, meaning they apply directly, without the need for a permit. As defined by the statute, the pretreatment standards for existing sources must be met by three years after the effective date of any final rule.

Regardless of when a facility's NPDES permit is ready for renewal, the EPA recommends that each facility immediately begin evaluating how it intends to comply with the requirements of any final rule. In cases where significant changes in operation are appropriate, the EPA recommends that the facility discuss such changes with its permitting authority and evaluate appropriate steps and a timeline for the changes as soon as a final rule is issued, even prior to the permit renewal process.

In cases where a facility's final NPDES permit is issued before these ELGs are finalized, and includes limitations for BA transport water and/or FGD wastewater from the 2015 rule, EPA recommends such a permit be reopened as soon as practicable, and modified consistent with any new rule provisions.

For permits that are issued on or after November 1, 2020, the permitting

[100] The limit of what is practicable at a facility may change drastically after making changes to comply with the CCR rule. For instance, if a facility closes its unlined surface impoundment and installs a remote MDS, the recycle rate that is practicable may approach that of the high recycle systems that the EPA used to establish BAT for units not falling into this subcategory.

authority would determine the earliest possible date that the facility can meet the limitations (but in no case later than December 31, 2023, for BA transport water or December 31, 2025, for FGD wastewater), and apply the proposed limitations as of that date (BPT limitations or the facility's other applicable permit limitations would apply until such date).

As proposed, the ''as soon as possible'' date determined by the permitting authority is November 1, 2020, unless the permitting authority determines another date after receiving facility-specific information submitted by the discharger.[101] EPA is not proposing to revise the specified factors that the permitting authority must consider in determining the as soon as possible date. Assuming that the permitting authority receives relevant, site-specific information from each discharger, in order to determine what date is ''as soon as possible'' within the implementation period, the factors established in the 2015 rule are:

(a) Time to expeditiously plan (including to raise capital), design, procure, and install equipment to comply with the requirements of the final rule.[102]

(b) Changes being made or planned at the facility in response to greenhouse gas regulations for new or existing fossil fuel-fired facilities under the Clean Air Act, as well as regulations for the disposal of coal combustion residuals under subtitle D of the Resource Conservation and Recovery Act.

(c) For FGD wastewater requirements only, an initial commissioning period to optimize the installed equipment.

(d) Other factors as appropriate.

The EPA proposes to clarify that the discharger must provide relevant, site-specific information for consideration of these factors by the permitting authority. Environmental groups informed the EPA that facilities had filed permit applications for, and states had granted, delayed applicability dates based on information about a facility other than the one being permitted. This was not the intent of the 2015 rule, and the EPA solicits comment on other potential misunderstandings of the factors presented in the 2015 rule that may have caused confusion or led to misunderstandings.

As specified in factor (b), the permitting authority must also consider scheduling for installation of equipment, which includes a consideration of facility changes planned or being made to comply with certain other key rules that affect the steam electric power generating industry. As specified in factor (c), for the FGD wastewater requirements only, the permitting authority must consider whether it is appropriate to allow more time for implementation in order to ensure that the facility has appropriate time to optimize any relevant technologies.

The ''as soon as possible'' date determined by the permitting authority may or may not be different for each wastestream. The permitting authority should provide a well-documented justification of how it determined the ''as soon as possible'' date in the fact sheet or administrative record for the permit. If the permitting authority determines a date later than November 1, 2020, the justification should explain why allowing additional time to meet the proposed limitations is appropriate, and why the discharger cannot meet the effluent limitations as of November 1, 2020. In cases where the facility is already operating the proposed BAT technology basis for a specific wastestream (*e.g.,* dry FA handling system), operates the majority of the proposed BAT technology basis (*e.g.,* FGD chemical precipitation and biological treatment, without sulfide addition), or expects that relevant treatment and process changes would be in place prior to November 1, 2020 (for example due to the CCR rule), it would not usually be appropriate to allow additional time beyond that date. Regardless, in all cases, the permitting authority would make clear in the permit by what date the facility must meet the proposed limitations, and that date, as proposed, would be no later than December 31, 2023, for BA transport water, or December 31, 2025, for FGD wastewater.

Where a discharger chooses to participate in the VIP and be subject to effluent limitations for FGD wastewater based on membranes, the permitting authority must allow the facility up to December 31, 2028, to meet those limitations. Again, the permit must make clear that the facility must meet the limitations by December 31, 2028.

2. Implementation for the Low Utilization Subcategory

The EPA is proposing to establish a new subcategory for low utilization boilers with net generation below 876,000 MWh per year. The EIA defines net generation as, ''The amount of gross generation less the electrical energy consumed at the generating station(s) for station service or auxiliaries. Note: Electricity required for pumping at pumped-storage plants is regarded as electricity for station service and is deducted from gross generation.'' [103] Unlike other subcategories, which often require that a facility possess some static characteristic (*e.g.,* less than 50 MW nameplate capacity), the proposed low utilization subcategory is based on the fluctuating net generation reported annually to the EIA. Thus, the EPA is clarifying how permitting authorities can determine whether a facility qualifies for this subcategorization, and how limitations for boilers in this subcategorization are to be implemented.

a. Determining Boiler Net Generation

When a facility seeks to have limitations for one or more subcategorized boilers incorporated into its permit, the EPA is proposing that the facility provide the permitting authority its calculation of the average of the most recent two calendar years of net generation for that boiler(s). A facility wishing to seek this subcategory, must operate below this threshold before the latest implementation dates, but a permitting authority should also refrain from establishing a ''no later than date'' which would restrict a facility from demonstrating two years of reduced net generation. This average should primarily be collected and calculated using data developed for reporting to the EIA, since using net generation information already collected for the EIA will both eliminate the potentially unnecessary paperwork burden of a separate information gathering and calculations and allow the permitting authority to more easily verify the accuracy of the reported values. If it is necessary for a facility to apportion facility-wide energy consumption not specifically attributable to individual boilers, the facility must apportion this consumption proportionally, by boiler nameplate capacity, unless it adequately documents a sufficient rationale for an alternate apportionment. The use of a two-year average will ensure that a low utilization boiler responding to a single extreme demand event in one year (*e.g.,*

[101] Information in the record indicates that most facilities should be able to complete all steps to implement changes needed to comply with proposed BA transport water requirements within 15–23 months, and the FGD wastewater requirements within 26 to 34 months.

[102] Cooperatives and municipalities presented information to the EPA suggesting that obtaining financing for these projects can be more challenging than for investor-owned utilities. Under this factor, permitting authorities may consider whether the type and size of owner and difficulty in obtaining the expected financing might warrant additional flexibility up to the ''no later than'' date.

[103] *See* EIA Glossary, available online at: *https://www.eia.gov/tools/glossary/index.php?id=N.*

unexpectedly high peak demand in summer or winter) can still qualify for this subcategory if its average net generation over the two years remains below 876,000 MWh. Furthermore, the facility must annually provide the permitting authority an updated two-year average net generation for each subcategorized boiler within 60 days of submitting annual net generation information to the EIA.

b. Tiering Limitations

In cases where a facility seeks to have limitations for this subcategory incorporated into its permit, the EPA is proposing that a permitting authority incorporate two additional features. First, the EPA is proposing that the limitations for this subcategory be included as the first of two sets of limitations. The second set of limitations would be those applicable to the rest of the steam electric generation point source category. Second, the EPA is proposing that these tiered limits have a two-year timeframe to be implemented for a facility exceeding the two-year net generation requirements as measured per calendar year. For example, if a facility reported it exceeded a two-year average net generation of 876,000 MWh for a unit, it would have two years before discharges of FGD wastewater and BA transport water would henceforth be subject to the second tier of limitations.[104] Application of the second tier would preclude future use of the low utilization subcategory.

These tiered limitations would ensure that, if a boiler that qualified for this subcategorization changes its operation such that it no longer qualifies, it would be automatically subject to the second set of limitations. An automatic feature makes sense for several reasons. Tiered limitations are beneficial to the regulated facility because they provide certainty that the facility would not be considered in violation of its permit initially, when exceeding the required net generation, nor subsequently, during the two-year timeframe over which it has to meet the second tier of effluent limitations. Two years is also consistent with the engineering documents provided to the EPA for the installation of the appropriate technologies. Tiered limitations are beneficial to the state because they avoid the potentially onerous permit modification process and its burden to the permitting authority. Finally, tiered limitations are beneficial to the environment because they ensure a timely transition to more stringent limitations as soon as the reason for the less stringent limitations (disproportionate cost) is gone. The EPA solicits comment on the inclusion of tiered limitations.

3. Addressing Withdrawn or Delayed Retirement

Since the 2015 rule, the EPA has learned of several instances when facilities have withdrawn or delayed retirement announcements for coal-fired boilers and facilities. These instances can be grouped into two categories. First, some delays were involuntary, resulting from orders issued by the Department of Energy (DOE) or Public Utility Commissions (PUCs). The remaining announcements were withdrawn or delayed voluntarily due to changed circumstances. While both the voluntary and involuntary changes to announced retirements were infrequent, the EPA acknowledges that such changes will necessarily impact a facility's status with regard to some of the new subcategories in today's proposal. These situations are discussed below. For further information on announced retirements, *see* DCN SE07207.

a. Involuntary Retirement Delays

At least five facilities with announced retirement dates had those dates involuntarily delayed as a result of the DOE issuing orders under Section 202(c) of the Federal Power Act, or a PUC issuing a reliability must-run agreement. Such involuntary operations have raised questions about the conflict between legal obligations to produce electricity and legal obligations under environmental statutes.[105] Today's proposal would subcategorize low utilization boilers and boilers retiring by 2028, subjecting those subcategories to less stringent limitations. However, both utilization and retirement could be impacted by involuntary orders and agreements. Thus, the EPA proposes a savings clause that would be included in all permits where a facility seeks limitations under one of these two subcategories. Such a savings clause would protect a facility which involuntarily fails to qualify for the subcategory for low utilization or retiring boilers, and would allow that facility to prove that, but for the order or agreement, it would have qualified for the subcategory. The EPA solicits comment on whether the proposed savings clause is broad enough to address all scenarios that may result in a mandatory order to operate a boiler.

b. Voluntary Retirement Withdrawals and Delays

Units at five facilities with announced retirement dates had those dates voluntarily withdrawn or delayed due to changed situations, including market conditions, unavailability of natural gas pipelines, changes in environmental regulations, and sale of the facility. Like the involuntary retirement delays discussed in the section above, these situations could impact a facility's qualification for the proposed subcategories for low utilization boilers and boilers retiring by 2028. Unlike the involuntary retirement delays, these voluntary delays and withdrawals can be accounted for through the normal integrated resource planning process. Thus, the EPA does not propose a similar savings clause for such units. Instead, a facility should carefully plan its implementation of the ELGs.

B. Reporting and Recordkeeping Requirements

This proposal includes five new reporting and recordkeeping standards. First, the EPA is proposing a reporting and recordkeeping standard for facilities operating high recycle rate BA systems. The EPA is proposing that such facilities submit the calculation of the primary active wetted BA system volume, which means the maximum volumetric capacity of BA transport water in all piping (including recirculation piping) and primary tanks of a wet bottom ash system, excluding the volumes of installed spares, redundancies, maintenance tanks, other secondary bottom ash system equipment, and non-bottom ash transport systems that may direct process water to the bottom ash system. This ensures that the permitting authority can verify the volume of discharge allowed for a high recycle rate system. The EPA solicits comment on the specific components of the BA transport water system that should be included and/or excluded from the calculation of primary active wetted BA system volume.

Second, the EPA is proposing a reporting and recordkeeping requirement for facilities seeking subcategorization of low utilization boilers. The EPA is proposing that, as part of any permit renewal or re-opening, such facilities submit a calculation of the two-year average net generation for each applicable boiler to

[104] Once a facility installs the capital equipment needed to meet the second tier of limitations, O&M costs will be proportional to the utilization of the boiler, and thus would no longer result in disproportionate costs.

[105] Moeller, James. 2013. *Clean air vs. electric reliability: The case of the Potomac River Generating Station*. September. Available online at: *https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1077&context=jece.*

the permitting authority, including underlying information. Once any limitations of this subcategory are applicable, the EPA is proposing that such a facility annually recertify that the boiler continues to meet the requirements of this subcategory, along with an updated two-year average net generation calculation and information for each applicable boiler. As proposed, if a boiler exceeds the MWh requirements of this subcategory, no further recordkeeping or reporting would be required, as this boiler would be treated the same as the rest of the steam electric point source category after the necessary treatment equipment was installed and operational at the end of two years.

Third, as described in Section VII.C.2, facilities with boilers that qualify for the low-utilization subcategory and that discharge BA transport water, would be required to develop and implement a BMP plan to minimize the discharge of pollutants by recycling as much BA transport water as practicable back to the BA handling system. As part of any permit renewal or any re-opening, such facilities would need to submit their facility-specific plan (certified that it meets the proposed requirements of 40 CFR 423.13(k)(3)) along with a certification that the plan is being implemented. For each permit renewal, the plan and PE certification should be updated and provided to the permitting authority.

Fourth, the EPA is proposing reporting and recordkeeping requirements for facilities seeking subcategorization for a boiler(s) retiring by December 31, 2028. The EPA is proposing that, as part of the permit renewal or re-opening, which are when a facility would make this request, such facilities submit a one-time certification to the permitting authority stating the date of expected retirement from the combustion of coal, and provide a citation to any filing, integrated resource plan, or other documentation in support of that date. This citation is meant to provide the permitting authority further evidence that a boiler will, in fact, cease the production of electricity by that date.

Finally, the EPA is proposing reporting and recordkeeping requirements for facilities invoking the proposed savings clause. The EPA is proposing that such facilities must demonstrate that a boiler would have qualified for the subcategory at issue, if not for the emergency order issued by the DOE under Section 202(c) of the Federal Power Act or PUC reliability must-run agreement. Furthermore, the EPA is proposing to require a copy of such order or agreement as an attachment to the submission.

C. Site-Specific Water Quality-Based Effluent Limitations

The EPA regulations at 40 CFR 122.44(d)(1) require that each NPDES permit shall include any requirements, in addition to or more stringent than effluent limitations guidelines or standards promulgated pursuant to sections 301, 304, 306, 307, 318 and 405 of the CWA, necessary to achieve water quality standards established under section 303 of the CWA, including state narrative criteria for water quality. Furthermore, those same regulations require that limitations must control all pollutants, or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, including state narrative criteria for water quality.

Bromide was discussed in the preamble to the 2015 rule as a parameter for which water quality-based effluent limitations may be appropriate. The EPA stated its recommendation that permitting authorities carefully consider whether water quality-based effluent limitations on bromide or TDS would be appropriate for FGD wastewater discharges from steam electric facilities upstream of drinking water intakes. The EPA also stated its recommendation that the permitting authority notify any downstream drinking water treatment plants of the discharge of bromide.

The EPA is not proposing additional limitations on bromide for FGD wastewater beyond the removals that might be accomplished by facilities choosing to implement the VIP limitations, though the EPA is soliciting comment on the three potential bromide-specific sub-options presented in Section VII of this preamble. The record continues to suggest that state permitting authorities should consider establishing water quality-based effluent limitations that are protective of populations served by downstream drinking water treatment facilities. As described in Section XII, the analysis of changes in human health benefits associated with changes in bromide discharges are concentrated at a small number of sites. This supports the EPA's determination that potential discharges are best addressed using site-specific, water quality-based effluent limitations established by permitting authorities for the small number of steam electric facilities that may impact downstream drinking water treatment facilities.

XV. Related Acts of Congress, Executive Orders, and Agency Initiatives

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

This proposed rule is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential social costs and benefits associated with this action. This analysis is contained in Chapter 13 of the BCA, available in the docket. The analysis in the BCA builds on compliance costs and certain other assumptions regarding compliance years discussed in the RIA to estimate the incremental social costs and benefits of the four proposed options relative to the baseline. Analyzing the options against the baseline enables the Agency to characterize the incremental impact of ELG revisions proposed by this action.

Table XV–1 presents the annualized value of the social costs and benefits over 27 years and discounted using a three percent discount rate as compared to the updated baseline. Table XV–2 presents annualized values using a seven percent discount rate. In both tables, negative costs indicate avoided costs (*i.e.,* cost savings) and negative benefits indicate forgone benefits.

TABLE XV–1—TOTAL MONETIZED ANNUALIZED BENEFITS AND COSTS OF PROPOSED REGULATORY OPTIONS

[Million of 2018$, three percent discount rate] [a]

Regulatory option	Total social costs [b]	Total monetized benefits [c d e]		
		Low estimate	Mid estimate	High estimate
Option 1	−$130.6	−$41.0	−$43.6	−$86.6
Option 2	−136.3	14.8	19.6	68.5

TABLE XV–1—TOTAL MONETIZED ANNUALIZED BENEFITS AND COSTS OF PROPOSED REGULATORY OPTIONS—Continued

[Million of 2018$, three percent discount rate] [a]

Regulatory option	Total social costs [b]	Total monetized benefits [c d e]		
		Low estimate	Mid estimate	High estimate
Option 3	−90.1	35.1	41.3	109.4
Option 4	11.9	98.4	105.9	188.9

[a] All social costs and benefits were annualized over 27 years using a 3% discount rate. Negative costs indicate avoided costs and negative benefits indicate forgone benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding.
[b] Total social costs are compliance costs to facilities accounting for the timing those costs are incurred.
[c] Total monetized benefits exclude other benefits discussed qualitatively.
[d] The EPA estimated the air-related benefits for Option 2 using the IPM sensitivity analysis scenario that includes the ACE rule in the baseline (IPM–ACE). EPA extrapolated estimates for Options 1 and 3 air-related benefits from the estimate for Option 2 that is based on IPM–ACE outputs. The values for Option 4 air-related benefits were estimated using the IPM analysis scenario that does not include the ACE rule in the baseline. *See* Chapter 8 in the BCA for details). The EPA estimated air-related benefits for Options 1 and 3 by multiplying the total costs for each option by the ratio of [air-related benefits/total social costs] for Option 2. The EPA did not monetize benefits of changes in NO_X and SO_2 emissions and associated changes in $PM_{2.5}$ levels for any option.
[e] The EPA estimated use and nonuse values for water quality improvements using two different meta-regression models of WTP. One model provides the low and high bounds while a different model provides a central estimate (included in this table under the mid-range column). For this reason, the mid benefit estimate differs from the midpoint of the benefits range. For details, *see* Chapter 5 in the BCA.

TABLE XV–2—TOTAL MONETIZED ANNUALIZED BENEFITS AND COSTS OF PROPOSED REGULATORY OPTIONS

[Million of 2018$, seven percent discount rate] [a]

Regulatory option	Total social costs [b]	Total monetized benefits [c d e]		
		Low estimate	Mid estimate	High estimate
Option 1	−$154.0	−$13.7	−$16.0	−$53.3
Option 2	−166.2	28.4	32.6	74.4
Option 3	−119.5	37.1	42.5	100.9
Option 4	−27.3	70.6	77.2	148.4

[a] All social costs and benefits were annualized over 27 years using a 7% discount rate. Negative costs indicate avoided costs and negative benefits indicate forgone benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding.
[b] Total social costs are compliance costs to facilities accounting for the timing those costs are incurred.
[c] Total monetized benefits exclude other benefits discussed qualitatively.
[d] The EPA estimated the air-related benefits for Option 2 using the IPM sensitivity analysis scenario that includes the ACE rule in the baseline (IPM–ACE). EPA extrapolated estimates for Options 1 and 3 air-related benefits from the estimate for Option 2 that is based on IPM–ACE outputs. The values for Option 4 air-related benefits were estimated using the IPM analysis scenario that does not include the ACE rule in the baseline. *See* Chapter 8 in the BCA for details). The EPA estimated air-related benefits for Options 1 and 3 by multiplying the total costs for each option by the ratio of [air-related benefits/total social costs] for Option 2. The EPA did not monetize benefits of changes in NO_X and SO_2 emissions and associated changes in $PM_{2.5}$ levels for any option.
[e] The EPA estimated use and nonuse values for water quality improvements using two different meta-regression models of WTP. One model provides the low and high bounds while a different model provides a central estimate (included in this table under the mid-range column). For this reason, the mid benefit estimate differs from the midpoint of the benefits range. For details, *see* Chapter 5 in the BCA.

B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

The proposed regulatory options would be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of the regulatory options are located in the RIA, and in Tables XV–1 and XV–2 above.

C. Paperwork Reduction Act

OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 423 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0281. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA estimated small changes in monitoring costs at steam electric facilities under the regulatory options presented in today's proposal relative to the baseline. As proposed, these changes would apply to facilities for which the proposed subcategories are applicable. In some cases, in lieu of these monitoring requirements, facilities would have additional paperwork burden such as that associated with certifications and applicable BMP plans. *See* Section VII of this preamble. However, some facilities would also realize savings, relative to the baseline, by no longer monitoring pollutants for some subcategories of boilers (and because their applicable limitations and standards are based on less costly technologies). The EPA projects that the burden associated with the new proposed paperwork requirements would be largely off-set by the reduced burden associated with less monitoring; therefore, the Agency projects that the proposal would have no net effect on the burden of the approved information collection requirements. With respect to permitting authorities, based on the information in its record, the EPA also does not expect any of the regulatory options in today's proposal to increase or decrease their burden. The proposed options would not change permit application requirements or the associated review; they would not affect the number of permits issued to steam electric facilities; nor would the options change the efforts involved in developing or reviewing such permits. Accordingly, the EPA estimated no net change (*i.e.,* no increase or decrease) in the cost burden to federal or state governments or dischargers associated with any of the regulatory options in this proposed rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment

rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The Agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The basis for this finding is documented in Chapter 8 of the RIA, included in the docket and summarized below.

The EPA estimates that 243 to 478 entities own steam electric facilities to which the regulatory options would apply, of which 79 to 127 are small. These small ownership entities own a total of 139 steam electric facilities. The EPA considered the impacts of the regulatory options presented in this proposal on small businesses using a cost-to-revenue test. The analysis compares the cost of implementing controls for BA and FGD wastewater under the four regulatory options to those under the baseline (which reflects the 2015 rule as explained in Section V of this preamble). Small entities estimated to incur compliance costs exceeding one or more of the one percent and three percent impact thresholds were identified as potentially incurring a significant impact. The EPA's analysis shows that four small entities (municipalities) are expected to incur costs equal to or greater than one percent of revenue to meet the 2015 rule; for two of these municipalities, the costs to meet the 2015 rule exceed three percent of revenue. Cost savings provided under the regulatory options reduce the impacts on these small entities to varying degrees. Option 2 has the greatest mitigating effect on small entities, reducing to 2 the number of small entities incurring costs equal to or greater than one percent of revenue, and to 1 the entities with costs greater than three percent of revenue. Options 1, 3, and 4 have similar mitigating effects, with one fewer small entity incurring costs equal to or greater than one percent of revenue. The number of small entities exceeding either the one or three percent impact threshold in the baseline is small in the absolute and represents small percentages of the total estimated number of small entities; the cost savings provided by the regulatory options further support the EPA's finding of no significant impact on a substantial number of small entities (No SISNOSE).

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. An action contains a federal mandate if it may result in expenditures of $100 million or more (annually, adjusted for inflation) for state, local, and tribal governments, in the aggregate, or the private sector in any one year ($160 million in 2018).

The EPA finds that this action is not subject to the requirements of UMRA section 203 because the expenditures are less than $160 million or more in any one year. As detailed in Chapter 9 of the RIA, for its assessment of the impact of potential changes in compliance requirements on small governments (governments for populations of less than 50,000), the EPA estimated the changes in costs for compliance with the regulatory options relative to the baseline for different categories of entities. All four regulatory options presented in this proposal result in lower compliance costs (cost savings) when compared to the baseline. Compared to $44.1 million in the baseline, the Agency estimates that the change in maximum cost in any one year to state, local, or tribal governments range from −$23.5 million under Option 1 to −$6.0 million under Option 4, with an incremental cost for Option 2 of −$23.0 million. Compared to $841.3 million in baseline, the incremental cost in any given year to the private sector ranges from −$444.5 million under Option 4 to −$327.5 million under Option 1, with Option 2 having an incremental cost of −$405 million. From these incremental cost values, the EPA determined that none of the regulatory options would constitute a federal mandate that may result in expenditures of $160 million (in 2018 dollars) or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. Chapter 9 of the RIA report provides details of these analyses.

This action is also not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments. To assess whether the regulatory options presented in this proposal would affect small governments in a way that is disproportionately burdensome in comparison to the effect on large governments, the EPA compared total incremental costs and incremental costs per facility for small governments and large governments. The EPA also compared the changes in per facility costs incurred for small-government-owned facilities with those incurred by non-government-owned facilities. The Agency evaluated both average and maximum annualized incremental costs per facility. These analyses, which are detailed in Chapter 9 of the RIA, find that small governments would not be significantly or uniquely affected by the regulatory options presented in this proposal.

F. Executive Order 13132: Federalism

Under Executive Order (E.O.) 13132, the EPA may not issue an action that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments or the EPA consults with state and local officials early in development of the action.

The EPA anticipates that none of the regulatory options presented in this proposed rule would impose incremental administrative burden on states due to issuing, reviewing, and overseeing compliance with discharge requirements. Nevertheless, the EPA solicits comment on examples and data that demonstrate net impacts compared to the 2015 rule baseline which would allow the Agency to evaluate these impacts for the final rule.

As detailed in Chapter 9 of the RIA in the docket for this action, the EPA has identified 160 steam electric facilities owned by state or local governments, of which 16 facilities are estimated to incur costs to comply with the BA transport water and FGD limitations in the 2015 rule. However, all four regulatory options presented in this proposal provide cost savings as compared to the baseline. The difference in the maximum costs of the options as compared to the baseline ranges from −$6 million under Option 4 to −$23.5 million under Option 2. Based on this information, the EPA proposes to conclude that this action would not impose substantial direct compliance costs on state or local governments.

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

This action does not have tribal implications, as specified in E.O. 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and the

Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in E.O. 13175.

The EPA assessed potential tribal implications for the regulatory options presented in this proposed rule arising from three main changes: (1) Direct compliance costs incurred by facilities; (2) impacts on drinking water systems downstream from steam electric facilities; and (3) administrative burden on governments that implement the NPDES program.

Regarding direct compliance costs, the EPA's analyses show that no steam electric facilities with BA transport water or FGD discharges are owned by tribal governments. Regarding impacts on drinking water systems, the EPA identified 15 public water systems operated by tribal governments that may be affected by bromide discharges from steam electric facilities. These systems serve a total of 18,917 people. The EPA estimated changes in bladder cancer risk and the resulting health benefits for the four regulatory options in comparison to the baseline. This analysis, which is detailed in Chapter 4 of the BCA, finds very small changes in exposure between the baseline and regulatory options, amounting to very small changes in risk for this population. Finally, regarding administrative burden, no tribal governments are currently authorized pursuant to section 402(b) of the CWA to implement the NPDES program. Based on this information, the EPA concluded that none of the regulatory options presented in the proposed rule would have substantial direct effects on tribal governments.

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

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because the EPA does not expect that the environmental health risks or safety risks associated with steam electric facility discharges addressed by this action present a disproportionate risk to children. This action's health risk assessments are in Chapters 4 and 5 of the BCA and are summarized below.

The EPA identified several ways in which the regulatory options presented in this proposal could affect children, including by potentially increasing health risks from changes in exposure to pollutants present in steam electric facility FGD wastewater and BA transport water discharges, or through impacts of the discharges on the quality of source water used by public water systems. This increase arises from less stringent pollutant limitations or later deadlines for meeting effluent limitations under certain regulatory options presented in this proposal as compared to the baseline. In particular, the EPA quantified the changes in IQ losses from lead exposure among pre-school children and from mercury exposure in utero resulting from maternal fish consumption under the four regulatory options, as compared to the baseline. The EPA also estimated changes in the number of children with very high blood lead concentrations. Finally, the EPA estimated changes in the lifetime risk of developing bladder cancer due to exposure to trihalomethanes in drinking water. The EPA did not estimate children-specific risk because these adverse health effects normally follow long-term exposure. These analyses show that all of the regulatory options presented in this proposal would have a small, and not disproportionate, impact on children.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action,'' as defined by E.O. 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The Agency analyzed the potential energy effects of the regulatory options presented in this proposal relative to the baseline and found minimal or no impacts on electricity generation, generating capacity, cost of energy production, or dependence on a foreign supply of energy. Specifically, the Agency's analysis found that none of the regulatory options would reduce electricity production by more than 1 billion kilowatt hours per year or by 500 megawatts of installed capacity under either of the options analyzed, nor would the option increase U.S. dependence on foreign supplies of energy. For more detail on the potential energy effects of the regulatory options in this proposal, *see* Section 10.7 in the RIA, available in the docket.

J. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

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

The EPA conducted the analysis in three ways. First, the EPA summarized the demographic characteristics of individuals living in proximity to steam electric facilities with BA transport water or FGD discharges and thus are likely to be affected by the facility discharges and changes in air emissions resulting from the regulatory options presented in this proposal. This first analysis focuses on the spatial distribution of minority and low-income groups to determine whether these groups are more or less represented in the populations that are expected to be affected by the regulatory options, based on their proximity to steam electric facilities. The results show that, when compared to state averages, all affected communities are poorer and a large majority of affected communities have more minority residents than average.

Second, the EPA summarized the demographic characteristics of individuals served by public water systems (PWS) downstream from steam electric facilities and potentially affected by bromide discharges. The results show that the majority of county populations potentially affected by changes in drinking water quality as a result of steam electric facility discharges are poorer and have more minority residents than the state average.

Finally, the EPA conducted analyses of populations exposed to steam electric power facility FGD wastewater and BA transport water discharges through consumption of recreationally caught fish by estimating exposure and health effects by demographic cohort. Where possible, the EPA used analytic assumptions specific to the demographic cohorts—*e.g.,* fish consumption rates specific to different racial groups. Recreational anglers and members of their households, including children, are expected to experience forgone benefits from an increase in pollutant concentrations in fish tissue under all of the regulatory options. EPA estimated forgone benefits to children (*i.e.,* IQ decrements) from increased mercury exposure in the populations that live below the poverty line and/or minority populations.

The results show that the regulatory options would result in forgone benefits to these populations and that these changes may disproportionately affect communities in cases where the regulatory options increase pollutant exposure compared to the baseline. Overall however, the EPA's analysis, which is detailed in Chapter 14 of the BCA, finds very small changes in exposure between the baseline and regulatory options, amounting to very small changes in risk for this population. The EPA solicits comment on the assumptions and uncertainties included in this analysis.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

Appendix A to the Preamble: Definitions, Acronyms, and Abbreviations Used in This Preamble

The following acronyms and abbreviations are used in this preamble.

Administrator. The Administrator of the U.S. Environmental Protection Agency.

Agency. U.S. Environmental Protection Agency.

BAT. Best available technology economically achievable, as defined by CWA sections 301(b)(2)(A) and 304(b)(2)(B).

Bioaccumulation. General term describing a process by which chemicals are taken up by an organism either directly from exposure to a contaminated medium or by consumption of food containing the chemical, resulting in a net accumulation of the chemical by an organism due to uptake from all routes of exposure.

BMP. Best management practice.

BA. The ash, including boiler slag, which settles in the furnace or is dislodged from furnace walls. Economizer ash is included when it is collected with BA.

BPT. The best practicable control technology currently available as defined by sections 301(b)(1) and 304(b)(1) of the CWA.

CBI. Confidential Business Information.

CCR. Coal Combustion Residuals.

Clean Water Act (CWA). The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended, *e.g.,* by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

Combustion residuals. Solid wastes associated with combustion-related power facility processes, including fly and BA from coal-, petroleum coke-, or oil-fired units; FGD solids; FGMC wastes; and other wastewater treatment solids associated with combustion wastewater. In addition to the residuals that are associated with coal combustion, this also includes residuals associated with the combustion of other fossil fuels.

Direct discharge. (a) Any addition of any ''pollutant'' or combination of pollutants to ''waters of the United States'' from any ''point source,'' or (b) any addition of any pollutant or combination of pollutant to waters of the ''contiguous zone'' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: Surface runoff which is collected or channeled by man; discharges though pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any ''indirect discharger.''

Direct discharger. A facility that discharges treated or untreated wastewaters into waters of the U.S.

DOE. Department of Energy.

Dry BA handling system. A system that does not use water as the transport medium to convey BA away from the boiler. It includes systems that collect and convey the ash without any use of water, as well as systems in which BA is quenched in a water bath and then mechanically or pneumatically conveyed away from the boiler. Dry BA handling systems do not include wet sluicing systems (such as remote MDS or complete recycle systems).

Effluent limitation. Under CWA section 502(11), any restriction, including schedules of compliance, established by a state or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

EIA. Energy Information Administration.

ELGs. Effluent limitations guidelines and standards.

E.O. Executive Order.

EPA. U.S. Environmental Protection Agency.

FA. Fly Ash

Facility. Any NPDES ''point source'' or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

FGD. Flue Gas Desulfurization.

FGD Wastewater. Wastewater generated specifically from the wet FGD scrubber system that comes into contact with the flue gas or the FGD solids, including, but not limited to, the blowdown or purge from the FGD scrubber system, overflow or underflow from the solids separation process, FGD solids wash water, and the filtrate from the solids dewatering process. Wastewater generated from cleaning the FGD scrubber, cleaning FGD solids separation equipment, cleaning FGD solids dewatering equipment, or that is collected in floor drains in the FGD process area is not considered FGD wastewater.

Fly Ash. The ash that is carried out of the furnace by a gas stream and collected by a capture device such as a mechanical precipitator, electrostatic precipitator, and/or fabric filter. Economizer ash is included in this definition when it is collected with fly ash. Ash is not included in this definition when it is collected in wet scrubber air pollution control systems whose primary purpose is particulate removal.

Groundwater. Water that is found in the saturated part of the ground underneath the land surface.

Indirect discharge. Wastewater discharged or otherwise introduced to a POTW.

IPM. Integrated Planning Model.

Landfill. A disposal facility or part of a facility where solid waste, sludges, or other process residuals are placed in or on any natural or manmade formation in the earth for disposal and which is not a storage pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome or salt bed formation, an underground mine, a cave, or a corrective action management unit.

MDS. Mechanical drag system.

Mechanical drag system. BA handling system that collects BA from the bottom of the boiler in a water-filled trough. The water bath in the trough quenches the hot BA as it falls from the boiler and seals the boiler gases. A drag chain operates in a continuous loop to drag BA from the water trough up an incline, which dewaters the BA by gravity, draining the water back to the trough as the BA moves upward. The dewatered BA is often conveyed to a nearby collection area, such as a small bunker outside the boiler building, from which it is loaded onto trucks and either sold or transported to a landfill. The MDS is considered a dry BA handling system because the ash transport mechanism is mechanical removal by the drag chain, not the water.

Mortality. Death rate or proportion of deaths in a population.

NAICS. North American Industry Classification System.

NPDES. National Pollutant Discharge Elimination System.

ORCR. Office of Resource Conservation and Recovery.

Paste. A substance containing solids in a fluid which behaves as a solid until a force is applied which causes it to behave like a fluid.

Paste Landfill. A landfill which receives any paste designed to set into a solid after the passage of a reasonable amount of time.

Point source. Any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. The term does not include agricultural stormwater discharges or return flows from irrigated agriculture. *See* CWA section 502(14), 33 U.S.C. 1362(14); 40 CFR 122.2.

POTW. Publicly owned treatment works. *See* CWA section 212, 33 U.S.C. 1292; 40 CFR 122.2, 403.3.

PSES. Pretreatment Standards for Existing Sources.

Publicly Owned Treatment Works. Any device or system, owned by a state or municipality, used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. CWA section 212, 33 U.S.C. 1292; 40 CFR 122.2, 403.3.

RCRA. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*

Remote MDS. BA handling system that collects BA at the bottom of the boiler, then uses transport water to sluice the ash to a remote MDS that dewaters BA using a similar configuration as the MDS. The remote MDS is considered a wet BA handling system because the ash transport mechanism is water.

RFA. Regulatory Flexibility Act.

SBA. Small Business Administration.

Sediment. Particulate matter lying below water.

Surface water. All waters of the United States, including rivers, streams, lakes, reservoirs, and seas.

Toxic pollutants. As identified under the CWA, 65 pollutants and classes of pollutants, of which 126 specific substances have been designated priority toxic pollutants. *see* appendix A to 40 CFR part 423.

Transport water. Wastewater that is used to convey FA, BA, or economizer ash from the ash collection or storage equipment, or boiler, and has direct contact with the ash. Transport water does not include low volume, short duration discharges of wastewater from minor leaks (*e.g.,* leaks from valve packing, pipe flanges, or piping) or minor maintenance events (*e.g.,* replacement of valves or pipe sections).

UMRA. Unfunded Mandates Reform Act.

Wet BA handling system. A system in which BA is conveyed away from the boiler using water as a transport medium. Wet BA systems typically send the ash slurry to dewatering bins or a surface impoundment. Wet BA handling systems include systems that operate in conjunction with a traditional wet sluicing system to recycle all BA transport water (remote MDS or complete recycle system).

Wet FGD system. Wet FGD systems capture sulfur dioxide from the flue gas using a sorbent that has mixed with water to form a wet slurry, and that generates a water stream that exits the FGD scrubber absorber.

List of Subjects in 40 CFR Part 423

Environmental protection, Electric power generation, Power facilities, Waste treatment and disposal, Water pollution control.

Dated: November 4, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 423 as follows:

PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

■ 1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

■ 2. Amend § 423.11 by revising paragraphs (n), (p), and (t) and adding paragraphs (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), and (dd).

§ 423.11 Specialized definitions.

* * * * *

(n) The term flue gas desulfurization (FGD) wastewater means any wastewater generated specifically from the wet flue gas desulfurization scrubber system that comes into contact with the flue gas or the FGD solids, including but not limited to, the blowdown from the FGD scrubber system, overflow or underflow from the solids separation process, FGD solids wash water, and the filtrate from the solids dewatering process. Wastewater generated from cleaning the FGD scrubber, cleaning FGD solids separation equipment, cleaning FGD solids dewatering equipment, cleaning FGD paste transportation piping, or that is collected in floor drains in the FGD process area is not considered FGD wastewater.

* * * * *

(p) The term transport water means any wastewater that is used to convey fly ash, bottom ash, or economizer ash from the ash collection or storage equipment, or boiler, and has direct contact with the ash. Transport water does not include low volume, short duration discharges of wastewater from minor leaks (*e.g.,* leaks from valve packing, pipe flanges, or piping), minor maintenance events (*e.g.,* replacement of valves or pipe sections), cleaning FGD paste transportation piping, wastewater present in equipment when a facility is retired from service, or maintenance purge water.

* * * * *

(t) The phrase ''as soon as possible'' means November 1, 2018 (except for purposes of § 423.13(g)(1)(i) and (k)(1)(i), and § 423.16(e) and (g), in which case it means November 1, 2020), unless the permitting authority establishes a later date, after receiving site-specific information from the discharger, which reflects a consideration of the following factors:

(1) Time to expeditiously plan (including to raise capital), design, procure, and install equipment to comply with the requirements of this part.

(2) Changes being made or planned at the plant in response to:

(i) New source performance standards for greenhouse gases from new fossil fuel-fired electric generating units, under sections 111, 301, 302, and 307(d)(1)(C) of the Clean Air Act, as amended, 42 U.S.C. 7411, 7601, 7602, 7607(d)(1)(C);

(ii) Emission guidelines for greenhouse gases from existing fossil fuel-fired electric generating units, under sections 111, 301, 302, and 307(d) of the Clean Air Act, as amended, 42 U.S.C. 7411, 7601, 7602, 7607(d); or

(iii) Regulations that address the disposal of coal combustion residuals as solid waste, under sections 1006(b), 1008(a), 2002(a), 3001, 4004, and 4005(a) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6906(b), 6907(a), 6912(a), 6944, and 6945(a).

(3) For FGD wastewater requirements only, an initial commissioning period for the treatment system to optimize the installed equipment.

(4) Other factors as appropriate.

(u) The term ''FGD paste'' means any combination of FGD wastewater treated with fly ash and/or lime prior to being landfilled, that is engineered to form a solid through pozzolanic reactions.

(v) The term ''FGD paste transportation piping'' means any pipe, valve, or related item used for transporting FGD paste from its point of generation to a landfill.

(w) The term ''retired from service'' means the owner or operator of a boiler no longer has, or is no longer required to have, the necessary permission through a permit, license, or other legally applicable form of permission to conduct electricity generation activities under Federal, state, or local law, irrespective of whether the owner and operator is subject to this part.

(x) The term ''high FGD flow'' means the maximum daily volume of FGD wastewater that could be discharged by a facility is above 4 million gallons per day after accounting for that facility's ability to recycle the wastewater to the maximum limits for the FGD system materials of construction.

(y) The term ''net generation'' means the amount of gross electrical generation less the electrical energy consumed at the generating station(s) for station service or auxiliaries as calculated in paragraph 423.19(e) of this subpart.

(z) The term ''low utilization boiler'' means any boiler for which the facility owner certifies, and annually recertifies, under 423.19(e) that the two-year average annual net generation is below 876,000 MWh per year.

(aa) The term ''primary active wetted bottom ash system volume'' means the maximum volumetric capacity of bottom ash transport water in all piping (including recirculation piping) and primary tanks of a wet bottom ash system, excluding the volumes of installed spares, redundancies, maintenance tanks, other secondary bottom ash system equipment, and non-bottom ash transport systems that may direct process water to the bottom ash system as certified to in paragraph 423.19(c).

(bb) The term ''tank'' means a stationary device, designed to contain

an accumulation of wastewater which is constructed primarily of non-earthen materials (*e.g.,* wood, concrete, steel, plastic) which provide structural support.

(cc) The term ''maintenance purge water'' means any water being discharged subject to paragraphs § 423.13(k)(2)(i) or § 423.16(g)(2)(i).

(dd) The term ''30-day rolling average'' means the series of averages using the measured values of the preceding 30 days for each average in the series.

■ 3. Amend § 423.12 by revising paragraph (b)(11).

§ 423.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *

(11) The quantity of pollutants discharged in FGD wastewater, flue gas mercury control wastewater, combustion residual leachate, gasification wastewater, or bottom ash maintenance purge water shall not exceed the quantity determined by multiplying the flow of the applicable wastewater times the concentration listed in table 1:

TABLE 1 TO PARAGRAPH (b)(11)

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed (mg/l)
TSS	100.0	30.0
Oil and grease	20.0	15.0

* * * * *

■ 4. Amend § 423.13 by:

■ a. Revising paragraph (g)(1)(i);

■ b. Redesignating paragraph (g)(2) as paragraph (g)(2)(i) and revising the newly redesignated paragraph (g)(2)(i);

■ c. Adding paragraphs (g)(2)(ii) and (g)(2)(iii);

■ d. Revising paragraphs (g)(3)(i) and paragraph (k)(1)(i);

■ e. Redesignating paragraph (k)(2) as (k)(2)(ii) and revising newly redesignated (k)(2)(ii); and

■ f. Adding paragraphs (k)(2)(i), (k)(2)(iii), and (k)(3).

The additions and revisions to read as follows.

§ 423.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(g)(1)(i) FGD wastewater. Except for those discharges to which paragraph (g)(2) or (g)(3) of this section applies, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following this paragraph (g)(1)(i). Dischargers must meet the effluent limitations for FGD wastewater in this paragraph by a date determined by the permitting authority that is as soon as possible beginning November 1, 2020, but no later than December 31, 2025. These effluent limitations apply to the discharge of FGD wastewater generated on and after the date determined by the permitting authority for meeting the effluent limitations, as specified in this paragraph.

TABLE 1 TO PARAGRAPH (g)(1)(i)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	18	9
Mercury, total (ng/L)	85	31
Selenium, total (ug/L)	76	31
Nitrate/nitrite as N (mg/L)	4.6	3.2

* * * * *

(2)(i) For any electric generating unit with a total nameplate capacity of less than or equal to 50 megawatts, that is an oil-fired unit, or for which the owner has certified pursuant to 423.19(f) will be retired from service by December 31, 2028, the quantity of pollutants discharged in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed for TSS in § 423.12(b)(11).

(ii) For FGD wastewater discharges from a high FGD flow facility, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following this paragraph (g)(2)(ii). Dischargers must meet the effluent limitations for FGD wastewater in this paragraph by a date determined by the permitting authority that is as soon as possible beginning November 1, 2020, but no later than December 31, 2023. These effluent limitations apply to the discharge of FGD wastewater generated on and after the date determined by the permitting authority for meeting the effluent limitations, as specified in this paragraph (g)(2)(ii).

TABLE 1 TO PARAGRAPH (g)(2)(ii)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	11	8
Mercury, total (ng/L)	788	356

(iii)(A) For FGD wastewater discharges from a low utilization boiler, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the Table 1 to paragraph (g)(2)(ii). Dischargers must meet the effluent limitations for FGD wastewater in this paragraph by a date determined by the permitting authority that is as soon as possible beginning November 1, 2020, but no later than December 31, 2023. These effluent limitations apply to the discharge of FGD wastewater generated on and after the date determined by the permitting authority for meeting the effluent limitations, as specified in this paragraph (g)(2)(iii)(A).

(B) If any low utilization boiler fails to timely recertify that the two year average net generation of such a boiler is below 876,000 MWh per year as specified in § 423.19(e), regardless of the reason, within two years from the date such a recertification was required, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the Table 1 to paragraph (g)(1)(i).

(3)(i) For dischargers who voluntarily choose to meet the effluent limitations for FGD wastewater in this paragraph, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following this paragraph (g)(3)(i). Dischargers who choose to meet the effluent limitations for FGD wastewater in this paragraph must meet such limitations by December 31, 2028. These effluent limitations apply to the discharge of FGD wastewater generated on and after December 31, 2028.

TABLE 1 TO PARAGRAPH (g)(3)(i)

Pollutant or pollutant property	BAT Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	5	.....
Mercury, total (ng/L)	21	9
Selenium, total (ug/L)	21	11
Nitrate/Nitrite (mg/L)	1.1	0.6
Bromide (mg/L)	0.6	0.3
TDS (mg/L)	351	156

* * * * *

(k)(1)(i) *Bottom ash transport water.* Except for those discharges to which paragraph (k)(2) of this section applies, or when the bottom ash transport water is used in the FGD scrubber, there shall be no discharge of pollutants in bottom ash transport water. Dischargers must meet the discharge limitation in this paragraph by a date determined by the permitting authority that is as soon as possible beginning November 1, 2020, but no later than December 31, 2023. This limitation applies to the discharge of bottom ash transport water generated on and after the date determined by the permitting authority for meeting the discharge limitation, as specified in this paragraph (k)(1)(i). Except for those discharges to which paragraph (k)(2) of this section applies, whenever bottom ash transport water is used in any other plant process or is sent to a treatment system at the plant (except when it is used in the FGD scrubber), the resulting effluent must comply with the discharge limitation in this paragraph. When the bottom ash transport water is used in the FGD scrubber, the quantity of pollutants in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of bottom ash transport water times the concentration listed in Table 1 to paragraph (g)(1)(i) of this section.

* * * * *

(2)(i)(A) The discharge of pollutants in bottom ash transport water from a properly installed, operated, and maintained bottom ash system is authorized under the following conditions:

(*1*) To maintain system water balance when precipitation-related inflows within any 24-hour period resulting from a 25-year, 24-hour storm event, or multiple consecutive events cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment; or

(*2*) To maintain water balance when regular inflows from wastestreams other than bottom ash transport water exceed the ability of the bottom ash system to accept recycled water and segregating these other wastestreams is not feasible; or

(*3*) To conduct maintenance not otherwise exempted from the definition of transport water in § 423.11(p) when water volumes cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment; or

(*4*) To maintain system water chemistry where installed equipment at the facility is unable to manage pH, corrosive compounds, and fine particulates to below levels which impact system operations.

(B) The total volume necessary to be discharged for the above activities shall be reduced or eliminated to the extent

achievable using control measures (including best management practices) that are technologically available and economically achievable in light of best industry practice, and in no instance shall it exceed a 30-day rolling average of ten percent of the primary active wetted bottom ash system volume. Discharges shall be measured by computing daily discharges by totaling daily flow discharges.

(ii) For any electric generating unit with a total nameplate generating capacity of less than or equal to 50 megawatts, that is an oil-fired unit, or for which the owner has certified pursuant to 423.19(f) will be retired from service by December 31, 2028, the quantity of pollutants discharged in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of the applicable wastewater times the concentration for TSS listed in § 423.12(b)(4).

(iii)(A) For bottom ash transport water generated by a low utilization boiler, the quantity of pollutants discharged in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of the applicable wastewater times the concentration for TSS listed in § 423.12(b)(4),and shall incorporate the elements of a best management practices plan as described in (k)(3) of this section.

(B) If any low utilization boiler fails to timely recertify that the two year average net generation of such a boiler is below 876,000 MWh per year as specified in 423.19(e), regardless of the reason, within two years from the date such a recertification was required, the quantity of pollutants discharged in bottom ash transport water shall be governed by paragraphs (k)(1) and (k)(2)(i) of this section.

(3) Where required in paragraph (k)(2)(iii) of this section, the discharger shall prepare, implement, review, and update a best management practices plan for the recycle of bottom ash transport water, and must include:

(i) Identification of the low utilization coal-fired generating units that contribute bottom ash to the bottom ash transport system.

(ii) A description of the existing bottom ash handling system and a list of system components (*e.g.,* remote mechanical drag system (rMDS), tanks, impoundments, chemical addition). Where multiple generating units share a bottom ash transport system, the plan shall specify which components are associated with low utilization generating units.

(iii) A detailed water balance, based on measurements, or estimates where measurements are not feasible, specifying the volume and frequency of water additions and removals from the bottom ash transport system, including:

(A) Water removed from the BA transport system:

(*1*) To the discharge outfall.

(*2*) To the FGD scrubber system.

(*3*) Through evaporation.

(*4*) Entrained with any removed ash.

(*5*) Other mechanisms not specified herein.

(B) Entering or recycled to the BA transport system:

(*1*) Makeup water added to the BA transport water system.

(*2*) Bottom ash transport water recycled back to the system in lieu of makeup water.

(*3*) Other mechanisms not specified herein.

(iv) Measures to be employed by all facilities:

(A) Implementation of a comprehensive preventive maintenance program to identify, repair and replace equipment prior to failures that result in the release of bottom ash transport water.

(B) Daily or more frequent inspections of the entire bottom ash transport water system, including valves, pipe flanges and piping, to identify leaks, spills and other unintended bottom ash transport water escaping from the system, and timely repair of such conditions.

(C) Documentation of preventive and corrective maintenance performed.

(v) Evaluation of options and feasibility, accounting for the associated costs, for eliminating or minimizing discharges of bottom ash transport water, including:

(A) Segregating bottom ash transport water from other process water.

(B) Minimizing the introduction of stormwater by diverting (*e.g.,* curbing, using covers) storm water to a segregated collection system.

(C) Recycling bottom ash transport water back to the bottom ash transport water system.

(D) Recycling bottom ash transport water for use in the FGD scrubber.

(E) Optimizing existing equipment (*e.g.,* pumps, pipes, tanks) and installing new equipment where practicable to achieve the maximum amount of recycle.

(F) Utilizing ''in-line'' treatment of transport water (*e.g.,* pH control, fines removal) where needed to facilitate recycle.

(vi) Description of the bottom ash recycle system, including all technologies, measures, and practices that will be used to minimize discharge.

(vii) A schedule showing the sequence of implementing any changes necessary to achieve the minimized discharge of bottom ash transport water, including the following:

(A) The anticipated initiation and completion dates of construction and installation associated with the technology components or process modifications specified in the plan.

(B) The anticipated dates that the discharger expects the technologies and process modifications to be fully implemented on a full-scale basis, which in no case shall be later than December 31, 2023.

(C) The anticipated change in discharge volume and effluent quality associated with implementation of the plan.

(viii) Description establishing a method for documenting and demonstrating to the permitting/control authority that the recycle system is well operated and maintained.

(ix) The discharger shall perform weekly flow monitoring for the following:

(A) Make up water to the bottom ash transport water system.

(B) Bottom ash transport water sluice flow rate (*e.g.,* to the surface impoundment(s), dewatering bins(s), tank(s), rMDS).

(C) Bottom ash transport water discharge to surface water or POTW.

(D) Bottom ash transport water recycle back to the bottom ash system or FGD scrubber.

* * * * *

■ 5. Amend § 423.16 by:

■ a. Revising paragraph (e)(1);

■ b. Adding paragraph (e)(2);

■ c. Revising paragraph (g)(1); and

■ d. Adding paragraph (g)(2).

The additions and revisions to read as follows

§ 423.16 Pretreatment standards for existing sources (PSES).

* * * * *

(e)(1) FGD wastewater. Except as provided for in paragraph (e)(2) of this section, for any electric generating unit with a total nameplate generating capacity of more than 50 megawatts, that is not an oil-fired unit, and that the owner has not certified pursuant to § 423.19(f) will be retired from service by December 31, 2028, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following this paragraph (e). Dischargers must meet the standards in this paragraph by [DATE 3 YEARS AFTER DATE OF FINAL RULE] except as provided for in paragraph (e)(2) of this section. These standards apply to the discharge of FGD wastewater generated on and after [DATE 3 YEARS AFTER DATE OF FINAL RULE].

TABLE 1 TO PARAGRAPH (e)(1)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	18	9
Mercury, total (ng/L)	85	31
Selenium, total (ug/L)	76	31
Nitrate/nitrite as N (mg/L)	4.6	3.2

(2)(i) For FGD wastewater discharges from a low utilization boiler, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following this paragraph (e)(2).

Dischargers must meet the standards in this paragraph by [DATE 3 YEARS AFTER DATE OF FINAL RULE].

(ii) If any low utilization boiler fails to timely recertify that the two year average net generation of such a boiler is below 876,000 MWh per year as specified in § 423.19(e), regardless of the reason, within two years from the date such a recertification was required, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in Table 1 to paragraph (e)(1).

TABLE 1 TO PARAGRAPH (e)(2)(ii)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	11	8
Mercury, total (ng/L)	788	356

* * * * *

(g)(1) Except for those discharges to which paragraph (g)(2) of this section applies, or when the bottom ash transport water is used in the FGD scrubber, for any electric generating unit with a total nameplate generating capacity of more than 50 megawatts, that is not an oil-fired unit, that is not a low utilization boiler, and that the owner has not certified pursuant to § 423.19(f) will be retired from service by December 31, 2028, there shall be no discharge of pollutants in bottom ash transport water. This standard applies to the discharge of bottom ash transport water generated on and after [DATE 3 YEARS AFTER DATE OF FINAL RULE]. Except for those discharges to which paragraph (g)(2) of this section applies, whenever bottom ash transport water is used in any other plant process or is sent to a treatment system at the plant (except when it is used in the FGD scrubber), the resulting effluent must comply with the discharge standard in this paragraph. When the bottom ash transport water is used in the FGD scrubber, the quantity of pollutants in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of bottom ash transport water times the concentration listed in Table 1 to paragraph (e)(1) of this section.

(2)(i)(A) The discharge of pollutants in bottom ash transport water from a properly installed, operated, and maintained bottom ash system is authorized under the following conditions:

(*1*) To maintain system water balance when precipitation-related inflows within any 24-hour period resulting from a 25-year, 24-hour storm event, or multiple consecutive events cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment; or

(*2*) To maintain water balance when regular inflows from wastestreams other than bottom ash transport water exceed the ability of the bottom ash system to accept recycled water and segregating these other wastestreams is feasible; or

(*3*) To conduct maintenance not otherwise exempted from the definition of transport water in § 423.11(p) when water volumes cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment; or

(*4*) To maintain system water chemistry where current operations at the facility are unable to currently manage pH, corrosive compounds, and fine particulates to below levels which impact system operations.

(B) The total volume necessary to be discharged to a POTW for the above activities shall be reduced or eliminated to the extent achievable using control measures (including best management practices) that are technologically available and economically achievable in light of best industry practice, and in no instance shall it exceed a 30-day rolling average of ten percent of the primary active wetted bottom ash system volume. Discharges shall be measured by computing daily discharges by totaling daily flow discharges.

(ii)(A) For bottom ash transport water generated by a low utilization boiler, the quantity of pollutants discharged in bottom ash transport water shall incorporate the elements of a best management practices plan as described in § 423.13(k)(3).

(B) If any low utilization boiler fails to timely recertify that the two year average net generation of such a boiler is below 876,000 MWh per year as specified in § 423.19(e), regardless of the reason, within two years from the date such a recertification was required, the quantity of pollutants discharged in bottom ash transport water shall be governed by paragraphs (g)(1) and (g)(2)(i) of this section.

■ 6. Add § 423.18 to read as follows.

§ 423.18 Permit conditions.

All permits subject to this part shall include the following permit conditions:

(a) In case of an emergency order issued by the Department of Energy under Section 202(c) of the Federal Power Act or a Public Utility Commission reliability must run agreement, a boiler shall be deemed to qualify as a low utilization boiler or

boiler that will be retired from service by December 31, 2028 if such qualification would have been demonstrated absent such order or agreement.

(b) Any facility providing the required documentation pursuant to § 423.19(g) may avail itself of the protections of this permit condition.

■ 7. Add § 423.19 to read as follows.

§ 423.19 Reporting and recordkeeping requirements.

(a) Discharges subject to this part must comply with the following reporting requirements in addition to the applicable requirements in 40 CFR 403.12(b), (d), (e), and (g).

(b) *Signature and certification.* Unless otherwise provided below, all certifications and recertifications required in this part must be signed and certified pursuant to 40 CFR 122.22 for direct dischargers or 40 CFR 403.12(l) for indirect dischargers.

(c) Requirements for facilities discharging bottom ash transport water pursuant to § 423.13(k)(2)(i) or § 423.16(g)(2)(i).

(1) *Initial Certification Statement.* For sources seeking to discharge bottom ash transport water pursuant to § 423.13(k)(2)(i) or § 423.16(g)(2)(i), an initial certification shall be submitted to the permitting authority by the as soon as possible date determined under § 423.11(t), or the control authority by [DATE 3 YEARS AFTER DATE OF FINAL RULE] in the case of an indirect discharger.

(2) *Signature and certification.* The certification statement must be signed and certified by a professional engineer.

(3) *Contents.* An initial certification shall include the following:

(A) A statement that the professional engineer is a licensed professional engineer.

(B) A statement that the professional engineer is familiar with the regulation requirements.

(C) A statement that the professional engineer is familiar with the facility.

(D) The primary active wetted bottom ash system volume in § 423.11(aa).

(E) All assumptions, information, and calculations used by the certifying professional engineer to determine the primary active wetted bottom ash system volume.

(d) Requirements for a bottom ash best management practices plan.

(1) *Initial and Annual Certification Statement.* For sources required to develop and implement a best management practices plan pursuant to § 423.13(k)(3), an initial certification shall be made to the permitting authority with a permit application, or to the control authority no later than [DATE 3 YEARS AFTER DATE OF FINAL RULE] in the case of an indirect discharger, and an annual recertification shall be made to the permitting authority, or control authority in the case of an indirect discharger, within 60 days of the anniversary of the original plan.

(2) *Signature and Certification.* The certification statement must be signed and certified by a professional engineer.

(3) *Contents for Initial Certification.* An initial certification shall include the following:

(A) A statement that the professional engineer is a licensed professional engineer.

(B) A statement that the professional engineer is familiar with the regulation requirements.

(C) A statement that the professional engineer is familiar with the facility.

(D) The approved best management practices plan.

(E) A statement that the best management practices plan is being implemented.

(4) *Additional Contents for Annual Certification.* In addition to the required contents of the initial certification in paragraph (d)(3) of this section an annual certification shall include the following:

(A) Any updates to the best management practices plan.

(B) An attachment of weekly flow measurements from the previous year.

(C) The average amount of recycled bottom ash transport water in gallons per day.

(D) Copies of annual inspection reports and a summary of preventative maintenance performed on the system.

(E) A statement that the plan and corresponding flow records are being maintained at the office of the plant.

(e) *Requirements for low utilization boilers.* (1) Initial and Annual Certification Statement. For sources seeking to apply the limitations or standards for low utilization boilers, an initial certification shall be made to the permitting authority with a permit application, or to the control authority no later than [DATE 3 YEARS AFTER DATE OF FINAL RULE] in the case of an indirect discharger, and an annual recertification shall be made to the permitting authority, or control authority in the case of an indirect discharger, within 60 days of submitting annual net generation data to the Energy Information Administration.

(2) *Contents.* A certification or annual recertification shall be based on the information submitted to the Energy Information Administration and shall include copies of the underlying forms submitted to the Energy Information Administration, as well as any supplemental information and calculations used to determine the two year average annual net generation. Where station-wide energy consumption must otherwise be apportioned to multiple boilers, the facility shall attribute such consumption to each boiler proportional to that boiler's nameplate capacity unless the facility can demonstrate the energy consumption is specific to a boiler.

(f) Requirements for units that will be retired from service by December 31, 2028 pursuant to §§ 423.13(k)(2)(ii) and 423.13(g)(1).

(1) *Initial Certification Statement.* For sources seeking to apply the limitations or standards for units that will be retired from service by December 31, 2028, a one-time certification to the permitting authority must be submitted with the permit application, or where a permit has already been issued, by the as soon as possible date determined under paragraph 423.11(t), or to the control authority by [promulgation date + 3 years] in the case of an indirect discharger.

(2) *Contents.* A certification shall include the estimated date that boiler will be retired from service, a brief statement as to the reason for retirement, as well as a copy of the most recent integrated resource plan, certification of boiler cessation under 40 CFR 257.103(b), or other legally binding submission supporting that the boiler will be retired from service by December 31, 2028.

(g) Requirements for facilities seeking the protections of § 423.18.

(1) *Certification Statement.* For sources seeking to apply the protections of the permit conditions in § 423.18, a one-time certification shall be submitted to the permitting authority, or control authority in the case of an indirect discharger, no later than 30 days from receipt of the order or agreement attached pursuant to paragraph (f)(2) of this section.

(2) *Contents.* A certification statement must demonstrate that a boiler would have qualified for the subcategory at issue absent the emergency order issued by the Department of Energy under Section 202(c) of the Federal Power Act or Public Utility Commission reliability must run agreement; and a copy of such order or agreement shall be attached.

[FR Doc. 2019–24686 Filed 11–21–19; 8:45 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–02; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–02. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

RULE LISTED IN FAC 2020–02

Subject	FAR Case	Analyst
Reporting of Noncomforming Items to the Government-Industry Data Exchange Program	2013–002	Chambers.

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn E. Chambers, Procurement Analyst, at 202–285–7380 or *marilyn.chambers@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–02, FAR Case 2013–002.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020–02 amends the FAR as follows:

Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (FAR Case 2013–002)

This final rule amends the FAR to require contractors and subcontractors to report to the Government-Industry Data Exchange Program (GIDEP) certain counterfeit or suspect counterfeit parts and certain major or critical nonconformances. This change implements sections 818(c)(4) and (c)(5) of the National Defense Authorization Act for Fiscal Year 2012, which require DoD contractors and subcontractors to report counterfeit or suspect counterfeit electronic parts purchased by or for DoD to GIDEP. In addition, the FAR Council extended coverage of the proposed rule by policy to cover other Government agencies, other types of parts, and other types of nonconformance. In response to public comments, this final rule has more limited scope than the proposed rule, exempting contracts and subcontracts for commercial items and limiting the clause application to acquisitions of items that require higher level quality standards, critical items, or electronic parts by or for DoD.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020–02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–02 is effective November 22, 2019 except for FAR Case 2013–002, which is effective December 23, 2019.

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2019–24963 Filed 11–21–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 46, and 52

[FAC 2020–02, FAR Case 2013–002; Docket No. FAR–2013–0002, Sequence No. 1]

RIN 9000–AM58

Federal Acquisition Regulation: Reporting of Nonconforming Items to the Government-Industry Data Exchange Program

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to require contractors and subcontractors to report to the Government-Industry Data Exchange Program certain counterfeit or suspect counterfeit parts and certain major or critical nonconformances.

DATES: *Effective:* December 23, 2019.

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Please cite FAC 2020–02, FAR Case 2013–002.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 79 FR 33164 on June 10, 2014, in the **Federal Register**, to implement sections 818(c)(4) and (c)(5) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81, 10 U.S.C. 2302 Note), which required DoD contractors and subcontractors to report counterfeit or suspect counterfeit electronic parts purchased by or for DoD to the Government-Industry Data Exchange Program (GIDEP).

The Presidential Memorandum on Combating Trafficking in Counterfeit and Pirated Goods, issued April 3, 2019, states that ''[c]ounterfeit trafficking . . . may threaten national security and public safety through the introduction of counterfeit goods destined for the Department of Defense and other critical infrastructure supply chains.'' Accordingly, the Federal Government must improve coordinated efforts to protect national security from the dangers and negative effects of the introduction of counterfeit goods. This rule furthers that aim by requiring contractors to screen for and report critical nonconformances, including counterfeits and suspect counterfeits, which may impede the performance of mission critical systems, where high level quality standards are essential to protect the integrity of systems requirements, and are necessary for national defense or critical national infrastructure.

The U.S. Intellectual Property Enforcement Coordinator's Annual Intellectual Property Report to Congress, dated February 2019, reiterated: ''Counterfeiting is a significant challenge that can impair supply chains for both the public and private sectors. In the context of the U.S. Government, acquiring products or services from sellers with inadequate integrity, security, resilience, and quality assurance controls create significant risks, from a national security and mission assurance perspective as well as from an economic standpoint (due to the increased costs to American taxpayers). Counterfeiting can have particularly significant consequences for the Department of Defense (DoD) supply chain, by negatively affecting missions, the reliability of weapon systems, the safety of the warfighter, and the integrity of sensitive data and secure networks.'' (Appendix, p.51.) This rule is likely to have a positive impact on national security and critical infrastructure where the Government procures elements of the infrastructure, for example, Federal Aviation Administration air traffic control systems, Department of Agriculture food safety equipment, all national defense programs, Department of Transportation monitoring of transportation systems, Department of Energy monitoring of power generation and distribution networks, etc.

By reporting in GIDEP, contractors are able to share knowledge of counterfeits and critical nonconformances which reduces the risk of counterfeit and other nonconforming items entering the supply chain and being used in high value, mission critical defense, space, or critical infrastructure systems where system failure could threaten national security through the loss of satellite-based critical information, communication and navigation systems, or other systems resulting in the loss of the ability to control connected systems or secure information within those systems. Counterfeits are not produced to meet higher-level quality standards required in mission critical applications and are a significant risk in causing failures to systems vital to an agency's mission. For weapons, space flight, aviation, and satellite systems, these failures can result in the death, severe injuries, and millions of dollars in system damage or loss. For example, if counterfeits are installed in a missile's guidance system, such missile may not function at all, may not proceed to its intended target, or may strike a completely unintended location resulting in catastrophic losses. Critical nonconforming and counterfeits items may cause failures in navigation or steering control systems, planes and flight control. Counterfeits can create ''backdoors'' into supposedly secure programmable devices which could be exploited to insert circuit functions to steal information and relay it to third parties or command or prevent the device from operating as designed. Defense, space, and aviation systems in particular must meet rigorous component specifications; failure of even a single one can be catastrophic causing serious problems and placing personnel and the public in harm's way.

GIDEP is a widely available Federal database. Timely GIDEP reporting and screening allows all contractors to promptly investigate and remove suspect parts from the supply chain and to ensure that suspect parts are not installed in the equipment which would result in experiencing high failure rates. With this knowledge, contractors can also avoid costs resulting from production stoppage, high failure rates, rework, or lost time due to maintenance turnaround to remove and replace failed parts. This effect is magnified by the fact GIDEP permits contractors to learn from the experiences of others across industry.

This rule concentrates on complex items with critical applications where the failure of the item could injure personnel or jeopardize a vital agency mission. In accordance with the Office of Federal Procurement Policy (OFPP) Policy Letter 91–3, all Government agencies use GIDEP as the central data base for receiving and disseminating information about nonconforming products. Contractor participation has been largely voluntary. This rule requires contractors to screen and report major or critical nonconformances in order to reduce the risk of counterfeit and other nonconforming items entering the supply chain and impacting the performance of mission critical items where item failure could result in loss of high value items or loss of life.

GIDEP is a cooperative activity between government and industry participants seeking to reduce and ultimately eliminate expenditures of resources by sharing technical information essential during research, design, development, production and operational phases of the life cycle of systems, facilities and equipment. Since GIDEP's inception, participants have reported over $2.1 billion in cost avoidance. That means without GIDEP, participants could have *potentially* realized additional expenses of over $2.1 billion. In many cases, these costs could have been passed on to the U.S. Government. In addition to reporting cost avoidance, participants also reported how the information helped keep production lines running, preserved readiness or avoided dangerous situations. This reporting by GIDEP participants is for the purpose of illustrating the value of sharing information when common items have issues that could impact safety, reliability, readiness and ownership costs.

Proper utilization of GIDEP data can materially improve the total safety, quality and reliability of systems and components during the acquisition and logistics phases of the life cycle and reduce costs in the development and manufacture of complex systems and mission critical equipment.

Examples of the value of this reporting include discovery of counterfeiting operations that supplied parts to many defense and other Government contractors and removal from the supply chain of—

• Faulty rivets that could have caused military aircraft failure in flight;

• Counterfeit electronic parts that would have caused a $100M failure of a satellite in orbit;

• Counterfeit bolts securing overhead gantry cranes in a Government industrial facility;

• Counterfeit raw stock materials (aluminum, steel, and titanium) supplied over a decade and used in structural applications across defense and civil systems and infrastructure;

• Counterfeit refrigerant with explosive properties that led to explosions and fire on several commercial ships;

• Uncertified electronic connectors that shut down large parts of the defense and space industrial base production for 6 months until solutions to certification could be devised.

What all these examples have in common is that the items in question are largely commercially available common piece parts or small assemblies that are used throughout the industrial base and in most defense, space, and critical infrastructure programs and can easily enter any supply stream.

In the proposed rule, the FAR Council extended coverage outside of DoD to other Government agencies, other types of parts, and other types of nonconformance. The FAR Council proposed this because the problem of counterfeit and nonconforming parts extends far beyond electronic parts and can impact the mission of all Government agencies, such as NASA and the Department of Energy, and mission critical systems such as avionics, satellites, space flight systems, and nuclear facilities. The final rule still applies across all agencies and to parts other than electronics, but there was some reassessment of costs and benefits, so that rather than applying to all supplies, in addition to the requirements for section 818(c)(4) with regard to electronic parts for DoD, the rule focuses on supplies that require higher-level quality standards or are determined to be critical items (definition added). This and other de-scoping efforts (see preamble sections II.A. and II.B.1.) reduced the estimated responses from 474,000 to 5,166 responses, and reduces the estimated burden hours from 1,422,000 hours to 30,986 hours, so that information is obtained where it is most critically needed.

A public meeting was held June 16, 2014. Public comments were received from 14 respondents (including respondents who provided written statements at the public meeting).

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows.

A. Summary of Significant Changes From the Proposed Rule

1. *Applicability.* The final rule is significantly descoped.

• It does not apply to contracts and subcontracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

• Section 818(c)(4) of the NDAA for FY 2012 will not apply to contracts and subcontracts at or below the simplified acquisition threshold (SAT).

• Rather than applying to all supplies, in addition to the requirements for section 818(c)(4) with regard to electronic parts for DoD, the rule focuses on supplies that require higher-level quality standards or are determined to be critical items (definition added).

• The rule also exempts medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803; foreign corporations or partnerships that do not have an office, place of business, or paying agent in the United States; counterfeit, suspect counterfeit, or nonconforming items that are the subject of an on-going criminal investigation, unless the report is approved by the cognizant law-enforcement agency; and nonconforming items (other than counterfeit or suspect counterfeit items) for which it can be confirmed that the organization where the defect was generated (*e.g.,* original component manufacturer, original equipment manufacturer, aftermarket manufacturer, or distributor that alters item properties or configuration) has not released the item to more than one customer.

• Flowdown to subcontracts is similarly descoped. The contractor is prohibited from altering the clause other than to identify the appropriate parties.

2. *Definitions.* In FAR 46.101 and the FAR clause 52.246–26, Reporting Nonconforming Items, the definition of ''quality escape'' is deleted. A definition of ''critical item'' is added.

3. *Prohibited disclosures.* The FAR clause 52.246–26 states explicitly the GIDEP policy that GIDEP reports shall not include trade secrets or confidential commercial or financial information protected under the Trade Secrets Act, or any other information prohibited from disclosure by statute or regulation.

4. *Timeframe for notification to the contracting officer.* In paragraph (b)(2) of FAR 52.246–26, the timeframe for contractor notification to the contracting officer of a counterfeit or suspect counterfeit item is revised from 30 to 60 days, for consistency with the statute.

B. Analysis of Public Comments

1. Scope/Applicability

a. Limit Scope to Statutory Requirement, or at Least Exclude Nonconformances

Comment: Sections 818(c)(4) and (c)(5) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 apply to all defense contractors and subcontractors who become aware, or have reason to believe, that any item purchased by or for DoD may contain counterfeit or suspect counterfeit electronic parts. The proposed rule applied the reporting requirements Governmentwide to all supplies (not just electronic parts) and addressed all major or critical nonconformances as well as counterfeit or suspect counterfeit items.

• Multiple respondents recommended limiting scope of the mandatory reporting rule to the statutory requirement: Counterfeit electronic parts and suspect counterfeit electronic parts from defense suppliers. Some respondents thought the rule should only apply to contractors/subcontractors covered by the cost accounting standards (CAS). One respondent recommended that FAR Case 2013–002 be withdrawn and a DFARS case be proposed instead. Another respondent stated that significant research has identified the problems and risks of counterfeit electronic part infiltration into the defense supply chain, but is concerned whether the benefits of such broad expansion of the scope of the rule justify the additional burdens and costs it will impose, not just on industry, but on the Government as well.

• Several respondents questioned the statutory authority for extending requirements to contractors for items that are not counterfeit. These respondents indicated that GIDEP reporting should be strictly limited to counterfeit items. These respondents stated that counterfeiting and nonconformance are two distinct problems that require different solutions. Another respondent indicated that expanding GIDEP reporting to include quality issues could also reduce

the overall effectiveness of the GIDEP system for combating counterfeit-part proliferation and recommended ''deleting the requirement for contractor reporting of nonconformances into GIDEP and, instead, continuing the process of deferring to the contracting officer to make the determination regarding which nonconformances should be reported to GIDEP''.

Response: As stated in the preamble to the proposed rule, the problem of counterfeit and other nonconforming parts extends far beyond electronic parts and can impact the mission of all Government agencies. The Councils note that, despite an erroneous statement in the preamble to the proposed rule, the statutory requirement for reporting to GIDEP is not limited to CAS-covered contractors and subcontractors but applies to all defense contractors and subcontractors. By requiring contractors to report to GIDEP counterfeit or suspect counterfeit items, as well as common items that have a major or critical nonconformance, the rule will reduce the risk of counterfeit items or items with major or critical nonconformance from entering the supply chain. Reducing the risk of potential damage to equipment, mission failure, and even injury or death of personnel is a matter of national security, particularly for DoD and NASA, improving operational readiness of personnel and systems. It supports the national security pillars of readiness, safety and reliability of systems and personnel. The FAR Council has the authority under 40 U.S.C. 101 and 121, and 41 U.S.C. 1303, to prescribe Governmentwide procurement policies in the FAR.

However, in response to public comments, after weighing the risks of failure against the cost of compliance with this rule, the final rule has significantly descoped the applicability (see FAR 46.317) of FAR clause 52.246–26, so that it applies only to acquisition of—

- Items that are subject to higher-level quality standards in accordance with the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement;
- Items that the contracting officer, in consultation with the requiring activity, determines to be critical items (see FAR 46.101) for which use of the clause is appropriate;
- Electronic parts or end items, components, parts, or assemblies containing electronic parts, if this is an acquisition by, or for, the Department of Defense, as provided in paragraph (c)(4) of section 818 of the NDAA for FY 2012 (Pub. L. 112–81) that exceeds the SAT; or
- Services, if the contractor will furnish, as part of the service, any items that meet the above-specified criteria.

The clause will not be required in contracts for the acquisition of commercial items (see paragraph II.B.1.b.) or the acquisition of medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803 (see paragraph II.B.5.e.).

Even if the clause is included in the contract, the contractor is not required to submit a report to GIDEP (see FAR 52.246–26(c)) if—

- The Contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States (see paragraph II.B.3.b.);
- The contractor is aware that the counterfeit suspect counterfeit or nonconforming item is the subject of an on-going criminal investigation, unless the report is approved by the cognizant law-enforcement agency (see paragraph II.B.7.b.); or
- For nonconforming items (other than counterfeit or suspect counterfeit items), it can be confirmed that the organization where the defect was generated (*e.g.,* original component manufacturer, original equipment manufacturer, aftermarket manufacturer, or distributor that alters item properties or configuration) has not released the item to more than one customer.

b. Exclude Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

Comment: Multiple respondents commented that the proposed rule is overly burdensome for commercial item providers, both prime contractors and subcontractors. One respondent stated that application of the regulation to commercial-item contractors is inconsistent with the Federal Acquisition Streamlining Act of 1994 (FASA) and FAR part 12, because the regulation is not required by statute or Executive order and is not consistent with customary commercial practice. One respondent commented that the proposed rule appears intended to build on the contractor inspection systems already required by the FAR, but that this assumption may not be reasonable for commercial item contractors.

Response: Based on public comments the clause is no longer prescribed for use in contracts for the acquisition of commercial items using FAR part 12 procedures.

c. Extent of Flowdown

Comment: Several respondents opposed the mandatory flowdown of the reporting requirement clause to all subcontractors and suppliers to all tiers within the supply chain. One respondent suggested that even the process of communicating its provisions to those required to comply will be significant. Another respondent stated that the rule should not flow down to providers of COTS items.

Response: The flowdown in the final rule has been significantly reduced. Consistent with the criteria for application of the clause at the prime level, the clause only flows down to subcontracts for—

- Items subject to higher-level quality standards in accordance with the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement;
- Items that the contractor determines to be critical items for which use of the clause is appropriate;
- Electronic parts or end items, components, parts, or materials containing electronic parts if the subcontract is valued at more than the SAT, and if this is an acquisition by, or for, the Department of Defense, as provided in paragraph (c)(4) of section 818 of the NDAA for FY 2012 (Pub. L. 112–81); or
- The acquisition of services, if the subcontractor will furnish, as part of the service, any items that meet the above-specified criteria.

The clause does not flow down to subcontracts for—

(i) Commercial items; or

(ii) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

d. Exclude Acquisitions Below the Micro-Purchase Threshold

Comment: One respondent suggested that the way the proposed rule was written, it is overly broad in its applicability. To mitigate this, the respondent suggested making the reporting requirements inapplicable to acquisitions for which the value of the acquired supplies is at or below the micro-purchase threshold.

Response: The proposed rule was not applicable to supplies at or below the micro-purchase level. This continues to be the case in the final rule.

e. Exclude ''Consumable'' Supplies

Comment: One respondent was concerned that the proposed clause at FAR 52.246–26, Reporting Nonconforming Items, will be required in all contracts for supplies and services. Therefore, the respondent recommended adding the word ''non-consumable'' to the texts of FAR 7.105(b)(19), 12.208, 46.102(f), 46.202–

1, and 46.317, hence reducing the scope and application of the rule.

Response: In response to the widespread concern that the rule was too broad and burdensome, the application and scope of the final rule have been significantly reduced so that it is not applicable to all supplies and services. However, the requirements of section 818(c)(4) of the NDAA for FY 2012 require application to all electronic parts or end items, components or materials containing electronic parts in acquisitions by or for DoD, (except for acquisitions of commercial items or at or below the simplified acquisition threshold). Electronic parts are often consumable items. Therefore, ''consumables'' cannot be removed as a group from the final rule's reporting requirements. Class IX consumables encompass many electrical and electronic parts, components, and subassemblies used on today's military systems.

f. Exclude ''Suspect Counterfeit'' Items

Comment: One respondent requested elimination of the requirement to report ''suspect counterfeit'' items from the rule if COTS items were not excluded from the rule.

Response: The Councils have excluded COTs items from the rule, but retained the requirement to report ''suspect counterfeit'' items within the scope and applicability of this rule. At the time of the initial report to GIDEP, most items are still in the category of suspect counterfeit items and the fact that an item is suspected of being counterfeit is useful information for the Government and industry to have because suspect counterfeits have the potential to impact safety, performance, and reliability and as such pose a risk.

g. Exclude ''Major Nonconformance''

Comment: One respondent indicated concern that the definition of ''major nonconformance'' includes language that could be read to reach run-of-the-mill warranty issues. The respondent questioned what types of nonconformances are of such significant concern as to warrant imposition of the reporting requirement on every supplier at any tier in the supply chain. The respondent proposed that the reporting obligation be limited to critical nonconformances. Even if this limitation is adopted, the respondent is still concerned that a lower-tier supplier would not have sufficient information about the intended use of a part to be able to determine whether a nonconformance is ''critical.''

Response: The application of the final rule is not limited to critical nonconformances as requested by the respondents, but also includes major nonconformances because it is difficult to draw the distinction between a major nonconformance and a critical nonconformance. Whether a nonconformance is major or critical depends on the application. What constitutes only a major nonconformance for one application may constitute a critical nonconformance for another application. Therefore, it is important to also share the data on major nonconformances in GIDEP. Some of the respondent's concerns may be alleviated by the overall reduced scope of the rule, *e.g.,* excluding commercial items, including commercially available off-the-shelf (COTS) items, and reducing flowdown to subcontracts (also see paragraphs II.B.2.a. thru c.)

h. Report When Counterfeit Items Are Offered for Sale by Nonauthorized Distributors

Comment: One respondent proposed that the GIDEP program be expanded to allow manufacturers the ability to report instances in which companies become aware that potentially counterfeit items are offered for sale by nonauthorized distributors.

Response: The final rule has not been changed and the GIDEP program has not been expanded to allow manufacturers the ability to report instances in which they become aware that potentially counterfeit items are offered for sale by nonauthorized distributors. The fact that a part is provided by an unauthorized distributor may indicate that a part is ''potentially'' counterfeit, but credible evidence (including but not limited to visual inspection and testing) is required to determine that a part is ''suspect counterfeit.''

i. Embedded Products, Such as Binary Code or Downloaded Apps

Comment: One respondent was concerned that DoD rules for counterfeit and suspect counterfeit electronic parts now include ''embedded software or firmware'' within their ambit. The respondent therefore requested clarification of the applicability of reporting on binary code or downloaded apps that are stored in a contractor's data system. This respondent suggested that the ability to discover flaws in embedded ''products'' was not part of section 818 and its inclusion in the detection and avoidance systems rules will cause gaps in the reporting process.

Response: The concern of the respondent with regard to applicability to embedded software or firmware is no longer a problem because in response to comments at a public meeting held on June 16, 2014 (after the submission of this comment), the subsequent final DFARS rule published on August 2, 2016 (81 FR 50635), under DFARS Case 2014–D005 entitled ''Detection and Avoidance of Electronic Parts—Further Implementation,'' removed the statement about ''embedded software or firmware'' from the definition of ''electronic part.'' The FAR rule does not address embedded software or firmware in the definition of counterfeit or suspect counterfeit items.

2. Definitions

a. ''Nonconformance''

Comment: Two respondents requested more clarity as to what constitutes nonconformance, especially in regard to electronic parts. One respondent opined that the rule must identify what types of ''nonconformances'' are of such significant concern as to warrant imposition of this reporting obligation on every supplier at any tier in the Government supply chain. Without sufficient clarity regarding what constitutes a ''major nonconformance,'' there is risk that suppliers will err on the side of over reporting.

Response: The respondent's concern with regard to imposing the reporting obligation on every supplier at any tier is no longer valid because the rule no longer applies to all supplies. The clause prescription has been revised in the final rule so that the clause will not be included in a contract except as provided in the response in paragraph II.B.1.a.

With regard to the meaning of the terms ''critical nonconformance'' and ''major nonconformance,'' these terms are not new to this rule, but have been used in the FAR for many years and are commonly understood in the quality assurance field. FAR 46.101, defines a ''critical nonconformance'' as a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission. It defines a ''major nonconformance'' to mean a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. As with other items, a nonconforming electronic part is one which does not meet the requirements for its intended use. Quality standards for electronic parts are widely understood in the industry. No further

explanation of the terms has been added to the final rule.

Comment: According to one respondent, the final DFARS rule published on May 6, 2014, defines a ''counterfeit electronic part'' as a knowingly misrepresented part and defines a ''suspect counterfeit electronic part'' as an item that a (presumably) higher-tier supplier had credible evidence to believe was knowingly misrepresented by a lower-tier supplier or the counterfeit maker. The respondent believed that same standard, *i.e.,* an intent to deceive, should be applied to reporting a nonconforming item because the qualifiers to the definitions add no substantive information to allow a supplier to adopt a useful model to identify when a nonconforming part must be reported.

Response: The FAR definitions in the final rule were not changed in response to this comment because the intent to deceive only applies to counterfeit parts. The FAR proposed rule definitions of ''counterfeit item'' and ''suspect counterfeit item'' are similar to the DFARS definitions of ''counterfeit electronic part'' and ''suspect counterfeit electronic part.'' The definition of ''counterfeit item,'' where misrepresentation is an element, is distinct from the definitions of an item with a critical or major nonconformance, which do not address misrepresentation. The nonconformance definitions purposely do not include an ''intent to deceive'' and are based solely on whether there is a major or critical nonconformance. It does not matter what the contractor's intent was, but only what the quality of the item is.

Comment: One respondent stated that the criticality of nonconformance is often application-specific and industry has no way to determine with certainty if another contractor is using a part in a manner that might cause a major or critical nonconformance. The respondent believes the rule mandates that Government contractors understand the design, relevance, and impact of nonconformance(s) on all other systems and Government contracts.

Response: The contractor is not required to determine how a part might be used in another application by another contractor. The rule creates a contract clause, which will be included in appropriate contracts requiring contractors to report under specific conditions where the item is being used in a specific application being purchased under the contract. No change has been made in the final rule as a result of this comment.

b. ''Common Item''

Comment: Several respondents opined that the definition of ''common item'' is overbroad, susceptible to many interpretations, and needs further clarification. One respondent noted the current definition stated that it is difficult to imagine any item (other than a one-of-a-kind part) that would not be a ''common item.''

Response: FAR 46.203(c)(1) currently notes that a ''common item'' has multiple applications whereas, in contrast, a peculiar item has only one application. In the proposed rule, the term was defined in the clause at 52.246–26 to make it more prominent and easier to find, with added examples. In the final rule, the Councils have retained the definition in the clause, but removed the examples from the definition of ''common item'' as they were not necessary and may have caused confusion.

c. ''Quality Escape''

Comment: Two respondents stated that the term ''quality escape'' was broad and confusing, did not serve to clarify what would rise to the level of being a reportable event, and may result in duplicative reporting.

Response: Based on the comments received, the Councils have removed the term ''quality escape'' from the rule.

d. ''Substance of the Clause''

Comment: One respondent contended that the indefinite meaning of the phrase ''substance of this clause'' threatens to introduce enormous complexity into already difficult negotiations between higher-tier and lower-tier contractors regarding the scope of reporting obligations that such lower-tier subcontractors are required to assume. Higher-tier contractors could justifiably insist on imposing quality-control and reporting requirements that go well beyond those specified in the proposed clause to ensure that they fulfill their own obligations under the clause.

Response: The Councils removed the phrase ''substance of the clause'' and added language at paragraph (g)(3) of the clause to state that the contractor shall not alter the clause other than to identify the appropriate parties. In addition, the Councils revised the flowdown language to add specificity on how the clause requirements are to be flowed down to applicable subcontracts and listed circumstances, such as for commercial items, where the clause would not flow down.

e. ''Becomes Aware''

Comment: One respondent noted that there is no definition of the term ''becomes aware,'' so a standard needs to be established that recognizes that there are many touch points in a supply chain where a counterfeit or suspect counterfeit part could potentially be discovered and thus potentially many points where the reporting requirement might legitimately surface.

Response: The Councils have revised paragraph (b)(2) of the clause to specify that written notification is required within 60 days of ''becoming aware or having reason to suspect through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party)'' that an item is counterfeit or suspect counterfeit. A similar change was made in paragraph (b)(4), with regard to notification to GIDEP.

3. Government-Industry Data Exchange Program (GIDEP)

a. Access for Contractors to Government-Only Reports

Comments: Two respondents expressed concern regarding the Government's submission of GIDEP reports that are shared exclusively with other Government agencies and not with industry. They are requesting that these reports be shared with industry to improve industry's ability to avoid and detect counterfeits.

Response: This comment did not result in a change to the final rule, because information considered sensitive by DoD concerning nonconforming or suspect counterfeit items may need to be temporarily withheld from the broader GIDEP industry membership and published in GIDEP with the distribution limited only to U.S. Government activities. However, to minimize the impact of restricting access to this information, DoD activities responsible for these reports are expected to release information when deemed appropriate.

b. Access for Foreign Contractors

Comments: Several respondents expressed concern regarding the current limits of GIDEP membership and the crucial need for their foreign suppliers to have access to GIDEP data.

One respondent expressed concern that by not including foreign suppliers in GIDEP that this rule would create a barrier to trade since foreign suppliers could not comply with the GIDEP related requirements.

Response: The Councils have determined that the inclusion of foreign contractors reporting into GIDEP would

be beyond the manageable scope of this rule. Therefore, the final rule states that foreign contractors and subcontractors are not required to submit or screen GIDEP reports. As a result, the applicability of the rule has been further reduced.

However, it is possible for a foreign contractor or subcontractor to work through a U.S. contractor that is a member of GIDEP and can act as a liaison between the foreign contractor and GIDEP.

c. Capacity

Comments: One respondent questioned whether GIDEP is sufficiently resourced to meet the demands of the increased participation that this rule would require.

Response: In anticipation of increased participation as a result of this rule, GIDEP has done an internal assessment of how it will handle this increase. For the near term, GIDEP will redirect current in-house resources and will reprioritize current workload to accommodate the estimated demand. For the long term, GIDEP is modernizing its policies, procedures, and information technology to increase capacity to meet this and future needs. In addition the rule has been descoped to reduce reporting requirements.

d. Search Capability And Screening

Comments: One respondent expressed concern with the GIDEP search capability to identify all suspect counterfeit reports in the GIDEP database based on a specific identifier. Request was made for GIDEP to provide a specific data field to be included in all suspect counterfeit reports that would serve as a unique identifier to facilitate the search process.

One respondent opined that reviewing, or screening, of GIDEP reports for suspect counterfeit electronic parts by contractors and Government is often geared ''not to find'' affected parts, stating if only the exact part number and lot/date code is checked for impact, there is little chance of detecting all counterfeit parts. The respondent suggested the rule be revised to instruct contractors to screen for similar parts purchased or installed from the named supplier.

Response: The search capability of GIDEP is outside the scope of this rule and no change to the rule has been made. It should be noted that GIDEP search capability, although dated, is very powerful and accesses a fully indexed database. GIDEP members are able to perform searches based on simple keywords, phrases, or on specific discrete fields such as manufacturer, part number, and supplier. GIDEP also provides a service for its members called Batch Match. A GIDEP member can provide a list of parts, which GIDEP will use to automatically search the database for an exact match to any reference that meets the provided criteria. If an applicable document is found, the member is provided with a list of document references. This matching can be performed one time or on an ongoing daily basis.

e. Reporting

i. Guidance To Limit Duplicative Reports, *i.e.,* Who in the Supply Chain Reports

Comments: Several respondents expressed concern that the proposed rule as written would require multiple parties in the same supply chain to create duplicate reports of the same counterfeit, suspect counterfeit or nonconforming part discovery.

One respondent recommended that the reporting obligation be imposed upon only the organization that delivered the nonconforming item, not the entity or entities that received the nonconforming item. Another respondent recommended that the first point in time in the supply chain where ''actual knowledge'' can be established may be the proper point for disclosure and reporting to GIDEP.

Response: The organization that becomes aware or has reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party), that an item purchased by the contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit, or that a common item has a major or critical nonconformance, is responsible for ensuring a GIDEP report is prepared and submitted. Duplicative nonconformance or counterfeit reports in GIDEP are defined as events that have the same part number, manufacturer, or supplier, the same lot or date code, and same technical facts. To save resources in the dispositioning of duplicate reports any event deemed to be a duplicate of a previously reported incident will be referenced in the ''Comment'' area of the GIDEP report. Events involving the same part number and manufacturer that had previously been reported to GIDEP may be documented with a new GIDEP report having a reference to that earlier report so that GIDEP users may reevaluate the disposition previously taken. This type of documentation also provides opportunities for Federal agencies to better understand issues within their supply chains. No changes were made to the final rule as a result of this comment.

ii. Inaccurate or False Reports

Comments: Several respondents stated the need to ensure that any inaccurate or improper information is corrected or removed from the GIDEP reports.

Response: The mechanics of how GIDEP corrects or removes inaccurate reports is outside the scope of this rule and no change to the rule has been made. Once a report is submitted to GIDEP and entered into the database so that it is visible to the GIDEP community it becomes a permanent record in the GIDEP information system. Once the record is visible to the community, users begin to make decisions and take action based on the report's content. In order to facilitate its use, the report becomes a historical record that can be referenced for as long and as frequently as needed. If an error or an inaccuracy is discovered the originator of the document can correct it through the use of an amendment record. The amendment is displayed with the original record and is made part of the document's history. This way, the most current and accurate information is made available and preserved for the GIDEP community's use.

iii. Nonconformance Reports

Comments: Two respondents expressed ''uncertainty about when the 60-day clock starts running'' for submitting GIDEP reports. The respondents questioned whether nonconforming items are to be reported immediately, or only after failure analysis is performed by the manufacturer. Another respondent recommended that the ''Government maintain current GIDEP reporting requirements for key information to include in nonconformance reports.''

Response: The final rule has modified the proposed rule to state that the contractor shall submit a report to GIDEP within 60 days of ''becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that an item purchased by the contractor for delivery to, or for, the Government is ''counterfeit or suspect counterfeit item'' or ''a common item that has a major or critical nonconformance''. The 60-day period begins when the contractor first becomes aware or has reason to suspect that an item is a counterfeit or suspect counterfeit item or has a major or critical nonconformance.

iv. Reports to Contracting Officer Versus Reports to GIDEP

Comments: Several respondents expressed concern about the creation of dual and duplicate reporting requirements, *i.e.,* reporting counterfeit or suspect counterfeit parts to the contracting officer as well as to GIDEP. One respondent recommended that the rule only address GIDEP reporting. One respondent stated that the rule gives no guidance on what information is to be provided to the contracting officer. The respondent asked whether a copy of the GIDEP form would suffice. Another respondent requested further clarification on the rationale for the dual reporting with regard to counterfeit or suspect counterfeit parts.

Response: In the proposed rule, paragraph (b)(2) of the clause at FAR 52.246–26 required the contractor to report counterfeit or suspect counterfeit items to the contracting officer. This requirement has been retained in the final rule because section 818(c)(4) requires contractors and subcontractors to report counterfeit or suspect counterfeit electronic parts to ''appropriate Government authorities and the Government-Industry Data Exchange Program.'' The contracting officer needs to be aware of issues that arise on the contract. With regard to content of the report, a copy of the GIDEP report would suffice.

v. Automatic Bulletins

Comments: One respondent recommended that ''GIDEP should be configured to automatically issue bulletins to industry when reports are input into the system in order to provide the maximum opportunity for contractors to reduce the real-time risk of counterfeit, suspect counterfeit or nonconforming items entering the supply chain.''

Response: This is outside the scope of this rule and no change to the rule has been made. However, GIDEP provides a number of ways to inform industry of recently published reports:

- A Batch Match service allows users to load their parts into GIDEP and to be informed via email whenever new published reports may impact their parts.
- Weekly report summaries and part numbers are pushed out to industry via email links.
- A daily XML feed of data tailored to meet industry's specific data requirements is also available.

GIDEP training emphasizes the capabilities of the various notifications systems available to industry.

vi. Instructions, Training, and Assistance

Comment: One respondent requested clarification as to how GIDEP reporting for counterfeit and suspect counterfeit electronic parts will work. Several respondents expressed concern that many contractors do not currently use the GIDEP database and will not be familiar with how to report to GIDEP.

Response: The operation of GIDEP is outside the scope of this rule and no change to the rule has been made. However, it should be noted, to better understand how GIDEP reporting works and become familiar with how to report to GIDEP, support is provided in a variety of ways to assist users.

Instructions: To assist GIDEP users in submitting suspect counterfeit reports, Chapter 7 of the GIDEP Operations Manual ''Failure Experience Data'' provides detailed instructions on how to complete a suspect counterfeit report. Appendix E ''Instruction for Reporting Suspect Counterfeit Parts'' provides detailed instructions on completing each field of the GIDEP Forms 97–1 and 97–2. Chapter 7 is available for download from the GIDEP public website.

Training:

- Various GIDEP instructional modules are provided as online web-based training.
- Training clinics are held where GIDEP members can attend to get personal hands-on training by GIDEP Operations Center personnel.
- Quarterly classroom training is held at the GIDEP Operations Center.
- Training is also available remotely through web-conferencing.

Help Desk: For the day-to-day issues and questions that may come up, the GIDEP Operations Center has a Help Desk.

f. Contractor Responses to Reports

Comments: One respondent expressed the need for industry to be able to provide feedback to GIDEP Reports.

Response: The operation of GIDEP is outside the scope of this rule and no change to the rule has been made. However, it is the standard GIDEP process for suppliers and/or manufacturers named in GIDEP reports to be given 15 working days to provide their response. Their response is then included in the release of the GIDEP report. If anyone should take issue with a report or believe they have additional information regarding a given report, they are free to discuss their information with the original submitter who, in turn, can amend their submitted report if they believe it is warranted. The GIDEP database also allows for the capture of individual GIDEP member comments in the comment field associated with each report.

4. Potential Adverse Impact

a. Increased Costs May Outweigh Benefits

Comment: Several respondents were concerned that the expansion of the statutorily mandated reporting and review requirements creates an unnecessary burden on industry that will result in increased costs to the Government with benefits unlikely to outweigh those increased costs. One respondent stated that the added compliance burdens will likely make future contracting opportunities cost-prohibitive for businesses of all sizes. Several respondents were concerned that the significant burden of the proposed rule may dissuade new companies (both prime and subcontractors) from entering the public sector market or cause companies to remove themselves from the Federal market place. Particularly commercial and COTS suppliers at the lower-tier may choose to exit the market.

Response: The final rule has been significantly descoped, including removal of applicability of FAR 52.246–26 to commercial prime contracts and exclusion of flowdown to subcontracts for commercial items. In addition, the rule no longer applies to all supplies. (See response in paragraph II.B.1.a.).

Furthermore, the information collected during normal quality assurance inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) is the information that is needed for a GIDEP report. Therefore, no changes are required to existing quality-assurance systems. In fact, the information required is a subset of that collected for the quality assurance contract compliance efforts and so only excerpts from the Quality Assurance system report are needed in the GIDEP report. The benefits of sharing this information will be the reduction of risks presented by counterfeit and nonconforming items in the supply chain. In turn, this will protect mission critical items and avoid failures impacting national security.

b. Expanded Acquisition Planning Requirements

Comment: One respondent was concerned by the expanded acquisition planning requirements proposed at FAR 7.105(b)(19). According to the respondent, there are multiple quality standards in various sectors of the

marketplace and, in still others, there are no standards at all. If this rule were to apply only to major systems, it might be possible to identify the standards in the various industry sectors involved, but this would require a number of levels of expertise that individual acquisition shops may not possess. The respondents foresee that the Government will face challenges in implementation.

Response: The final rule has amended the proposed text at FAR 7.105(b)(19), since the rule no longer applies to all supplies or service contracts that include supplies. The final rule requires that the acquisition plan address whether high-level quality standards are necessary in accordance with FAR 46.202, and whether the supplies to be acquired are critical items in accordance with FAR 46.101, rather than requiring that the acquisition plan address for all supplies ''the risk-based Government quality assurance measures in place to identify and control major and critical nonconformances''.

c. Civil Liability

Comment: Various respondents commented on the ''safe harbor'' from civil liability that may arise as a result of reporting to GIDEP, provided that the contractor made a reasonable effort to determine that the items contained counterfeit electronic parts or suspect counterfeit electronic parts. This safe harbor in the proposed rule is provided by section 818(c)(5) of the NDAA for FY 2012, applicable only to contracts awarded by or for the Department of Defense, and only applicable to reporting of counterfeit electronic parts or suspect counterfeit electronic parts.

Several respondents supported the safe harbor provisions, but had some concern that it may encourage contractors to err on the side of reporting to GIDEP, rather than analyzing whether the nonconformance is a critical or major nonconformance, and whether the nonconformance is genuine.

Some respondents, expressed concern that expanding the rule beyond the original Congressional intent leaves industry open to significant civil liability, which Congress could not have intended. According to two respondents, the rule should not be extended beyond the original statutory scope until Congress provides safe harbor for the expanded scope of the rule. Some respondents recommended that the rule should afford civil immunity to all contractors covered by the rule, or even legal indemnification.

According to one respondent, lack of safe harbor may disincentivize contractors from reporting. Several other respondents were concerned that, absent safe harbor provisions for authorized supply chains, the Government may find its access to authorized sellers limited.

Response: With regard to concern that contractors or subcontractors will be ''erring on the side of reporting to GIDEP'' because of protection against civil liability, the contractor or subcontractor is only exempted from civil liability provided that the contractor or subcontractor ''made a reasonable effort to determine that the report was factual.''

Section 818(c)(5) of the NDAA for FY 2012 is limited by its language to immunity from civil liability to defense contractors and subcontractors, only with regard to reporting of counterfeit or suspect counterfeit electronic parts. It does not provide a legal basis to hold civilian agency contractors immune from civil liability in accordance with the plain language of the statute. Immunity is an exemption from liability that is granted by law to a person or class of persons. There has to be a legal basis to release a contractor from liability either under the contract, pursuant to a statute, or in accordance with common law. Granting an immunity from liability is achieved by law—either by the legislature pursuant to statute, or by the courts under common law (*e.g.,* a common law defense to a lawsuit that the contractor asserts before the courts), or in accordance with contract terms and conditions. The FAR Council is not authorized to expand the statutory liability provisions (in this case immunity from civil liability) beyond the statutory language, or to include indemnification. Therefore, there were no changes from the proposed rule as a result of these comments.

d. De Facto Debarment or Suspension

Comment: One respondent was concerned that reporting of contractors and subcontractors may include reporting of third-party items. The respondent is concerned that the entity whose item is reported to GIDEP is effectively debarred or suspended from Government contracting unless and until cleared.

Response: The focus of suspension and debarment is on the responsibility of the contractor or subcontractor. The focus of GIDEP is on the conformance of a part, which may or may not reflect badly on the contractor or subcontractor. Before a report is submitted to GIDEP for publication, the manufacturer of the item or the supplier of the suspect counterfeit part is given the opportunity to provide their perspective on the issues presented in the report. Often, the information presented includes how the part manufacturer is being improved to resolve the concerns or how the supplier who provided the suspect counterfeit part is improving their quality assurance processes or procurement practices. Most GIDEP reports provide an opportunity for a positive perception of the entity. There were no changes from the proposed rule as a result of this comment.

5. Conflicts or Redundancies

a. Mandatory Disclosure Requirements at FAR 52.203–13

Comment: Several respondents were concerned about differentiation between expanded GIDEP reporting and mandatory disclosure under FAR clause 52.203–13. One respondent stated that it is their understanding that the DoD Inspector General (DoDIG) Office of Contract Disclosure has taken the position that contractors are obliged to report ''any discovery of counterfeit electronic parts and non-conforming parts.'' This respondent noted that if the FAR clause is in the contract and if they find credible evidence of fraud committed somewhere in the supply chain, they would report it to the DoDIG via the contract disclosure process. However, it is not clear to the respondent that when these conditions are not present, that they must still report to the DoDIG. One respondent asked for clarification of the obligation of contractors under the contemplated expanded reporting requirement and the requirement at FAR 52.203–13. Another respondent requested that the FAR Council ''expressly state that any reporting required under the rule does not implicate or trigger any requirements to notify the IG under . . . FAR part 3.10.'' Two respondents cited to the DoD statement in the preamble to the final DFARS rule for DFARS case 2012–D055 that the mandatory disclosure process suggests that the contractor has committed an ethical code of conduct violation, whereas the GIDEP reporting is not meant to imply a violation of this nature.

Response: Counterfeit or suspect counterfeit parts, by definition, probably involve fraud at some tier of the supply chain. The evidence that led to the conclusion that the part was counterfeit or suspect counterfeit should provide the credible evidence required by FAR 52.203–13 that would require disclosure to the IG. Nonconforming parts, on the other hand, do not necessarily involve the fraud or other criminal violations or

civil false claims violations listed at FAR 52.203–13, and therefore may, but do not necessarily, trigger the disclosure requirement under FAR 52.203–13.

The fact that the clause is not in the contract may relieve the contractor from the specific requirement to report the credible evidence of fraud to the IG. However, although the clause at FAR 52.203–13 is only included in contracts in accordance with the clause prescription at FAR 3.1004, the requirements at FAR 3.1003(a)(2) state that, whether or not the clause is applicable, a contractor may be suspended and/or debarred for knowing failure to timely disclose to the Government, in connection with the award, performance, or closeout of a Government contract performed by the contractor or a subcontract award thereunder, credible evidence of a violation of Federal criminal law involving fraud or a violation of the Civil False Claims Act.

Although the mandatory disclosure under FAR 52.203–13 indicates an ethical code of conduct violation at some tier by some entity, that does not equate to an ethical violation by the contractor that is reporting the violation. Therefore, there was no change from the proposed rule as a result of these public comments.

b. FAR Part 46 Quality Assurance Conflicts or Redundancies

Comment: Two respondents expressed concerns that the additional reporting is redundant and extending reporting to other areas duplicates controls already in place. One respondent stated that contractors are already required to report uncorrected nonconformances.

Response: While quality management systems standards require reporting of nonconformances in some instances, GIDEP reporting is not redundant because the GIDEP reporting is to the larger acquisition community thereby providing other acquisition activities an opportunity to mitigate disruptions caused by suspect and known counterfeit items. FAR part 46 and the Quality Management Systems Standards require reporting to the customer only. Therefore, there was no change from the proposed rule as a result of these public comments.

c. DI–MISC–81832, Data Item Description: Counterfeit Prevention Plan (21 Jan 2011) Issued by National Reconnaissance Office (NRO)

Comment: One respondent stated that the proposed rule is in conflict with Data Item Description, DI–MISC–81832 COUNTERFEIT PREVENTION PLAN (21 JAN 2011). The contractor is not required by the DID to notify the suppliers that the items are suspect counterfeit.

Response: The clause does not require the contractor to notify the suppliers. It requires reporting to the contracting officer and GIDEP. Therefore, there was no change from the proposed rule as a result of these public comments.

d. GIDEP Failure Experience Data (FED) Operations Manual

i. Notifying More Than One Customer on Single-Use Item

Comment: One respondent noted that the proposed rule is in conflict with the GIDEP Operating Manual. The respondent stated that the GIDEP Operating Manual does not require reporting of items ''acquired for a specific application or use, and known not to be used by anyone else,'' whereas the rule conflicts with this.

Response: The GIDEP Operations Manual does not conflict with either the proposed or the final rule. The rule requires reporting of major or critical nonconformances to GIDEP only for ''common items,'' which term is defined at FAR 46.101 to mean an item that has multiple applications versus a single or peculiar application. The Operations Manual states ''Items and services uniquely acquired for a specific application or use, and known not to be used by anyone else, will not be reported through GIDEP. If you are unsure whether the item may be similar to one used for another application modified only by the color or slight change of form or fit, you should report the nonconforming item or service using the applicable form.''

If parts are procured from sources open to or available to the broader industrial base, then it is likely others have procured the same part and it should be reported.

ii. GIDEP Community Collaboration

Comment: Two respondents stated that the GIDEP manual already contains a reporting process that many involved with Federal contracting already use. One respondent does not support changes to the reporting process documented in the manual. According to the respondent: ''All enhancements and changes to reporting requirements should be implemented through the GIDEP membership community where Government and industry advisory groups collaborate, pilot, and execute reporting requirement changes.''

Response: This FAR rule is not changing the GIDEP process. In some instances the rule now requires mandatory reporting, rather than voluntary reporting, but does not change how to report. No change from the proposed rule is required as a result of these comments.

e. Food and Drug Administration MedWatch Database

Comment: One respondent stated that the intent of the rule is for information to be exchanged among agencies about nonconformance. This goal is served by the Food and Drug Administration MedWatch database for products regulated by the Food and Drug Administration that present a risk to health.

Response: The final rule no longer applies to acquisition of items reported in the Food and Drug Administration's MedWatch database due to the change to the clause prescription at 46.317(b)(2) and the change to the clause flowdown at 52.246–26(g)(2)(ii).

6. Safeguards

a. Proprietary Data Under Trade Secrets Act

Comments: One respondent expressed concern whether adequate measures and processes are in place to ensure that proprietary data or information protected under the Trade Secrets Act shall not be reported.

Response: It is GIDEP policy that submitted reports should not contain proprietary data. To make this prohibition explicit, the final rule adds a new paragraph (d) to the clause at FAR 52.246–26, which states that submitted reports are not to include ''trade secrets or confidential commercial or financial information protected under the Trade Secrets Act.'' It is the practice of GIDEP that all GIDEP reports are screened upon receipt for information labelled as proprietary data or information protected under the Trade Secrets Act. If this data is found, it is brought to the attention of the submitter. If the submitter of the report is insistent upon including the proprietary data, a written release is obtained.

b. Impact on Ongoing Criminal Investigation

Comments: One respondent recommended that the proposed rule should provide ''clear guidance as to when a report should not be made if a criminal investigation is in-process and reporting could impact such investigation.''

Response: The final rule has been modified at FAR 52.246–26(c)(2) to add the statement that a GIDEP report should not be submitted when the contractor is aware that the issue it is reporting is being investigated unless

the report has been approved by the cognizant law enforcement agency.

c. Export-Controlled Data

Comments: One respondent expressed concern whether adequate measures and processes are in place to ensure that ''export controlled data is not inadvertently released to unauthorized parties.''

Response: The final rule revised the clause at 52.246–26(b)(1) and (c)(1) to clarify that the GIDEP reporting and screening requirement does not apply if the contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States. Since foreign corporations will not be allowed to screen or submit GIDEP reports, export-controlled data will not be inadvertently released to unauthorized parties as a result of this rule. Further, when applying for access to GIDEP, all applicants are required to agree to the GIDEP Operations Manual, Chapter 2, Appendix A, ''GIDEP Terms and Conditions'' that include the following—''Safeguard GIDEP data in accordance with the Security and Technology Transfer regulations of the U.S. and Canadian Governments. The U.S. regulations are located at 15 CFR chapter VII, subchapter C ''Export Administration Regulations''. For example, these regulations include rules covering access by and disclosure to foreign nationals employed at the businesses within the United States or Canada.

7. Additional Guidance

a. Disposition of Counterfeit Parts

Comments: One respondent recommended that the Government establish and communicate—

(1) An official position about what a recipient of suspect/actual counterfeit parts should do with the material when it discovers/determines that it may be counterfeit;

(2) Procedures the Government would prefer industry follow in securing suspect counterfeit electronic parts and preserve the chain of custody; and

(3) Guidance addressing how long after a company notifies the Government of its conclusion that industry should retain suspect counterfeit electronic parts.

Response: FAR 46.407(h) provides that the contracting officer shall provide disposition instructions for counterfeit or suspect counterfeit items in accordance with agency policy. Agency policy may require the contracting officer to direct the contractor to retain such items for investigative or evidentiary purposes. Also, FAR 52.246–26(b)(3) directs the contractor to retain counterfeit or suspect counterfeit items in its possession at the time of discovery until disposition instructions have been provided by the contracting officer. Therefore, no changes from the proposed rule are required.

b. Law Enforcement Lead

Comments: One respondent noted that industry would prefer a single Federal law enforcement agency as a point of contact for questions, understanding best practices, referrals, etc. Industry would look to this agency for purposes of reporting and investigation of events such as discovery of counterfeit electronic parts and recommended that GIDEP be the mechanism by which notification to such law enforcement is conducted.

Response: This recommendation is outside the scope of this case and no change is made to the final rule.

c. Cooperation Between Original Component Manufacturers (OCMs) and Contractors

Comments: One respondent addressed difficulties with obtaining sufficient information from the OCM to suspect an item is counterfeit. The respondent indicated that industry benefits, under certain circumstances, from attempting to authenticate electronic parts procured from other than ''trusted suppliers'' when the OCM cooperates. Such circumstances include—

(1) The parts in question are electronic components for items contained in fielded systems previously sold to the Government years earlier and are now needed to support replacement or additional requirements for those same systems;

(2) The OCM no longer manufactures the part in question;

(3) Neither the OCM nor its authorized distributors have the part in stock; and

(4) There is not enough time or inventory to engage authorized aftermarket manufacturers.

According to the respondent, OCMs occasionally refuse to verify such information as lot number, date code, and trademark of suspect counterfeit parts citing that (1) the reporting company did not purchase the part in question from the OCM; (2) taking time to assess the part costs the OCM money; and (3) the risk to the OCM involved in terms of liability to the seller of the part if the OCM's input to the reporting company is incorrect. The respondent recommended that the Government allow industry to bring its requests for such information from OCMs to Federal law enforcement to obtain the information from the OCM or encourage OCMs to cooperate with industry in the collective public good.

Response: It is outside the scope of this case and the authority of the Councils to require OCMs to provide information to another entity with regard to suspect counterfeit parts; therefore, no change is made to the final rule.

8. Technical Corrections/Comments

Comment: According to one respondent, the FAR text should reference 12.301(d)(5) rather than 12.301(d)(4) for the requirement to include the clause FAR 52.246–26, Reporting Nonconforming Items.

Response: The respondent is correct. However, this issue is no longer relevant, as this clause is no longer required for acquisitions of commercial items.

Comment: One respondent commented that if the proposed rule is intended to require flowing down FAR 52.246–26 to commercial-item subcontracts awarded under commercial-item prime contracts, then the FAR Council should propose corresponding amendments to FAR 52.212–5(e).

Response: The respondent is technically correct. However, the final rule no longer applies to contracts for the acquisition of commercial items using FAR part 12 procedures, nor does the rule flow down to subcontracts for commercial items.

Comment: One respondent stated that the proposed rule and clause use the term ''contractor'' at some points and ''Contractor'' at other points.

Response: In accordance with FAR drafting conventions, the term ''contractor'' is not capitalized in the FAR text, but in a clause it is capitalized to indicate the prime contractor.

9. Phased Implementation

a. Adequate Time To Develop Practices, Processes, and Tools

Comment: One respondent proposed a phased implementation approach to allow adequate time for the supply base to develop practices, processes, and tools to comply with the requirements. This would allow for system access and training needs of companies newly reporting in GIDEP and for existing participants' to establish internal protocols to ensure accurate, timely and complete GIDEP reporting.

Response: The Councils do not agree that a phased implementation approach is necessary and no change is made to the final rule. The GIDEP system is well

established and support is provided in a variety of ways to assist users. Instructions are provided in the GIDEP Operations Manual found on the GIDEP website, along with information on instructional modules and web-based training. Additionally, the GIDEP Operations Center has a Help Desk to assist users. These tools will assist with compliance and reduce the need to develop extensive practices, processes, and internal protocols.

b. Limit Reporting Requirement

Comment: Two respondents proposed a phased-in approach initially limited to reporting counterfeit and suspected counterfeit parts and only later expanded once the processes for implementing such systems are established and functioning.

Response: Because the final rule has been significantly descoped there is no need for a phased-in approach and no change was made to the rule concerning a phased-in approach.

c. Expanded Access to GIDEP

Comment: One respondent proposed the FAR Council delay implementation of the rule or make GIDEP participation voluntary until access to GIDEP is more broadly available, specifically to non-U.S. and non-Canadian companies who do not presently have access to the system.

Response: The final rule does not extend access to foreign contractors. It has been determined that the inclusion of foreign contractors would be beyond the manageable scope of this rule. Therefore, the final rule adds the statement in paragraphs (b)(1) and (c)(1) of the clause at 52.246–26 that foreign contractors are not required to submit or screen GIDEP reports.

d. Commercial Item Contractors' Exemption

Comment: One respondent proposes to exempt commercial item contractors, their subcontractors and suppliers from the initial applicability of the rule.

Response: The final rule was revised to no longer apply to acquisition of commercial items and does not require flowdown to subcontracts for the acquisition of commercial items.

10. ''Major Rule'' Under 5 U.S.C. 804

Comment: One respondent disagreed with the statement in the preamble to the proposed that this is not a major rule under 5 U.S.C. 804. The respondent cites the value of current industry investments to secure supply chains and ensure product integrity, increased costs to the Government customer for compliance, and the additional liability costs imposed on the Government industrial base and information and communication technology sectors.

Response: It is not the decision of the FAR Council whether a rule is a major rule, but it is, by the definition at 5 U.S.C. 804, the decision of the Office of Information and Regulatory Affairs (OIRA). OIRA determined that the proposed rule was not a major rule. This final rule has significantly less effect than the proposed rule (*e.g.,* estimated burden hours reduced from 1,422,000 to 30,966 hours), so is even less likely to be considered a major rule. As defined in 5 U.S.C. 804, ''major rule'' means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

(A) An annual effect on the economy of $100,000,000 or more;

(B) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Quality assurance systems already have methods of analyzing and dealing with nonconformances; therefore, the bulk of the process in gathering information on nonconforming parts is already happening (*e.g.,* FAR 52.246–2, Inspection of Supplies—Fixed Price; or 52.246–3, Inspection of Supplies—Cost-Reimbursement).

11. Small Business Impact

Comment: One respondent asserted the analysis of the costs and impacts of the proposed rule are greatly underestimated and that small businesses most assuredly will be impacted as the proposed rule requires a system for ongoing review of GIDEP, audit, investigation, and reporting; and investigation and reporting to GIDEP and the contracting officer. The respondent pointed out that small businesses have limited resources—both in terms of personnel and financial resources—to establish systems necessary to engage in these kinds of continuous monitoring, auditing, investigating, and reporting activities.

Another respondent stated that, although the proposed rule addresses an important objective—to mitigate the threat that counterfeit items pose when used in systems vital to an agency's mission—the rule imposes significant new monitoring and reporting requirements that will pose particular challenges for small businesses. The respondent stated that the proposed rule was likely to increase costs for smaller businesses. The respondent cited examples, such as by requiring them to significantly increase quality assurance and compliance investments in order to remain at some tier in the Government supply chain, increasing liability costs associated with compliance failures, and increasing costs associated with the heightened risk of application of the exclusionary authority. This respondent also opined that in the section 818 regulatory process, the rulemakings have had the net effect of higher-tiered Federal contractors trimming their supply chains to eliminate companies unable or unwilling to implement flowdown policies or that cannot immediately demonstrate well in advance of entering supplier agreements that they have the capabilities demanded by the various section 818 rules. Ultimately, the by-product of this and other section 818 rulemakings is that they disproportionately and negatively impact small businesses through reduced participation in the Federal market and reduced Federal funding.

Response: The significant descoping of the applicability of this rule both at the prime and subcontract level, including removal of the applicability of the clause to commercial prime contracts, and removal of the flowdown requirements to subcontracts for commercial items (see paragraphs II.B.1.a. through II.B.1.c.) will greatly reduce the impact on small businesses. Additionally, the rule does not require application of section 818(c)(4) to DoD contracts and subcontracts that do not exceed the SAT. Furthermore, while this rule may require small businesses to implement new business practices, these practices will have the beneficial effect of making the business more competitive as potential prime contractors and business partners see the firm has instituted practices to avoid passing on counterfeits and items with major or critical nonconformances.

The Councils have revised the rule to lessen burden and reduced reporting requirements to the maximum extent while still getting information necessary to protect items that require higher-level quality standards, critical items, and electronic parts for DOD from counterfeit parts and major or critical nonconformances. Changes to the rule include: Focusing on supplies that require higher-level quality standards or are determined to be critical items, excluding foreign contractors and commercial items. Commercial items

include COTS items. This and other descoping efforts (see preamble sections II.A. and II.B.1.) reduced the estimated responses from 474,000 to 5,166 responses, and reduces the estimated burden hours from 1,422,000 hours to 30,986 hours, so that information is obtained where it is most critically needed.

Comment: One respondent was concerned that adding negotiations over quality assurance may further distort the playing field to hurt small businesses attempting to retain a degree of control in their operations when negotiating with prime contractors. Conversely, lower-tier subcontractors, particularly commercial item contractors and small business entities, may assert that they do not have (and cannot afford to have) the sophisticated internal control systems necessary to detect and categorize the types of nonconforming conditions that require reporting to GIDEP. Neither the proposed clause nor the proposed regulation offers any guidance for resolving such conflicts.

Response: Part of the concern of the respondent was that higher-tier contractors could insist on imposing quality control and reporting requirements that go well beyond those specified in the proposed clause to ensure that they fulfill their own obligation under the clause. In the final rule, paragraph (g)(3) of the clause at 52.246–26 revises the flowdown language to restrict changes to the clause (see paragraph II.B.2.d.).

12. Information Collection Requirements

Comment: Various respondents commented on the estimate of the information collection requirement in the preamble to the proposed rule.

Several respondents stated that the burden is currently underestimated. According to a respondent, the estimate of 474,000 reports underestimates the potential burden of the expanded reporting requirements because it failed to account for the growth in GIDEP reporting entities and relies on the number of companies currently participating in GIDEP.

Various respondents commented that 3 hours per report was substantially underestimated. One respondent noted that any incident must be identified, investigated, and reported. Procedures need to be followed, individuals with expertise need to be consulted, tests need to be performed and reports to memorialize findings of the review need to be prepared and filed. Another respondent noted that a single report can take up to 100 hours to complete, including significant legal review. Another respondent commented that the ''very low estimate'' seems to ignore the significant time and costs associated with training, implementation, and the risks of liability.

Response: DoD, GSA, and NASA have completely revised the estimated number of reports per year because the rule has been significantly descoped and data was also reviewed regarding the current number of participating contractors and the current number of reports submitted, resulting in an estimate of 51,657 participating contractors submitting 5,166 reports per year.

Industry already has all the information necessary to prepare a GIDEP report, based on existing quality assurance systems and procedures. However, in response to the industry comments and after discussions with subject matter experts, DoD, GSA, and NASA have reconsidered the number of estimated hours to prepare, review, and submit the report at an average of 6 hours per report (see section VII of this preamble).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council, which includes DoD, makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The FAR Council has not made this determination. Therefore, section 818(c)(4) of Public Law 112–81 will not be applied below the SAT at either the prime or subcontract level. However, the Governmentwide policy, which is not required by statute, with regard to items that require higher level quality standards and critical items (including electronic parts), will be applied below the SAT, because for such parts, counterfeit or nonconforming parts of any dollar value can still cause hazardous or unsafe conditions for individual using the equipment and can lead to mission failure.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts and subcontracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Likewise, 41 U.S.C. 1907 governs the applicability of laws to the acquisition of COTS items, with the Administrator for Federal Procurement Policy serving as the decision authority in determining whether it is not in the best interest of the Government to exempt contracts for COTS items from a provision of law.

The FAR Council and the Administrator for Federal Procurement Policy have not made these determinations with regard to application of section 818(c)(4) of Public Law 112–81 to contracts and subcontracts for the acquisition of commercial items and COTS items, respectively. This final rule will not apply the requirements of section 818(c)(4) of Public Law 112–81 or the Governmentwide policy to prime contracts for the acquisition of commercial items using FAR part 12 procedures and will not flow the clause FAR 52.246–26 down to subcontracts for the acquisition of commercial items.

IV. Expected Costs

DoD, GSA, and NASA have performed a regulatory cost analysis on this rule. The following is a summary of the estimated public and Government costs. Currently, there is no FAR requirement for contractors to exchange information about counterfeit, suspect counterfeit or major or critical nonconforming items in a Governmentwide database. This final rule establishes the requirement for contractors to search for and share information on such items in GIDEP. Specifically, the rule adds a new FAR clause at 52.246–26, Reporting Nonconforming Items, that includes a requirement for contractors to: (1) Screen GIDEP for items which may have critical or major nonconformances or items that are counterfeits or suspect counterfeits; and (2) report to GIDEP and the contracting officer within 60 days of becoming aware or having

reason to suspect—such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party)—that an end item purchased by the contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit. These screening and reporting requirements apply to contracts that are: (1) Subject to higher-level quality standards in accordance with the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement; (2) for critical items; or (3) for acquisitions over the simplified acquisition threshold of electronic parts or end items, components, parts, or assemblies containing electronic parts, by, or for the Department of Defense.

By sharing this information in GIDEP, both the Government and contractors will benefit from knowing about and avoiding items with critical or major nonconformances, or items that are counterfeits or suspect counterfeits. Sharing this information in GIDEP will reduce the risk of having such items in the supply chain for mission critical items where failure would endanger an agency mission, cause catastrophic failures, or endanger human health and the environment. Although unable to quantify the benefits of this rule, the Government expects reduction in the high costs of potential damage to equipment, mission failure, and even injury and death of personnel.

The following is a summary of the estimated public and Government cost savings calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

Summary	Public	Government	Total
Present Value	$209,045,344.99	$4,007,342.86	$213,052,687.85
Annualized Costs	14,633,174.15	280,514.00	14,913,688.15
Annualized Value Costs (as of 2016 if Year 1 is 2019)	11,945,028.99	228,982.98	12,174,011.97

To access the full regulatory cost analysis for this rule, go to the Federal eRulemaking Portal at *https://www.regulations.gov,* search for ''FAR Case 2013–002,'' click ''Open Docket,'' and view ''Supporting Documents.''

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is an E.O. 13771 regulatory action. The total annualized value of the cost is $14,913,688.15. Details on the estimated costs can be found in section IV. of this preamble.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule partially implements section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81, 10 U.S.C. 2302 Note), requiring regulations regarding the definition, prevention, detection and reporting of actual or suspected counterfeit electronic parts in the Government-Industry Data Exchange Program (GIDEP) system. Section 818(c)(4) was directed specifically at the reporting of counterfeit or suspect counterfeit electronic parts by Department of Defense (DoD) contractors and subcontractors; however, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Counsel (the Councils) consider the problem of nonconforming and counterfeit parts to be significant across the Federal Government and, therefore this rule applies to all applicable Federal contracts.

Respondents expressed concern about the scope of the proposed rule and the potential difficulty of tracking and reporting, especially for small businesses.

- One respondent asserted that the analysis of the costs and impacts of the proposed rule were greatly underestimated and that small business most assuredly will be impacted as the proposed rule requires a system for ongoing review of GIDEP, audit, investigation, and reporting to GIDEP and the contracting officer. The respondent pointed out that small businesses have limited resources—both in terms of personnel and financial resources—to establish systems necessary to engage in these kinds of continuous monitoring, auditing, investigating, and reporting activities.
- Another respondent stated that the proposed rule was likely to increase cost for smaller businesses. The respondent cited examples, such as by requiring them to significantly increase quality assurance and compliance investments in order to remain at some tier in the Government supply chain, increasing liability costs associated with compliance failures, and increasing costs associated with the heightened risk of application of the exclusionary authority.

In response to these concerns, the Councils significantly descoped the rule, both at the prime and the subcontract level. The final rule no longer applies to contracts or subcontracts for the acquisition of commercial items. Additionally, the rule does not require application of section 818(c)(4) to DoD contracts and subcontracts that do not exceed the simplified acquisition threshold (see FAR 46.317(a) and 52.246–26(g)(1)).

The removal of the flowdown requirements will greatly reduce the impact on small businesses. While this rule may require small businesses to implement new business practices involving screening GIDEP reports or reporting in GIDEP if a mission critical nonconforming item is discovered, we do not expect the incident of finding mission critical nonconformances to be frequent. These practices will have the beneficial effect of making the business more competitive as potential prime contractors and business partners see that the firm has instituted practices to avoid passing on counterfeit parts and items with critical nonconformances.

One respondent was concerned that adding negotiations over quality assurance may further distort the playing field to hurt small businesses attempting to retain a degree of control in their operations when negotiating with prime contractors. Conversely, lower-tier subcontractors, particularly commercial-item contractors and small-business entities, may assert that they do not have (and cannot afford to have) the sophisticated internal control systems necessary to detect and categorize the types of nonconforming conditions that require reporting to GIDEP. Neither the proposed clause nor the proposed regulation offers any guidance for resolving such conflicts.

Part of the concern of the respondent was that higher-tier contractors could insist on imposing quality control and reporting requirements that go well beyond those specified in the proposed clause to ensure that they fulfill their own obligation under the clause. This issue has been resolved through amendment of the flowdown language to restrict changes to the clause.

The rule applies to contracts that have higher-level quality assurance requirements (FAR 52.246–11), contracts for critical items, and DoD contracts for electronic parts that exceed the simplified acquisition threshold (other than commercial items). The total number of contractors and subcontractors to which the rule will apply is estimated to be

51,657. Of this number, it is estimated 42,153 or 82 percent will be small businesses, of which approximately 10 percent may be required to submit a GIDEP report in a given year.

This rule requires screening of GIDEP reports; written notice to the contracting officer within 60 days of becoming aware through inspection or testing of counterfeit or suspect counterfeit parts for delivery to, or for, the Government; and reporting of counterfeit and suspect counterfeit items and common items that have a critical or major nonconformance into GIDEP.

The Government vitally needs a program to protect its critical assets from the threat of loss and especially where failure of the item could injure personnel or jeopardize a vital agency mission. The Councils carefully weighed the stated concerns of businesses against the serious impact parts with major or critical nonconformances may have on critical items.

As described above, the Councils minimized the economic impact on small entities consistent with the stated objects of the rule by descoping the rule significantly to the maximum extent possible while maintaining the ability to track and avoid counterfeit, suspect counterfeit items and common items that have a critical or major nonconformance.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0187, titled: ''Reporting of Nonconforming Items to the Government-Industry Data Exchange Program.'' Due to the major descoping of the final rule, the approved estimated number of responses is substantially less than the estimated responses in the preamble to the proposed rule. However, the number of hours per response has been increased to 6 hours.

Respondents: 5,166.
Responses per respondent: 1.
Total annual responses: 5,166.
Preparation hours per response: 6.
Total response burden hours: 30,996.

List of Subjects in 48 CFR Parts 1, 2, 7, 46, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA and NASA are issuing a final rule amending 48 CFR parts 1, 2, 7, 46, and 52 as set forth below:

■ 1. The authority citation for parts 1, 2, 7, 46, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by adding in numerical sequence, the entry for ''52.246–26'' to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.246–26	9000–0187
* * * * *	

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b) by revising the definition ''Common item'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Common item means material that is common to the applicable Government contract and the contractor's other work, except that for use in the clause at 52.246–26, see the definition in paragraph (a) of that clause.

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.105, in paragraph (b)(19) by adding a new sentence to the end of the paragraph to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(19) * * * In contracts for supplies or service contracts that include supplies, address whether higher-level quality standards are necessary (46.202) and whether the supplies to be acquired are critical items (46.101).

* * * * *

PART 46—QUALITY ASSURANCE

■ 5. Amend section 46.101 by adding, in alphabetical order, the definitions ''Counterfeit item'', ''Critical item'', ''Design activity'', and ''Suspect counterfeit item'' to read as follows:

46.101 Definitions.

* * * * *

Counterfeit item means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Critical item means an item, the failure of which is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the item; or is likely to prevent performance of a vital agency mission.

* * * * *

Design activity means an organization, Government or contractor, that has responsibility for the design and configuration of an item, including the preparation or maintenance of design documents. Design activity could be the original organization, or an organization to which design responsibility has been transferred.

* * * * *

Suspect counterfeit item means an item for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic.

* * * * *

■ 6. Add section 46.317 to read as follows:

46.317 Reporting Nonconforming Items.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall insert the clause at 52.246–26, Reporting Nonconforming Items, in solicitations and contracts—as follows:

(1) For an acquisition by any agency, including the Department of Defense, of—

(i) Any items that are subject to higher-level quality standards in accordance with the clause at 52.246–11, Higher-Level Contract Quality Requirement;

(ii) Any items that the contracting officer, in consultation with the requiring activity determines to be critical items for which use of the clause is appropriate;

(2) In addition (as required by paragraph (c)(4) of section 818 of the National Defense Authorization Act for

Fiscal Year 2012 (Pub. L. 112–81)), for an acquisition that exceeds the simplified acquisition threshold and is by, or for, the Department of Defense of electronic parts or end items, components, parts, or materials containing electronic parts, whether or not covered in paragraph (a)(1) of this section; or

(3) For the acquisition of services, if the contractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (a)(1) through (a)(2) of this section.

(b) The contracting officer shall not insert the clause at 52.246–26, Reporting Nonconforming Items, in solicitations and contracts when acquiring—

(1) Commercial items using part 12 procedures; or

(2) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

(c) If required by agency policy, the contracting officer may modify paragraph (b)(4) of the clause at 52.246–26, but only to change the responsibility for the contractor to submit reports to the agency rather than to Government-Industry Data Exchange Program (GIDEP), so that the agency instead of the contractor submits reports to GIDEP within the mandatory 60 days.

■ 7. Amend section 46.407 by adding paragraph (h) to read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(h) The contracting officer shall provide disposition instructions for counterfeit or suspect counterfeit items in accordance with agency policy. Agency policy may require the contracting officer to direct the contractor to retain such items for investigative or evidentiary purposes.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Add section 52.246–26 to read as follows:

52.246–26 Reporting Nonconforming Items.

As prescribed in 46.317, insert the following clause:

Reporting Nonconforming Items (Dec 2019)

(a) *Definitions.* As used in this clause—

Common item means an item that has multiple applications versus a single or peculiar application.

Counterfeit item means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Critical item means an item, the failure of which is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the item; or is likely to prevent performance of a vital agency mission.

Critical nonconformance means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

Design activity means an organization, Government or contractor, that has responsibility for the design and configuration of an item, including the preparation or maintenance of design documents. Design activity could be the original organization, or an organization to which design responsibility has been transferred.

Major nonconformance means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

Suspect counterfeit item means an item for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic.

(b) The Contractor shall—

(1) Screen Government-Industry Data Exchange Program (GIDEP) reports, available at *www.gidep.org,* as a part of the Contractor's inspection system or program for the control of quality, to avoid the use and delivery of counterfeit or suspect counterfeit items or delivery of items that contain a major or critical nonconformance. This requirement does not apply if the Contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States;

(2) Provide written notification to the Contracting Officer within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the Contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit;

(3) Retain counterfeit or suspect counterfeit items in its possession at the time of discovery until disposition instructions have been provided by the Contracting Officer; and

(4) Except as provided in paragraph (c) of this clause, submit a report to GIDEP at *www.gidep.org* within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that an item purchased by the Contractor for delivery to, or for, the Government is—

(i) A counterfeit or suspect counterfeit item; or

(ii) A common item that has a major or critical nonconformance.

(c) The Contractor shall not submit a report as required by paragraph (b)(4) of this clause, if—

(1) The Contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States;

(2) The Contractor is aware that the counterfeit, suspect counterfeit, or nonconforming item is the subject of an on-going criminal investigation, unless the report is approved by the cognizant law-enforcement agency; or

(3) For nonconforming items other than counterfeit or suspect counterfeit items, it can be confirmed that the organization where the defect was generated (*e.g.,* original component manufacturer, original equipment manufacturer, aftermarket manufacturer, or distributor that alters item properties or configuration) has not released the item to more than one customer.

(d) Reports submitted in accordance with paragraph (b)(4) of this clause shall not include—

(1) Trade secrets or confidential commercial or financial information protected under the Trade Secrets Act (18 U.S.C. 1905); or

(2) Any other information prohibited from disclosure by statute or regulation.

(e) Additional guidance on the use of GIDEP is provided at *http://www.gidep.org/about/opmanual/opmanual.htm.*

(f) If this is a contract with the Department of Defense, as provided in paragraph (c)(5) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), the Contractor or subcontractor that provides a written report or notification under this clause that the end item, component, part, or material contained electronic parts (*i.e.,* an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly)) that are counterfeit electronic parts or suspect counterfeit electronic parts shall not be subject to civil liability on the basis of such reporting, provided that the Contractor or any subcontractor made a reasonable effort to determine that the report was factual.

(g) *Subcontracts.*

(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert this clause, including this paragraph (g), in subcontracts that are for—

(i) Items subject to higher-level quality standards in accordance with the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement;

(ii) Items that the Contractor determines to be critical items for which use of the clause is appropriate;

(iii) Electronic parts or end items, components, parts, or materials containing electronic parts, whether or not covered in paragraph (g)(1)(i) or (ii) of this clause, if the subcontract exceeds the simplified

acquisition threshold and this contract is by, or for, the Department of Defense (as required by paragraph (c)(4) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81)); or

(iv) For the acquisition of services, if the subcontractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this clause.

(2) The Contractor shall not insert the clause in subcontracts for—

(i) Commercial items; or

(ii) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

(3) The Contractor shall not alter the clause other than to identify the appropriate parties.

(End of clause)

[FR Doc. 2019–24960 Filed 11–21–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–02; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–02, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–02, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn E. Chambers, Procurement Analyst, at 202–285–7380 or *marilyn.chambers@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–02, FAR Case 2013–002.

RULE LISTED IN FAC 2020–02

Subject	FAR Case	Analyst
* Reporting of Noncomforming Items to the Government-Industry Data Exchange Program	2013–002	Chambers.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020–02 amends the FAR as follows:

Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (FAR Case 2013–002)

This final rule amends the FAR to require contractors and subcontractors to report to the Government-Industry Data Exchange Program (GIDEP) certain counterfeit or suspect counterfeit parts and certain major or critical nonconformances. This change implements sections 818(c)(4) and (c)(5) of the National Defense Authorization Act for Fiscal Year 2012, which require DoD contractors and subcontractors to report counterfeit or suspect counterfeit electronic parts purchased by or for DoD to GIDEP. In addition, the FAR Council extended coverage of the proposed rule by policy to cover other Government agencies, other types of parts, and other types of nonconformance. In response to public comments, this final rule has more limited scope than the proposed rule, exempting contracts and subcontracts for commercial items and limiting the clause application to acquisitions of items that require higher level quality standards, critical items, or electronic parts by or for DoD.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–24961 Filed 11–21–19; 8:45 am]

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FEDERAL REGISTER

Vol. 84 Friday,
No. 226 November 22, 2019

Part IV

The President

Memorandum of November 19, 2019—Ocean Mapping of the United States Exclusive Economic Zone and the Shoreline and Nearshore of Alaska

Federal Register
Vol. 84, No. 226
Friday, November 22, 2019

Presidential Documents

Title 3—

The President

Memorandum of November 19, 2019

Ocean Mapping of the United States Exclusive Economic Zone and the Shoreline and Nearshore of Alaska

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of the Interior[,] the Secretary of Agriculture[,] the Secretary of Commerce[,] the Secretary of Transportation[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] the Administrator of the Environmental Protection Agency[,] the Director of the Office of Management and Budget[,] the Administrator of the National Aeronautics and Space Administration[,] the Director of the National Science Foundation[,] the Director of National Intelligence[,] the Chairman of the Joint Chiefs of Staff[,] the Administrator of the National Oceanic and Atmospheric Administration[,] the Assistant Secretary of the Army for Civil Works[,] the Commandant of the Coast Guard[,] the Assistant to the President for National Security Affairs[,] the Assistant to the President for Domestic Policy[,] the Assistant to the President for Economic Policy[,] the Director of the Office of Science and Technology Policy[,] the Chairman of the Council on Environmental Quality[, and] the Deputy Assistant to the President for Homeland Security and Counterterrorism

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Policy.* It is the policy of the United States to act boldly to safeguard our future prosperity, health, and national security through ocean mapping, exploration, and characterization. Data and information about the ocean help to advance maritime commerce, domestic seafood production, healthy and sustainable fisheries, coastal resilience, energy production, tourism and recreation, environmental protection, national and homeland security, and other interests. Such activities contribute more than $300 billion per year of economic activity, 3 million jobs, and $129 billion in wages.

On March 10, 1983, President Reagan issued Proclamation 5030 (Exclusive Economic Zone of the United States of America), which established the United States Exclusive Economic Zone (U.S. EEZ) to advance the development of ocean resources and promote the protection of the marine environment. With more than 13,000 miles of coastline and 3.4 million square nautical miles of ocean within our territorial jurisdiction, our country's EEZ is among the largest in the world and is larger than the combined land area of all 50 States. The U.S. EEZ contains a vast array of underutilized, and likely many undiscovered, natural resources, including critical minerals, marine-derived pharmaceuticals, energy, and areas of significant ecological and conservation value. However, only about 40 percent of the U.S. EEZ has been mapped and significantly less of the area has natural resources and ocean systems that have been characterized, including identification and evaluation, by executive departments and agencies (agencies).

The Nation is poised to harness cutting-edge science, new technologies, and partnerships to unlock the potential of our oceans through increased ocean mapping.

Maps and charts that present accurate and contemporary coastal elevation data support economic growth, resource management, and the safety and security of coastal residents. Completed mapping is especially lacking for

Alaska and for the Alaskan Arctic, which lack the comprehensive shoreline and nearshore maps available for much of the rest of the Nation.

To improve our Nation's understanding of our vast ocean resources and to advance the economic, security, and environmental interests of the United States, it is the policy of the United States to support the conservation, management, and balanced use of America's oceans by exploring, mapping, and characterizing the U.S. EEZ, including mapping the Arctic and Sub-Arctic shoreline and nearshore of Alaska. Further, to ensure that these activities produce the broadest possible benefits and provide the greatest return on investment of Federal resources, it is the policy of the United States to support these activities, when appropriate, in collaboration with non-United States Government entities.

Sec. 2. *National Strategy for Mapping, Exploring, and Characterizing the U.S. EEZ.* Mapping, exploring, and characterizing the U.S. EEZ is necessary for a systematic and efficient approach to understanding our resources. Mapping will reveal the terrain of the ocean floor and identify areas of particular interest; exploration and characterization will identify and evaluate natural and cultural resources within these areas. This knowledge will inform conservation, management, and balanced use of the U.S. EEZ.

To advance these objectives, the Director of the Office of Science and Technology Policy (Director) and the Chairman of the Council on Environmental Quality (Chairman), who serve as co-chairs of the Ocean Policy Committee established by Executive Order 13840 of June 19, 2018 (Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States), shall coordinate the development of a national strategy for mapping, exploring, and characterizing the U.S. EEZ, and for enhancing opportunities for collaboration among interagency and non-United States Government entities with respect to those activities. Specifically, within 180 days of the date of this memorandum, the Ocean Policy Committee, working through its Ocean Science and Technology Subcommittee and in coordination with the Administrator of the National Oceanic and Atmospheric Administration, shall develop a proposed strategy to map the U.S. EEZ, to identify priority areas within the U.S. EEZ, and to explore and characterize the priority areas, and shall submit it to the Director and the Chairman.

Sec. 3. *Strategy for Mapping the Arctic and Sub-Arctic Shoreline and Nearshore of Alaska.* Within 180 days of the date of this memorandum, the Administrator of the National Oceanic and Atmospheric Administration, in coordination, as appropriate, with the State of Alaska and the Alaska Mapping Executive Committee, shall develop a proposed strategy to map the shoreline and nearshore of Alaska and shall submit it to the Director and the Chairman to inform actions of the Ocean Policy Committee and relevant agencies.

Sec. 4. *Efficient Permitting of Mapping, Exploration, and Characterization Activities.* The United States Government, in coordination with non-United States Government entities, conducts hundreds of ocean exploration, mapping, and research activities every year across the U.S. EEZ. These activities improve our understanding of our oceans, including by identifying potential new sources of critical minerals, biopharmaceuticals, energy, and other resources. These activities frequently require multiple environmental reviews, consultations, permits, and other authorizations under Federal laws and regulations that protect resources such as maritime heritage sites and sensitive or protected marine natural resources. In order to reduce duplication and promote efficiency across agencies, within 180 days of the date of this memorandum, the Ocean Policy Committee, working through its Ocean Resource Management Subcommittee, shall identify opportunities and recommend actions to the Director and the Chairman to increase the efficiency of the permitting and authorization processes for ocean research, mapping, and characterization activities across agencies.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

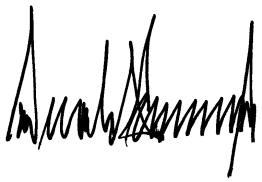
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

(d) The Secretary of Commerce is hereby authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, November 19, 2019

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